

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

**Under Section 12(3) and 60(5)(c) of
Insolvency and Bankruptcy Code, 2016**

I.A. NO. 779 OF 2020

Filed by

Hemant J. Mehta,

Resolution Professional of Lok Housing and
Construction Ltd.

...Applicant

In the matter of

C.P. (IB) No. 4135/I&B/2018

USV Private Limited.

...Financial Creditor

Versus

Lok Housing and Construction Limited

...Corporate Debtor

Order Pronounced on: 10.12.2020

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Per: Shri. Shyam Babu Gautam, Member

ORDER

1. This Interlocutory Application filed by the Resolution Professional Mr. Hemant J Mehta (hereinafter called as "the applicant") of Lok Housing and Construction Limited (hereinafter called as "the Corporate Debtor") under Section 12(3) and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code") seeking an exclusion of the period of the Corporate Insolvency Resolution Process of the Corporate Debtor.
2. The applicant sought following reliefs in this application:
 - a. *To permit exclusion of 271 days, in computation of 270 days, from the insolvency process period;*
 - b. *To permit the continuation of the exclusion pending final decision of the appeal by the Hon'ble NCLAT even if that results in the total CIRP period exceeding the limit of 330 days as per 2nd proviso to section 12(3) of the I&B Code, 2016;*

c. Any other relief as the Hon'ble Tribunal may deem fit.

3. Facts of the case are as under:

- i. The CIRP of the Corporate Debtor commenced on 03.06.2019 vide order dated 03.06.2019. This Tribunal vide order dated 05.12.2019 extended the CIRP period ending on 01.12.2019 by another 90 days to 28.02.2020. The work done till date by the Applicant, Resolution Professional are mentioned hereunder:

Issue of Public Announcement, Verification of claims, appointment of Authorized Representative, constitution of Committee of Creditors, conduct of 5th CoC meetings and so on.

- ii. The CIRP could not be taken forward due to the intervention of the suspended directors by appeals to the Hon'ble NCLAT and SLP filed in the Hon'ble Supreme Court. The table below gives details of the time lost due to litigation:

Event	Date	Time elapsed in CIRP	No of days to be excluded
Admission to CIRP	03.06.2019		
Order of Hon'ble NCLAT not to constitute CoC	19.06.2019	13	
Order of Hon'ble NCLAT vacating the order	28.08.2019		77
Order of Hon'ble Supreme Court directing that decision of the CoC not to be implemented pending final decision Hon'ble NCLAT	25.10.2019	58	

Till date the matter has not been disposed off by the Hon'ble NCLAT	24.02.2020		123
Total days that may be excluded			199
The number of days for which the process could be run		71	

- iii. The applicant states that the matter of exclusion was deliberated upon by the Committee of Creditors and at the fifth CoC meeting held on 25.02.2020 as the liquidation has not been considered by the COC and the Hon'ble NCLAT has not yet decided on the appeal of Mr. Darshan Gandhi, the CoC members has no objection to the filing of the exclusion application.
- iv. The CIRP is almost on a standstill due to the order of the Supreme Court directing that the decision of the COC should not be implemented pending the final decision of NCLAT on the appeal filed by the suspended director of the Corporate Debtor.
- v. The CoC vide their decision at the 5th meeting has approved the application permitting exclusion of time.
4. In the light of the above facts and circumstances, we can grant only prayer clause 'a'. We believe that the Prayer clause 'b' cannot be granted at this juncture since the number of days has not been crystallised and the matter is still subjudiced before Hon'ble NCLAT.
5. By this order, we are providing the applicant herein, exclusion of 271 days in computation of 270 days from the insolvency process period. Here this bench is relying upon the order of Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of Hemant Sharma, Resolution Professional of Global Softech Ltd. V. in Company Appeal (AT) (Insolvency) No. 942 of 2020 dated 02.11.2020 excluding the

Lockdown period from 25.03.2020 till 15.09.2020. Therefore, we are hereby *suo moto* granting exclusion till 15.09.2020 even if not expressly prayed in this application.

6. With the aforesaid observations, exclusion is granted and the present IA No. 779 of 2020 stands disposed of.

Sd
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)