

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Ins) No.240 of 2021**

[Arising out of Order dated 09.02.2021 passed by National Company Law Tribunal, New Delhi in IA 411/ND/2021 in Company Petition No.(IB)1896/ND/2019]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Sunil Kumar Agrawal,  
Resolution Professional,  
GSS Procon Pvt. Ltd.  
E-29, South Extension- II  
New Delhi 110049

RP

Appellant

Also Available at:  
904, GF, Sector – 7C,  
Faridabad – 121006,  
Haryana

**Versus**

1. Committee of Creditors,  
GSS Procon Pvt. Ltd.  
Through Authorized  
Representative of the  
Homebuyers:  
Mr. Ajay Kumar Siwach,  
Flat No. 504,  
Rama Krishna Society,  
Sector – 2,  
Faridabad – 121004

...

Respondent No.1

2. Crossroad Welfare  
Society  
C-1202,  
Victory Crossroad,  
Plot No.01/C,  
Sector – 143B,  
Noida – UP – 201301

...

Respondent No.2

**For Appellant: Shri Rakesh Kumar and Ms. Preeti Kashyap, Advocates**

**For Respondent: None**

**ORDER**  
**(Virtual Mode)**

**31.03.2021** This Appeal has been filed by the Resolution Professional of Corporate Debtor – M/s. GSS Procon Pvt. Ltd. against the Impugned Order dated 9<sup>th</sup> February, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in I.A. 411/ND/2021 in Company Petition bearing No.(IB)1896/ND/2019 whereby the Adjudicating Authority partly allowed the Interlocutory Application - I.A. No.411/ND/2021. The Resolution Professional had sought extension of CIRP (Corporate Insolvency Resolution Process) period by excluding 221 days from 25<sup>th</sup> March, 2020 to 31<sup>st</sup> October, 2020 due to COVID-19 situation in the country, along with extension of 90 days which the Adjudicating Authority had granted vide Order dated 11<sup>th</sup> February, 2020. It is claimed that the Adjudicating Authority excluded period only from 25.03.2020 to 31.05.2020 on the basis that it had done so, in another matter.

2. Heard Counsel for the Appellant – Resolution Professional. It is stated that in this matter, the CIRP commenced on 10<sup>th</sup> October, 2019. 180 days were over on 7<sup>th</sup> April, 2020. There was extension of 90 days which would end on 7<sup>th</sup> July, 2020. It is stated that the lockdown was imposed on 25<sup>th</sup> March, 2020 which created various difficulties in proceeding with the CIRP. It is stated that the COC (Committee of Creditors) in the matter of CIRP against

the Corporate Debtor – GSS Procon Pvt. Ltd. has already approved Resolution Plan in its meeting dated 4<sup>th</sup> December, 2020 and I.A. for approval of the Resolution Plan has already been filed with the Adjudicating Authority which is I.A. No.5670/2020. It is stated that the Appellant filed I.A. No.411 of 2021 for exclusion of time from 25<sup>th</sup> March, 2020 till 31<sup>st</sup> October, 2020 due to COVID-19 situation but the Adjudicating Authority has excluded period only of 68 days for the period 25<sup>th</sup> March, 2020 till 31<sup>st</sup> May, 2020.

3. The Hon'ble Supreme Court in the matter of **“Committee of Creditors of Essar Steel India Limited versus Satish Kumar Gupta & Ors.”** – Civil Appeal No.8766-67 of 2019 has observed in the context of newly added Proviso to Section 12 of Insolvency and Bankruptcy Code, 2016 (IBC – in short), as under in Para - 79:-

“However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the

outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.”

4. The learned Counsel for the Appellant refers to Appeal Para – 7(l) which reads as under:-

“1. Severe Prejudice shall be caused to the Corporate Debtor Company if the Impugned Order dated 09.02.2021 is not set aside by the Hon’ble Appellate Tribunal along with specific directions, if the CIRP period as per the Impugned Order dated 09.02.2021 stands expired on 14.09.2020, since the Resolution Plan has been received on 30.10.2020 and the same is approved by the CoC in the 10<sup>th</sup> CoC Meeting held on 04.12.2020 with a majority voting share of 93.43% assent.”

5. The learned Counsel Shri Rakesh Kumar submits that the Resolution Plan has already been approved by a voting majority of 93.43% (which can be seen in Impugned Order also) and the M.A. is pending. The learned Counsel for the Appellant submits that the I.A. 5670 of 2020 under Sections 30 and 31 of IBC to seek approval to the Resolution Plan is pending and Replies have been called by Adjudicating Authority in the said Application. The learned Counsel submits that in order to avoid later complications and technicalities, it would be appropriate that the prayers as sought in CA 411/ND/2021 (Annexure A-4 – Page 48 @ 61) may be approved.

6. This matter has come up today for the first time. The Respondent No.1 is Committee of Creditors and Respondent No.2 is stated to be Successful Resolution Applicant.

7. When Resolution Plan is already approved and available, it would not be appropriate to refuse extension of time, in the facts of the matter.

8. As such, Notice is dispensed with. Seen copy of I.A. 411/ND/2021 (Annexure A-4 – Page 48). Considering the above factors and reasons, we modify the Impugned Order so as to hold that extension is granted to CIRP in the matter of present Corporate Debtor granting exclusion of 221 days from 25<sup>th</sup> March, 2020 to 31<sup>st</sup> October, 2020 due to COVID-19 situation and CIRP period is extended upto 29<sup>th</sup> January, 2021 which includes 90 days extension by NCLT Order dated 11<sup>th</sup> February, 2020. This is in terms of prayer which was made in Annexure A-4 by the Resolution Professional.

The Appeal is disposed accordingly. No costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Dr. Alok Srivastava]  
Member (Technical)

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