

**NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CA Nos. 569/2019 & 944/2019**

**IN**

**CP (IB) No. 161/Chd/Hry/2018  
(Admitted Matter)**

**Under Section 60(5) of the  
Insolvency and Bankruptcy Code,  
2016**

**In the matter of:**

|                             |                                  |
|-----------------------------|----------------------------------|
| Allahabad Bank              | ...Petitioner-Financial Creditor |
| Vs.                         |                                  |
| Skyhigh Infraland Pvt. Ltd. | ...Respondent-Corporate Debtor   |

**And in the matter of CA No. 569/2019:-**

|  |              |
|--|--------------|
| Committee of Creditors<br>Represented through Chairman of Committee<br>Jalesh Kumar Grover<br>Resolution Professional in the matter of<br>Skyhigh Infraland Private Limited (Corporate Debtor)<br>(Undergoing Corporate Insolvency Resolution Process)<br>through Jalesh Kumar Grover<br>Resolution Professional | ...Applicant |
|--|--------------|

**And in the matter of CA No. 944/2019:-**

|   |                |
|---|----------------|
| INR Constructions through its<br>Partners Shri Rohit Dhaiya | ...Applicant   |
| Vs.   |                |
| Jalesh Kumar Grover & others                                | ...Respondents |

**Order delivered on: 08.11.2019**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial).  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical).**

For the Resolution  
Professional

- : 1). Ms. Pooja Mahajan, Advocate  
2). Mr. G.S. Sarin, Practising Company Secretary  
3). Mr. Jalesh Kumar Grover, Resolution  
Professional in person.

For the applicant

- : 1). Mr. Anand Chhibbar, Senior Advocate  
2). Mr. Vaibhav Sahni, Advocate

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

### **ORDER**

#### **CA No. 569/2019**

CA No. 569/2019 is filed by the Committee of Creditors (**COC**) of M/s Skyhigh Infraland Pvt. Ltd. through the Resolution Professional under Section 60(5)(c) of Insolvency and Bankruptcy Code, 2016 (**Code**) seeking exclusion of time on account of litigation and for further extension of time by three months beyond the Corporate Insolvency Resolution Profession (**CIRP**) period of 270 days which was expiring on 29.07.2019.

2. The applicant has filed a compliance affidavit enclosing various annexures vide Diary No. 6178 dated 07.11.2019. It is stated therein that the CIRP against the corporate debtor was announced on 29.10.2018 and the Form G for the first time was published on 16.01.2019 and since no Expression of Interest (**EOI**) and resolution plans were received within the last date, Form G was republished second time on 05.03.2019 and as 180 days of CIRP were expiring on 30.04.2019, the same was got extended by 90 more days vide order dated 02.05.2019 and since no EOI and no plans

received/submitted even in response to the second Form G before the last date, the Form G was republished again third time on 10.06.2019 and the last date for submission of the resolution plans was extended till 20.07.2019 and out of the 09 EOIs received, 04 resolution plans were submitted within the said extended time. It was also submitted that since 270 days of CIRP were to be expired on 29.07.2019, the instant CA No. 569/2019 seeking exclusion of litigation period was filed on 25.07.2019.

3. It was also stated that in the 8<sup>th</sup> COC meeting held on 13.08.2019, Ms. Seema Rana, one of the 4<sup>th</sup> resolution applicant was announced as the H1 and in 9<sup>th</sup> COC held on 29.08.2019 negotiations were held with the said H1 Ms. Seema Rana and in 10<sup>th</sup> COC meeting held on 04.09.2019, the resolution plan of H1 Ms. Seema Rana was put to vote and the same was not approved by the COC with the required percentage of vote as the Allahabad Bank with 47% voting share dissented and the home buyers holding 52.7% voting share approved the plan.

4. It was also stated that H1 Ms. Seema Rana sent a revised resolution plan via e-mail to the COC on 26.09.2019 and the COC in its 11<sup>th</sup> meeting held on 03.10.2019 considered the revised plan of H1 Ms. Seema Rana submitted on 26.09.2019 and decided to put the same for e-voting. In 12<sup>th</sup> meeting of COC held on 24.10.2019, the Resolution Professional (**RP**) apprised the COC Members that he received another resolution plan from M/s INR Constructions on 20.10.2019, however, the COC has not

considered the said plan by holding that the same is barred under the provisions of the Code and to avoid unnecessary delay and in the best interest of the financial creditors the revised plan submitted by H1 Ms. Seema Rana should be considered and put for e-voting.

5. We may add here that the meetings of the COC were convened after the period of 270 days of CIRP had expired on 29.07.2019 and despite the present application for exclusion of time being pending before the Tribunal. However, we are taking into consideration the factual position of the holding of the COC meetings and the decisions taken therein.

6. The above referred facts as stated by the applicant clearly shows that after the expiry of 270<sup>th</sup> day and after the original plan of Ms. Seema Rana was rejected in voting by the COC, the COC received the revised plan of H1 Ms. Seema Rana and also put for voting for approval, though the said action is not permissible under the Code. But the plan submitted by M/s INR Constructions was not considered on the ground that the same was submitted beyond the last date. The said action of COC is self-contradictory and discriminatory.

7. However, it is relevant that Section 12 of the Code has been amended w.e.f. 06.08.2019, by inserting two new provisos to the said Section and the said Section after the said amendment reads as under:-

*“12. Time-limit for completion of insolvency resolution process.-*

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of [sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may be order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

*Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:*

*[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:*

*Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]”*

8. The Hon’ble Supreme Court of India on 24.09.2019 in ***Committee of Creditors of Amtek Auto Limited through Corporation Bank v. Dinkar T. Venukatsubramanian & Ors.***, (*supra*), which was filed against the direction of the NCLAT to the Adjudicating Authority to pass orders for liquidation of Amtek Auto Limited, passed the following order:

*“Heard the learned senior counsel appearing for the parties.*

*It is submitted by the learned Solicitor General appearing on behalf of the Committee of the Creditors of Amitek Auto Limited that a resolution plan was prepared that*

*has failed owing to nonfulfillment of the commitment by Liberty House. That has consumed the time which was available as per the provisions contained in Section 12 of the Insolvency and Bankruptcy Code, 2016. Our attention has also been drawn to the third proviso by virtue of the Amendment Bill, 2019 with effect from 16.08.2019, by which the resolution process may be permitted to be completed within 90 days from the date of the commencement of the Amendment Act. The said period is available upto 15th November, 2019. Reliance has also been placed on a decision of this Court in "Arcelormittal India Pvt. Ltd Vs. Satish Kumar Gupta and Ors.", reported in (2019) 2 SCC 1. Without deciding the aforesaid issue finally, the learned counsel for the parties have agreed that one more effort should be made to resolve the issue. It was also pointed out that expression of interest have already been indicated by eight other parties.*

*The learned Solicitor General has also submitted that the Resolution Professional may be permitted to invite the fresh offers within a period of 21 days as an earlier offer had been invited and considering the time limit of 15.11.2019, 21 days may be fixed instead of 30 days for submission of the offer. We permit the Resolution Professional to invite fresh offers within a period of 21 days. Let steps be taken by the Resolution Professional by tomorrow i.e. by 25.09.2019 for invitation of the fresh offers in accordance with the rules. Within 2 weeks thereafter, the Committee of Creditors shall take a final call in the matter and the decision of the Committee of Creditors and the offers received be placed before this Court on the next date of hearing for consideration.*

*List the matter on 05.11.2019.*

*Written submissions may be filed on or before 04.11.2019."*

9. In ***M/s Alpha Corp Development Pvt. Ltd. v. M/s Earth Infrastructure Ltd. through the Resolution Professional Shri Aakash Shinghal***, (*supra*), the Hon'ble NCLAT after adding of the second and third provisos to Section 12 by way of the latest amendment which came into force w.e.f. 16.08.219, by its order dated 30.09.2019 observed as under:-

*"In terms of third proviso of sub-section (3) of Section 12, as we find that the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor' is pending and has not*

*been completed within the period referred to in the second proviso, we hold that the 'Corporate Insolvency Resolution Process' is to be completed within another period of 90 days from the date of commencement of Insolvency & Bankruptcy Code (Amendment Act, 2019) i.e. w.e.f. 16<sup>th</sup> August, 2019.*

*In view of the fact that the period has been extended for another 90 days in the present case in view of third proviso to sub-section (3) of Section 12, we set aside the impugned order and allow the 'Resolution Applicant to move before the 'Committee of Creditors' and 'Resolution Professional and direct completing of the process within 90 days from the date of commencement of Insolvency & Bankruptcy Code (Amendment Act, 2019) i.e. w.e.f. 16<sup>th</sup> August, 2019'*

10. Following the aforesaid decisions this Tribunal also passed, identical orders in various cases.

11. Therefore, we are of the considered view that in cases where CIRP is pending and has not been completed within the period of 330 days the 3<sup>rd</sup> proviso to Section 12 is applicable.

12. Taking a similar view, we dispose of CA No. 569/2019, as under:

i) The R.P. shall convene a meeting of the COC and place the Revised Resolution Plan of H1 Ms. Seema Rana and also the resolution plan of M/s INR Constructions before COC, which consider both the plans and vote upon the same and take appropriate decision either for approving either of the resolution plans or for liquidation of the corporate debtor. In accordance with Section 30(5) of the Code, both the resolution applicants may be allowed to attend the meeting of the COC but shall not have right to vote at the meeting. We may add here that the

discussion made in this order is not to be taken as discussion about the merits of the resolution plans and the COC is directed to take decision uninfluenced by any observation in this order.

ii) The entire exercise including filing of an application under Section 31 or under 33, as the case may be, shall be completed within a period of 90 days from the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 as provided for in the third proviso to Section 12(3) of the Code.

**CA No. 944/2019**

13. In view of the order passed in CA No. 569/2019, this CA No. 944/2019 also disposed of accordingly.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

November 8<sup>th</sup>, 2019

Yashpal

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)