

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH**  
*(through web-based video conferencing platform)*

**IA No.184 and 185 of 2020  
In  
CP (IB) No.30/Chd/Pb/2017  
(Admitted)**

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

**In the matter of:-**

FM Hammerle Textiles Limited

...Corporate Debtor

**And in the matter of :-**

New Ram Traders (Successful Resolution Applicant)

...Applicant

Versus

Rajiv Goyal (Resolution Professional/Monitoring Personal) and Another

...Respondents

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)**

**Present through Video Conferencing :-**

For the Applicant : - Mr. Arun Saxena, Advocate with Ms. Nalini,  
Advocate

For Respondent No.1 : - Mr. Neevrat Sharma, Advocate

For Respondent No.2 : - Mr. Abhay Gupta, Advocate with Mr. Praveen  
Sharma, AGM

**ORDER**

**IA No.184/2020**

The instant application has been fixed for hearing through video conferencing on 11.05.2020 i.e. today at 11:00 AM.

Heard the parties. In the circumstances and in the interest of justice, the instant IA i.e. IA No.184/2020, filed for seeking urgent hearing of IA No.185/2020 in CP (IB) No.30/Chd/Pb/2017, is allowed. Thus, IA No.184/2020 stands disposed of.

**IA No.185/2020**

The applicant in the instant IA is the successful Resolution Applicant in the matter of FM Hammerle Textiles Limited i.e. the corporate debtor. The resolution plan submitted by the applicant in the instant case was approved by the Committee of Creditors and thereafter, the same was approved by this Tribunal vide order dated 13.03.2020 (Annexure A-1) in CA No.893/2019.

2. The successful Resolution Applicant filed the instant IA, seeking the following reliefs:-

- i.) *To exclude the period of complete lockdown from the due date of first trench of payments & allow Applicant to make first trench of payments within 30 (thirty) days from the date of order excluding the period of lockdown;*
- ii.) *To exclude the time period of complete lock down from the due date of making final payments under Approved Resolution Plan & allow applicant to make final payment within 90 (Ninety) days from the date of order excluding period of lockdown;*
- iii.) *To pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

3. It is stated in the instant application that:-

*"2. That the Resolution Plan of Applicant herein was approved by the Committee of Creditors ("CoC") and thereafter, the same was approved by this Hon'ble Tribunal vide its order dated 13.03.2020. Under the Resolution Plan, the Applicant herein i.e. the successful Resolution Applicant had to make the total payment of Rs.64.33 Crores approximately. Further as per the approved Plan, the Applicant was to make the following payments within 30 (Thirty) days of the date when plan was approved by this Hon'ble Tribunal i.e. 13.04.2020:*

Sr.No.	Particulars	Amount
1.	CIRP Cost	Rs.10.50 Crores (any increase over and above the said amount is also to be paid by the Resolution Applicant)
2.	Operational Creditor(s)	Rs.24.43 Lakhs
3.	Financial Creditors	Rs.5.00 Crores

*Rest of the payments was to be made within 90 (Ninety) days from the date of the approval of the Plan. Further, in terms of the approved Resolution plan the Monitoring Committee was constituted consisting of the successful Resolution Applicant, SBI and the Resolution Professional. Copy of order dated 13.03.2020 of this Hon'ble Tribunal is annexed herewith and marked as Annexure A-1.*

3. *That in order to implement the provisions of the Resolution plan, the Resolution Applicant was required to open an Escrow Account as well as to appoint an escrow trustee. In the First Meeting of the Monitoring Committee held on 18.03.2020, it was agreed that the Escrow Account shall be opened with Union Bank of India. The State Bank of India i.e. the erstwhile CoC member with 100% vote share and presently a member of the Monitoring Committee, vide its email dated 26.03.2020 suggested that either SBI CAPS or Axis Trustee Services Limited be appointed as the Custodian or trustee of certain documents.*

4. *That in pursuance of the above, the Applicant communicated with Union Bank of India. After exchanging certain draft, the Union Bank of India approved the draft Escrow Agreement vide its email dated 03.04.2020. The Applicant further appointed Axis Trustee Services Limited as Custodian of documents and exchanged draft Custodian Agreement. The Monitoring Committee has been promptly informed about the above developments.*

5. *That it is most humbly submitted that while Applicant was steadfastly engaged in making arrangement for the timely implementation of the successful Resolution Plan, a nationwide lockdown was declared from 25.03.2020 due to pandemic caused by Coronavirus. Movement was extremely restricted and individuals were confined to their homes. Further, Banks were working with skeletal staff and were engaged in providing only essential and emergency services. Union Bank of India also vide its email dated 03.04.2020 expressed the difficulty faced by it and informed that due to exceptional circumstances, Account opening will be delayed. Copy of email received from union bank of India is annexed hereto and marked as Annexure A-2.*

6. *That it is respectfully submitted that despite the approval of draft Escrow Agreement by the Union Bank of India, the same could not be executed due to the concerned parties being confined to their homes. Similarly, the Custodian Agreement could not be executed with Axis Trustee Services due to lockdown. In view of such exceptional circumstances beyond*

*the control of the Applicant herein, it has become impossible to open up Escrow Account and during the complete lockdown in the entire country it become impossible for the resolution applicant to arrange the required funds as planned. Consequently, it became impossible for the applicant to make fresh trench of payments as per the approved Resolution Plan.*

7. *The Resolution Applicant also updated the monitoring committee, vide its email dated 12.04.2020. The monitoring committee considered representation of resolution Applicant in its meeting held on 27.04.2020 (through Video Conferencing) and resolved to approach this Hon'ble Tribunal for the necessary directions. The copy of the email dated 12.04.2020 & minutes of the meeting dated 27.04.2020 are attached hereto & marked as ANNEXURE A-3 (COLLY)."*

Hence, the IA.

4. In view of the unprecedented sudden spread of pandemic Novel COVID-19, the Government of India, imposed a country wide total lockdown and as a result, the entire nation came to a halt and the said lockdown is still continuing as on date. In this connection, it is relevant to mention the following:-

i.) The Hon'ble Supreme Court of India in ***Suo Motu Writ Petition (Civil) No(s).3/2020 in Re: cognizance for extension of Limitation***, vide order dated 23.03.2020, observed as under:-

*"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).*

*To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.*

*We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.*

*This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.*

*Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”*

- ii.) The Hon'ble National Company Law Appellate Tribunal in *Suo Moto-Company Appeal (AT) (Insolvency) No.01 of 2020*. Vide order dated 30.03.2020, observed as under:-

*“Upon requests for urgent listing of cases having been made telephonically to Registrar of this Appellate Tribunal from various persons, who were unable to physically file the same on account of complete lockdown declared by Government with effect from 25th March, 2020, we take suo moto cognizance of the unprecedented situation arising out of spread of COVID19 virus declared a pandemic. Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/ cases, which has already been taken care of by the Hon'ble Apex Court by extending the period of limitation with effect from 15th March, 2020 till further order/s in terms of order dated 23rd March, 2020 in *Suo Motu Writ Petition (Civil) No(s).03/2020*, inasmuch as certain steps required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 or to comply with various provisions and to adhere to the prescribed timelines for taking the 'Resolution Process' to its logical conclusion in order to obviate and mitigate such hardships, this Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 r/w the decision of this Appellate Tribunal rendered in "*Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018*" decided on 8th May, 2018 do hereby order as follows:*

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- (1) *That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.*

- (2) *It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later.*

*A copy of this order be communicated to Registrar of National Company Law Tribunal, New Delhi with a request to circulate the same to all Benches of NCLT across the country including the Principal Bench based at Delhi.*

*A copy of this order be also communicated to Secretary, Ministry of Corporate Affairs, New Delhi for information and compliance by various Authorities under its control.”*

5. Thereafter, the Insolvency and Bankruptcy Board of India, inserted Regulation 40C to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, vide notification dated 29.03.2020 and the same is as under:-

***“40C. Special provision relating to time-line***

*Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process”*

6. Similarly, the Insolvency and Bankruptcy Board of India, vide notification dated 20.04.2020, inserted Regulation 47 A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the said regulation reads as under :-

***“Exclusion of period of lockdown***

*47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process.”*

7. Heard learned counsel for the applicant and learned counsel for respondent Nos.1 and 2.

8. In the circumstances and since the facts are not disputed by the respondents and in view of the orders of the Hon'ble Supreme Court of India and the National Company Law Appellate Tribunal and the new Regulations issued by the Insolvency and Bankruptcy Board of India, the entire lockdown period i.e. from the date of imposition of lockdown by the Government of India till the reopening of National Company Law Tribunal, Chandigarh Bench, on regular basis, after removal of the lockdown, be excluded, from the compliances required to be made under order dated 13.03.2020 in CA No.893/2019, passed by this Tribunal and in relation to the Corporate Insolvency Resolution Process.

Accordingly, IA No.185/2020 stands disposed of.

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

May 11<sup>th</sup>, 2020  
Mohit Kumar