

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT  
CHENNAI  
(APPELLATE JURISDICTION)  
Company Appeal (AT) (CH) (INS) No. 223 of 2021  
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)  
Against the Order dated 03.08.2021 in IA/510/CHE/2021 in  
CA/1/IB/2017 passed by the 'Adjudicating Authority', (National  
Company Law Tribunal, Division Bench-I, Chennai)**

**In the matter of:**

**Committee of Creditors of**  
M/s. Vasan Health Care Pvt. Ltd.  
Represented By:  
Stressed Asset Recovery Branch  
Union Bank of India  
Whites Road, Royapettah, Chennai

**...Appellant**

**V**

**Mr. S. Rajendran**  
Resolution Professional  
M/s. Vasan Health Care Pvt. Ltd.  
2<sup>nd</sup> Floor, Hari Krupa, 71/1, McNichols Road  
(Off Poonamallee High road), Chetpet,  
Chennai – 600 031.

**...Respondent**

**IA No. 456 of 2021 in Company Appeal (AT) (CH) (INS) No. 223 of  
2021**

**In the matter of:**

**Maxivision Eye Hospitals Private Limited,**  
Having its registered office at 15,  
IV Street, Abhiramapuram,  
Chennai, Tamil Nadu - 600 018.

**...Applicant**

**V**

**Mr. S. Rajendran**

Resolution Professional

M/s. Vasam Health Care Pvt. Ltd.

2<sup>nd</sup> Floor, Hari Krupa, 71/1, McNichols Road

(Off Poonamallee High road), Chetpet,

Chennai – 600 031.

**...Respondent**

**IA No. 474 of 2021 in Company Appeal (AT) (CH) (INS) No. 223 of 2021**

**In the matter of:**

**ASG Hospital Private Ltd.**

Represented by its Director

Priyanka Singhvi

Having its Registered Office at –

Plot No. 1, Shyam Nagar Pal Link Road,

Jodhpur, Rajasthan – 342001.

**...Applicant**

**V**

**Committee of Creditors of**

Vasam Healthcare Pvt. Ltd.

Having its registered office at:

No.70, Radhakrishnan Salai,

Westminister Complex, Mylapore,

Chennai – 600 004.

**...1<sup>st</sup> Respondent/Appellant**

**2. S. Rajendran,**

Resolution Professional,

Vasam Healthcare Pvt. Ltd.

Having its registered office at:

No.70, Radhakrishnan Salai,

Westminister Complex, Mylapore,

Chennai – 600 004.

**...2<sup>nd</sup> Respondent/Respondent**

**IA No. 497 of 2021 in Company Appeal (AT) (CH) (INS) No. 223 of 2021**

**In the matter of:**

**Dr. Agarwals Healthcare Limited**

1<sup>st</sup> Floor, Buhari Towers, No.4,  
Moore's Road (off Greaves Road),  
Chennai – 600006.

**...Applicant**

**Present for parties:**

For Appellant : Mr. Varun Srinivasan, Advocate  
For Ms. Vinithra Srinivasan, Advocate  
Ms. M. S. Elamathi, Advocate  
Ms. M. Savitha Devi, Advocate

For Respondent : Ms. Amritha Satyajith, Advocate  
Mr. R.V. Yajura Devil, Advocate

For Intervenor : Mr. A. R. L. Sundaresan, Sr. Advocate  
Ms. Adeesh Anto, Advocate  
Mr. Suhirth Parthasarathy, Advocate  
Mr. S. Kaushik Ramaswamy, Advocate

**In IA 456/2021**

For Applicant : Mr. Suhirth Parthasarathy, Advocate  
Ms. M. Savitha Devi, Advocate  
For Intervenor : Mr. A. R. L. Sundaresan, Sr. Advocate

**In IA 474/2021**

For Applicant : Mr. J. Sivanandaraaj, Advocate  
For Mr. Adeesh Anto, Advocate  
Mr. Kaushik Ramaswamy, Advocate

**In IA 497/2021**

For Applicant : Mr. Satish Parasaran, Sr. Advocate  
For Mr. R. Parthasarathy, Advocate  
Mr. Rahul Balaji, Advocate

**Coram : Mr. Justice M. Venugopal Member (J)  
Mr. Kanthi Narahari Member (T)**

**JUDGMENT**  
**(VIRTUAL MODE)**

**FACTS IN COMPANY APPEAL (AT) (CH) (INS) 223 of 2021**

**Per: Kanthi Narahari Member (T)**

1) The present appeal is filed aggrieved by the order of the ‘Adjudicating Authority’ (NCLT, Division Bench-1, Chennai) dated 3<sup>rd</sup> August 2021 whereby and whereunder the ‘Adjudicating Authority’ did not allow the prayer as made in IA/510/2021 in CA/1/2017 filed by the Resolution Professional of the Corporate Debtor and only extended the ‘CIRP’ period upto 22.08.2021 in relation to the Corporate Debtor i.e. M/s.Vasan Healthcare Pvt. Ltd.

2) Aggrieved by the said order the Appellant being the ‘Committee of Creditors’ of the Corporate Debtor filed the ‘instant Appeal’.

3) The Learned Senior Counsel for the Appellant submitted that the ‘Appellant’ i.e. COC constituted on 14.11.2018 and reconstituted as on 15.05.2021 with the members of the COC as mentioned in detail in Para-1 of the Memo of Appeal. The CIR Process against the ‘Corporate Debtor’ was initially ordered by the ‘Adjudicating Authority’ vide order dated 21.04.2017 and pursuant to a Company Petition being filed by the Corporate Debtor before the Hon’ble High Court of Madras and the Hon’ble High Court

granted stay of CIR Process proceedings on 04.05.2017, subsequently the Division Bench of the Hon'ble High Court of Madras vacated the stay vide its order dated 05.09.2019. Accordingly, the CIR process revived with effect from 03.10.2019. The COC was constituted on 14.11.2019 as per the regulations. The first COC was held on 21.11.2019 and subsequently in view of the nationwide lockdown imposed due to COVID-19 pandemic with effect from 24.03.2020 the 5<sup>th</sup> COC was constituted to deliberate and decide on instructing the IRP to seek for an extension of CIR Process by filing an application before the Hon'ble Adjudicating Authority. The Adjudicating Authority vide order dated 06.08.2020 excluded 150 days in light of nationwide lockdown vide order dated 06.08.2020.

4) The Learned Senior Counsel for the Appellant submitted that the CIR Process was delayed in view of the reasons viz. gathering information for the purpose of information memorandum and other crucial documents/information required under the CIR Process to attract bidder and change of the Resolution Professional. The new Resolution Professional was appointed by the Hon'ble Adjudicating Authority and took charge w.e.f. 23.04.2021. In view of several developments with respect to conduct of CIR Process, the COC in its 12<sup>th</sup> meeting requested the RP to seek further extension of CIR Process by period of six months w.e.f. 01.06.2021 and the reasons for extension are: improvement in the operation and revenue collections of

Corporate Debtor, strong interest shown by prospective resolution applicants in the same line of business to submit a fresh competitive bids, livelihood of about 2000 direct employees and their families spread over about 100 centers located in five States and Union Territory, continuation of more than 200 dedicated Professional Doctors, and renewal of Licenses, Permits, etc. for maximizing the value of the Corporate Debtor.

5) Accordingly, the Resolution Professional moved the IA/510/2021 before the Hon'ble Adjudicating Authority, Chennai Bench seeking extension of 180 days till 30.11.2021.

6) While matter stood thus during/prior to the application filed by the Resolution Professional on 25.05.2021 seeking extension of period, wherein it was resolved in 13<sup>th</sup> COC dated 18.06.2021 and decided to float fresh Expression Of Interest (EOI). Accordingly, a fresh EOI was floated on 28.06.2021. Based on the above EOI, 8 bidders have expressed their interest to submit their Resolution Plans, however only 7 bidders were shortlisted after scrutiny and placed before the COC in the 14<sup>th</sup> COC Meeting held on 29.07.2021. The list of bidders given in a tabular column at page 28 of the Appeal Paper Books.

7) The Learned Senior Counsel for the Appellant submitted that the decision of the COC for seeking extension of time and also calling expression of interest from the competent bidders who are in the same line

of business is a commercial decision of the Appellant and the Application was filed by the Resolution Professional seeking extension of time. It is also submitted that the Hon'ble Adjudicating Authority ought to have considered the situation prevailed in the state of Tamil Nadu in view of imposition of lockdown. It is submitted that the business of Corporate Debtor spread over to all southern states and union territory and in most of the states suffered due to COVID-19 pandemic and imposition of lockdown. The business of the Corporate Debtor is in relation to healthcare and the Corporate Debtor is reviving slowly and now it generating a monthly income of Rs.20 crore.

8) The Learned Senior Counsel for the Appellant submitted that the Hon'ble Adjudicating Authority did not consider the prevailing situation in view of the several hurdles come in the way of smooth functioning of the Corporate Debtor, the period as sought by the Resolution Professional ought to have considered and extended in the interest of the Corporate Debtor duly following the Judgments of the Hon'ble Supreme Court and this 'Tribunal'.

9) The Learned Senior Counsel for the Appellant submitted that the Resolution Process of the Corporate Debtor required to be considered with a different approach and perspective, which would protect the interest of the stakeholders besides achieving maximization of value of the assets of the Corporate Debtor by protecting it from a Corporate death by Liquidation. As stated above 7 prospective Resolution Applicants have already been

shortlisted and awaiting the Resolution Plan.

10) In view of the reasons the Learned Senior Counsel for the Appellant prayed this Bench to set aside the Impugned Order by granting the reliefs as prayed for in IA/510/2021 by extending the CIR Process till 30<sup>th</sup> November 2021.

**IA/456/2021 in CA(AT)(CH)(INS) No.223 of 2021.**

1) The above IA/456/2021 filed by the applicant i.e. Maxvision Eye Hospitals Pvt. Ltd. seeking intervention in the above Company Appeal.

**The brief facts of the IA/456/2021**

2) Shri A.R.L. Sundaresan Learned Senior Counsel appeared for the Applicant submitted that the Applicant filed the above application seeking permission of this Hon'ble Tribunal to intervene and make submissions in the above Company Appeal filed by the Committee of Creditors of M/s. Vasan Health Care Pvt. Ltd. The Learned Senior Counsel did not dispute the facts with regard to the CIR Process Proceedings initiated against M/s. Vasan Health Care Pvt. Ltd. and with respect to Stay granted by the Hon'ble High Court of Madras and later vacated by the Division Bench of the Hon'ble Madras High Court and the delay due to COVID 19 Pandemic the CIR Process could not continue. It is submitted that the country ravaged by the second wave of COVID 19 pandemic, the Hon'ble Adjudicating Authority granted a further time of 150 days on an application filed by the Resolution



Professional for completion of the CIR Process and directed completion of CIR Process of the Corporate Debtor by 31<sup>st</sup> May 2021. In the meantime, there is a replacement of Resolution Professional vide order dated 23.04.2021 and the new Resolution professional taken the charge and issued Form-G on 28.06.2021 in the prescribed format inviting prospective Resolution applications to submit their expression of interests. In response to the EOI the Applicant submitted its expression of interest on 19.07.2021. Further, the Resolution Professional filed an application seeking an exclusion of 165 days relating to the lockdown owing to the second wave of COVID 19 pandemic and additionally sought a period of 15 days for completion of CIR Process. Hon'ble Adjudicating Authority granted a period of 83 days only and directed the completion of CIR Process by 22.08.2021.

3) The Learned Senior Counsel for the Applicant submitted that the Committee of Creditors have not opened the Resolution Plan submitted by the applicant, thereby causing a risk of the Corporate Debtor being pushed towards Corporate Death i.e. Liquidation. The Applicant also wrote to the Resolution Professional and the COC requesting them to open the Resolution Plan submitted by the Applicant within the timelines prescribed by the Learned Adjudicating Authority and uphold not only the objective of Resolution prescribed under the code but also the sanctity of the process and

procedure undertaken under the Provisions of the Code.

4) The Learned Senior Counsel for the Applicant submitted that on 05.08.2021 a communication was sent by the Resolution professional to all prospective Resolution Applicants (RPA) including the applicant herein updating them regarding the order dated 3<sup>rd</sup> August 2021 passed by the Learned Adjudicating Authority. In view of the above communication, the Applicant proceeded to submit its Resolution Plan with the Resolution Professional on 21.08.2021 i.e. within the period prescribed under the Code. However, the Resolution Professional and the COC failed to open the Resolution Plan submitted by the applicant and failed to make attempt towards resolving the Financial affairs of the Corporate Debtor.

5) The Learned Senior Counsel for the Applicant submitted that it is a settled law laid down by the Hon'ble Supreme Court as held in the matter of Swiss Ribbons v Union of India reported in 2019 (4) SCC Page 70 held as under:

“11. As is discernible, the preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtor. Unless such reorganization is effected in a time-bond manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code.

“What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark”.

“12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being, a mere recovery legislation for creditors...”

6) The Learned Senior Counsel for the Applicant also relied upon the judgment of the Hon’ble Supreme Court in the case of Committee of Creditors of Essar Steels India Ltd. v Satish Kumar Gupta and Ors., 2019(16) SCALE Page 319. The Learned Senior Counsel submitted that the Hon’ble Supreme Court in the above Judgment categorically held that the Powers of this Appellate Authority to grant time even beyond the statutorily prescribed period of 330 days wherein it can be demonstrated that only a short period is left for completion of the Insolvency Resolution process. Considering the above law laid down by the Hon’ble Supreme Court, the Resolution Professional is in receipt of Resolution plans within the period of CIR Process prescribed by the Learned Adjudicating Authority, the grant of a limited extension to the Resolution Professional and the COC to consider the Resolution Plans submitted within the period of the CIR Process would save

the Corporate Debtor from liquidation.

7) In view of the aforesaid reasons the Learned Senior Counsel for the Applicant submitted that to meet the interest of justice and uphold the principles governing the Code this Hon'ble Tribunal ought to grant the RP and COC a limited extension to consider only such resolution plans that were submitted within the period of the CIR Process prescribed by the Learned Adjudicating Authority.

8) We heard the Learned Senior Counsel for the Applicant on the merits of the Application and we would deliberate upon the merits of their submissions in the Appeal. Prima facie this Tribunal allowing the Applicant to intervene.

9) In view of the intervention we heard the submissions of the Learned Senior Counsel for the Applicant at length.

**IA/474/2021 in CA(AT)(CH)(INS) No.223 of 2021.**

1) The above IA/474/2021 filed by the applicant i.e. ASG Hospitals Pvt. Ltd. praying this Tribunal to implead the Applicant as 2<sup>nd</sup> Respondent in above Company Appeal No.223 of 2021.

**The brief facts of the IA/474/2021**

2) The Learned Counsel appearing for the Applicant submitted that the Applicant is a Resolution Applicant submitted its Resolution Plan before the Committee of Creditors on 30.09.2021 based on the Request For Resolution

Plan (RFRP) dated 03.08.2021 circulated by the Resolution Professional.

3) The Learned Counsel for the Applicant submitted that the Applicant is functioning as a chain of Super Speciality Eye Hospital operating about 37 hospitals across the country providing Comprehensive Diagnosis, treatment and Surgical Services carefully maintaining National Accreditation Board for hospitals and Healthcare provides (NABH) Level Quality Standards.

4) The Learned Counsel submitted that in view of EOI dated 28.06.2021 and RFRP dated 03.08.2021, the Resolution Professional issued communication to all prospective Resolution Applicants on 05.08.2021 to submit their respective resolution plans by 13.09.2021. In accordance with the Request For Resolution Plan (RFRP), the applicant submitted its Resolution Plan on 13.09.2021. This Applicant learnt that aggrieved by the order passed by the Learned Adjudicating Authority the Committee of Creditors and the Resolution Professional filed appeals bearing No.223 and 224 of 2021 respectively before this 'Tribunal'. The Applicant under the bona fide belief and legitimately expecting to give an effective resolution plan, planned various site visits at several centers of the Corporate Debtor across the States of Tamil Nadu, Karnataka, Andhra Pradesh, Kerala and Telangana between the months of August to September 2021 during state wide restrictions and lockdowns imposed during the month of April 2021.

The Applicant also learnt that several other prospective Resolution Applicant also submitted their plans and it is evident that there are other interested parties apart from the Applicant herein acting for the revival of the Corporate Debtor.

5) The Learned Counsel appearing for the Applicant submitted that the Resolution Plan submitted by the applicant is also to be taken on record for consideration of the COC. The other Resolution Plans also be considered by the COC apart from Max Vision Eye Hospitals Pvt. Ltd. It is submitted that this Applicant has incurred a lot of expenditure and has visited about 36 of the 94 centers belonging to the Corporate Debtor despite several restrictions imposed due to the ongoing COVID 19 have been able to submit a comprehensive resolution Plan before the COC.

6) In view of the Reasons the Learned Counsel prayed this Bench to consider the above submissions and implead the applicant as one of the Respondent.

7) The Learned Counsel also relied upon the Judgments of the Hon'ble Supreme Court in the matter of Swiss Ribbons (P) Ltd. v Union of India (2019) 4 SCC Page 17. Also relied upon Judgment of the Hon'ble Supreme Court in Committee of Creditors of Essar Steels Ltd. v Satish Kumar Gupta (2020) 8 SCC Page 531.

8) Heard the Learned Counsel appeared for the Applicant and perused the pleadings documents submitted by it.

9) Having raised a common issue as raised in the main appeals we are of the view that this Tribunal would deal all the issues that arise in the main appeals and the applications. In view of the reasons, we are not inclined to implead the applicant in the above appeal. However, this Tribunal already permitted the applicant to intervene and make his submissions accordingly the Learned Counsel for this Applicant made elaborate submissions and this Tribunal heard the same and pass appropriate orders in the main Appeals.

**IA/497/2021 in CA(AT)(CH)(INS) No.223 of 2021.**

1) The above IA/497/2021 filed by the applicant i.e. Dr. Agarwal's Healthcare Ltd. seeking intervention and implead as one of the Respondent in the above Company Appeal.

**The brief facts of the IA/497/2021**

2) Shri Satish Parasaran, Learned Senior Counsel appearing for the applicant submitted the brief facts. He submitted that this Hon'ble Tribunal may be pleased to direct the Resolution Professional of the Corporate Debtor to consider the resolution plans of all the prospective resolution applicants including the applicant herein who have duly submitted the respective resolution plans within the prescribed date in the CIR Process of the Corporate Debtor in terms of the provisions of the I&B Code 2016 and the

order of the Adjudicating Authority (NCLT, Chennai Bench, Chennai) dated 03.08.2021.

3) The Learned Senior Counsel for the Applicant submitted that the applicant herein is amongst the leading chain of Speciality Eye Hospitals in India and is renowned in the field of eye-care being one of the largest in India. The Learned Counsel narrated the brief facts with respect to the Corporate Debtor, its admission into CIR Process and stay granted by the Hon'ble High Court and continuation of CIR Process and hit the CIR Process in view of COVID 19 pandemic and also second wave of COVID 19. The facts are indisputable therefore, we are refraining to deal with the same to avoid the repetition.

4) The Learned Senior Counsel further submitted that the first expression of interest dated 28.07.2020 was issued by the then IRP notifying the last date for submission of EOI on 24.08.2020. Later the Applicant was informed that the last date for submissions of Resolution plans was extended upto 31<sup>st</sup> January, 2021. The Applicant herein submitted the Resolution Plan dated 29.01.2021 on 30<sup>th</sup> January, 2021 and was the only Resolution Applicant to submit a Resolution Plan for the CIR Process of the Corporate Debtor.

5) The applicant was called to present before the COC regarding its resolution plan dated 29.01.2021 on 12<sup>th</sup> March, 2021. The Applicant learnt that the IRP replaced by the new RP. The Applicant issued a letter to the



COC on 18.03.2021 for further negotiations with the applicant and suggested to adopt “Swiss Challenge Method” for consideration by the COC. However, there is no response from the COC.

6) While so, a fresh EOI was issued on 28.06.2020 (i) notifying the last date for submission of EOI as 19.07.2021. A second Request For Resolution Plan (RFRP) was issued on 03.08.2021 notifying the last date of submission of plans by 13.09.2021. On the very same date, the Learned Adjudicating Authority passed order granting extension of CIR Process and direction to complete the same by 22.08.2021. The applicant wrote a letter dated 16.08.2021 indicating its willingness to adhere to the timelines and discuss with the COC and the Resolution Professional regarding its Resolution Plan dated 29.01.2021 which was already submitted before the COC and the applicant was willing to better its plan pursuant to discussions with COC and the Resolution Professional.

7) It is submitted that the applicant has consistently being participating in the process and by way of abandon caution submitted its revised and improved Resolution Plan on 13.09.2021 as per the date given in the Request For Resolution Plan (RFRP) in order to be in compliance with the same. Therefore, the Resolution Plan of the Applicant ought to be considered.

8) The Learned Senior Counsel also submitted that it is in the interest of the Corporate Debtor as well as all stakeholders that all the Resolution Plans

are considered by the COC which alone would enable to achieve the main principle behind Insolvency Resolution i.e. maximization of value. The Applicant being a serious contender having participated all along and having submitted its Resolution Plan and proposal both times it is only fair that the COC consider the applicant's resolution plan along with other plans submitted prior to the cutoff date as may be determined.

9) The Learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v Union of India* (2019) 4 SCC Page 17 held "Liquidation should only be a last resort".

10) In view of the submissions the Learned Counsel prayed this Bench to implead or in the alternate permit to intervene to assist this Hon'ble Tribunal in the matter.

11) Heard the Learned Senior Counsel appeared for the applicant and perused the application and documents filed in its support. This tribunal after hearing the Learned Senior Counsel is not inclined to implead the applicant as one of the Respondent to the main Company Appeals. However, this Tribunal having permitted the Applicant to put forth its arguments on the merits of the case. Accordingly, this Tribunal permitted the Applicant to intervene. The issue raised in this Application is also similar to the issue raised in the main Company Appeals and other similarly situated applications, this Tribunal would deal the merits of the case in the main

Order/Judgment.

12) Now this Tribunal deal with the merits of the Appeals and Application together. The only issue that arise for consideration is whether the Appellants have made out any case seeking extension of time for completion of CIR Process of the Corporate Debtor.

13) Heard the Learned Senior Counsel/Counsel appearing for the Appellants/Applicants, perused the pleadings, documents and citations relied upon by them.

**Appraisal:**

14) Since both the Company Appeals i.e. CA/223/2021, CA/224/2021 filed by the Committee of Creditors and Resolution Professional involve similar pleadings/grounds and sought similar reliefs. Further, in both the appeals the Appellants have challenged to the order passed by the Adjudicating Authority (NCLT, Chennai) dated 03.08.2021 which is impugned in both the appeals.

15) Further, the applications filed by Max Vision Eye Hospitals Pvt. Ltd., ASG Hospitals Pvt. Ltd. and Dr. Agarwal's Healthcare Pvt. Ltd. are with regard to consider their resolution plans submitted by them contending that their plans have been submitted in accordance with the timelines of CIRP/RFRP.

16) Though the applications are different, the bone of contention in all those applications are similar. Taking into consideration all the pleadings in the appeals/applications and to avoid multiplicity of pleadings, and to decide the common issue involved in the appeals and applications, this Tribunal passing the following

### **Judgment/Order**

#### **Analysis/Appraisal**

17) In the Impugned Order the Learned Adjudicating Authority observed at Para 19 as under:

“19. As to the facts of the present case, already two times exclusion has been sought and given for to the applicant in relation to the CIRP. Hence, the exclusion as sought by the Applicant for any period before 31.05.2021 as adumbrated in the table supra cannot be granted by this Adjudicating Authority. However, due to the second wave of COVID 19 which was prevailing in the country, nationwide lockdown was imposed on 08.05.2021, which was full lifted only on 27.06.2021. Hence, as per Section 40(C) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said period from 08.05.2021 till 27.06.2021 can be excluded from the CIRP timelines. Further, the present application was filed before this Tribunal on 25.05.2021 and till the date it was pending i.e. 30<sup>th</sup> July 2021 can be excluded from the CIRP timelines. Thus, a total of 83 days can be excluded from the CIRP timelines. If the said 83 days are excluded the CIRP in relation to the Corporate Debtor would come to an end on 22.08.2021.”

18) On the basis of the above observations the Adjudicating Authority extended CIR Process only upto 22.08.2021 by directing the Appellant/Applicant to finalize the accounts as per the Order dated 26.02.2021. In both the Appeals and in the Applications the facts are not in dispute. The reasons for delay in completing the CIR Process narrated as under.

19) The Corporate Debtor was admitted by the Adjudicating Authority and initiated CIR Process on 21.04.2017.

- i. However, pursuant to a Company Petition filed by the Corporate Debtor before the Hon'ble High Court of Madras, the Hon'ble High Court stayed the CIRP proceedings by order dated 04.05.2017. However, the Division Bench of the Hon'ble High Court of Madras vacated the stay by order dated 05.09.2019.
- ii. After vacating the stay by the Hon'ble High Court, the Adjudicating Authority revived the CIRP w.e.f. 03.10.2019 by its order dated 03.10.2019 in MA/1050/2019. Accordingly, the COC was constituted on 14.11.2019 as per regulation 17 of IBBI Regulations, 2016 and the first COC was held on 21.11.2019.
- iii. Subsequently, nationwide lockdown was imposed due to the COVID-19 pandemic w.e.f. 24.03.2020. The COC was deliberated and instructed the then IRP to seek an extension of CIRP by filing an application before the Adjudicating Authority National Company Law Tribunal, Chennai Bench. Upon an application being IA/515/2020 seeking exclusion of a period of

150 days, the Adjudicating Authority vide its order dated 06.08.2020 excluded period of 150 days in view of nationwide lockdown announced by Central Government.

- iv. It is also seen that some other developments have taken place with respect to the Corporate Debtor i.e. change of Resolution Professional and the new Resolution Professional took charge w.e.f. 23.04.2021 pursuant to a 11<sup>th</sup> COC held on 12.03.2021.
- v. The Committee of Creditors discussed in its 12<sup>th</sup> COC dated 21.05.2021 with regard to several issues and asked the Resolution Professional to take necessary steps for further exclusion/extension of CIR Period by another 6 months w.e.f. 01.06.2021. The reasons for seeking extension/exclusion are that improvement in operations and revenue collections of the Corporate Debtor, strong interest shown by prospective resolution applicants in the same line of business to submit fresh competitive bids , livelihood of about 2000 direct employees and their families spread over about 100 centers located in five states and Union Territories, continuation of more than 200 dedicated professional Doctors who are associated with the Corporate Debtor for a long time.

20) While so, the Committee of Creditors in their 13<sup>th</sup> COC dated 18.06.2021 decided to float a fresh (EOI) Expression of Interest on 28.06.2021. Based on the expression of interest floated 8 bidders had expressed their interest to submit a resolution plan. The following are the prospective resolution applicants namely

- i. ASG Hospital Pvt. Ltd. Jodhpur, Rajasthan
- ii. i Labs India Special situations fund (sub scheme of i Labs

investments trust Jubilee Hills, Hyderabad)

- iii. Mr. M.K. Rajagopalan, Chennai
- iv. Dr. Agarwal's Healthcare Ltd. Chennai
- v. Max Vision eye Hospital Pvt. Ltd. Hyderabad.
- vi. GVPR Engineers Ltd. Hyderabad
- vii. Consortium of UV Stressed assets Management Pvt. Ltd. New Delhi. With Suruchi Foods Pvt. Ltd. New Delhi.
- viii. JC Founds Assets Reconstruction, Mumbai

21) It is stated that out of above eight prospective Resolution Applicants only seven Applicants were shortlisted after scrutiny. It is also stated that as per the terms of Request For Resolution Plan (RFRP), the last date for submission of Resolution Plans is 13<sup>th</sup> September 2021. It is also stated that the Adjudicating Authority passed the Impugned Order on 03.08.2021 extending the time only upto 22.08.2021. It is an admitted fact that the Corporate Debtor is in the Healthcare Industry and its Hospitals/Dispensaries are spread over to Southern States of the country having Hospitals and Centers being run all over the country. It is also not out of place to mention that due to COVID-19 pandemic in first phase and second phase, the Central Government and the State Governments have imposed lockdowns and restrictions in movement across in the respective States and Country. Therefore, the prospective Resolution Applicants may not have the opportunity to visit the places to take the stock of situation before submitting their plans. Even otherwise, the Resolution Professional

may not be able to gather the information for the purpose of maintaining and providing the same to the prospective Resolution Applicants. Therefore, the situation can be treated as exceptional circumstances.

22) The NCLTs (Adjudicating Authorities)/NCLAT have to keep in mind, the object of the code and follow the same in true spirit in achieving its object. In the preamble of the code the statement of objects and reasons namely:

“2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.”

23) The Hon’ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. v Union of India reported in 2019 (4) SCC 17. While deciding the constitutional validity of various provisions of the Insolvency and Bankruptcy Code, 2016 (‘the code’) the Hon’ble Supreme Court while upholding its preamble held as under at Para 27 and 28:



“27. As is discernible, the Preamble gives an Insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and Insolvency Resolution of Corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads overall to higher economic growth and development of the Indian economy. What is interesting to note is that the preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. (See *Arcelor Mittal (India) (P) Ltd. v Satish Kumar Gupta*, (2019) 2 SCC 1 at Para 83, fn 3).

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium

imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”

24) The Hon'ble Supreme Court while upholding the Provisions of the I&B Code, 2016 held supra that one of the objects of the Code is for maximization of value of the assets of the Corporate Debtor. Further, the Hon'ble Supreme Court also held that the preamble of the Code does not in any manner refer to liquidation, which is only availed of as a last resort if there is either no Resolution Plan or the Resolution Plans submitted are not upto the mark. In the present case, there are Resolution Plans on hand before the Committee of Creditors and the Committee of Creditors have to take into consideration of the Resolution Plans of prospective Resolution Applicants, provided the time is extended with respect to CIR Process period. From the perusal of the applications filed by the prospective Resolution Applicants for intervening/impleading themselves before this Bench, it is evident that the Applicants are very much interested in participating bid process of the Corporate Debtor. Having submitted the resolution plans by the prospective resolution applicants, the situation does not arise for pushing the Corporate Debtor into Liquidation. As held by the Hon'ble Supreme Court the

Liquidation is a last resort provided there are no prospective Resolution Applicants.

25) Further, in the code (IBC, 2016) the timeline for completion of Insolvency Resolution Process as envisaged in Section 12 of the Code. As per sub Section 1 of Section 12 of the Code, the Corporate Insolvency Resolution Process shall be completed within a period of 180 days from the date of admission of the application to initiate such process. However, as per Sub Section 2 the Resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate Insolvency Resolution process beyond 180 days, if instructed to do so by a resolution passed with a meeting of the Committee of Creditors by a vote of 66% of the voting share.

26) In respect of the Corporate Debtor the Committee of Creditors have from time to time passed the resolutions and permitted the IRP/RP to file necessary applications to extend/exclusion of time period for completion of CIR Process. Therefore, this Tribunal is of the view that the Committee of Creditors of the Corporate Debtor and the RP have complied with the provisions of law, seeking extension and exclusion of time.

27) As per Sub section 3 of Section 12 of the Code, the Adjudicating Authority, if satisfied that the CIR Process cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days,

but not exceeding 90 days. However, a proviso was inserted by Act 26 of 2019 to sub section 3 of section 12 w.e.f. 16.08.2019 whereby the proviso reads as under:

“provided further that the Corporate Insolvency Resolution Process shall mandatorily be completed within a period of 330 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.”

28) From the above proviso of sub section 3 of section 12 the total period prescribed i.e. 330 days and the said proviso made it as ‘mandatory’ to complete the CIR Process.

29) However, the Hon’ble Supreme Court in the matter of Essar Steel India Ltd. Committee of Creditors v Satish Kumar Gupta reported in (2020) 8 SCC Page 531 the Hon’ble Supreme Court struck down the word mandatorily from the proviso to Sub Section 3 of Section 12 in Para 127 and held as under:

“127. Both these judgments in Aima Ram Mittal and Sarah Mathew (2014) 2 SCC62 : 2014) 1 SCC (Cri) 721 have been followed in Neeraj Kumar Sainy v State of U.P. (2017) 14 SCC 136 : 8 SCEC 454. SCC Paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant’s case within the requisite period for no fault of the litigant, a

provision which mandatorily requires the CIRP to end by a certain date – without any exception thereto – may well be an excessive interference with a litigant’s fundamental rights to non-arbitrary treatment under Article 14 and an excessive arbitrary and therefore unreasonable restriction on a litigant’s fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, in as much as the time taken in legal proceedings is certainly an important factor which causes delay and which has made previous statutory experiments fail as we have seen from *Madras Petrochem Ltd. v BIFR*, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478. Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extension and the time taken in legal proceedings. 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.”

30) The Hon’ble Supreme Court while striking down the word ‘mandatorily’ held further that the Tribunal (Adjudicating Authority) or the Appellate Tribunal may extend time beyond 330 days. However, the Hon’ble Supreme Court held that 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. Therefore, the Hon’ble Supreme Court keeping in view of the paramount interest of the Corporate Debtor and to save the Corporate Debtor from its death by liquidation, struck down the word ‘mandatorily’ for completion of CIR Process within 330 days and extended the time beyond 330 days in

exceptional cases and the power is given to the Tribunal i.e. the Adjudicating Authority and also this Appellate Tribunal. The Judgment of the Hon'ble Supreme Court is law of the land and bound by this Appellate Tribunal and all other Tribunals.

31) This Tribunal is of the view that the instant case, the Appellants have shown exceptional circumstances in not completing the CIR Process within the time and it is unequivocal that it received Resolution Plans from prospective Resolution Applicants pursuant to a second Expression of Interest and the Corporate Debtor cannot be pushed into liquidation by not extending the time. Therefore, this Tribunal is of the considered opinion that it is a fit case to extend the time by 30<sup>th</sup> November 2021 for completion of CIR Process as prayed for by the Appellants.

32) It is Apt to mention that based upon the Judgment of the Hon'ble Supreme Court in re- Essar Steels supra, this Tribunal also passed Judgments extending the time period in completion of CIR Process beyond 330 days in exceptional cases. The NCLAT in the matter of **Ritu Rastogi, Resolution Professional, Benlon India Ltd. v Riyal Packers** in Company Appeal (AT) (INS) 482 of 2020 dated 16.06.2020 held that "it is a fit case for exercising the jurisdiction by this Appellate Tribunal being an exceptional case to depart from the general rule of 330 days being outer limit prescribed under the law for completion of the Corporate Insolvency

Resolution Process inclusive of period of judicial intervention. We are also of the considered opinion that failure to exercise discretion in a matter of this nature would have serious implications imperiling the legitimate interest of all stakeholders and inevitable conclusion would be to push the Corporate Debtor into liquidation which has to be avoided at all costs.”

33) Further, this Tribunal (NCLAT) in the matter of **Vivek Raheja, Resolution Professional in Company Appeal (AT) (INS) No. 331 of 2021 dated 04.05.2021** held at para “11. From the Judgment of the Hon’ble Supreme Court that the Adjudicating Authority and/or this Tribunal may extend time beyond 330 days in exceptional cases. The Appellant had shown the exceptional circumstances one is the imposition of lockdown and pendency of the judicial proceedings before the Adjudicating Authority. Apart from the above, the Hon’ble Supreme Court in a number of cases, clearly held that the liquidation is the last resort”.

34) Further this Tribunal (NCLAT) in the matter of **Mr.Ravi Sankar Deverakonda v Committee of Creditors of Meenakshi Energy Ltd. in Company Appeal (AT) (CH) (INS) No.15 of 2021** held at para “15. Bearing in mind the word ‘mandatorily’ found in Section 12(3) of the Insolvency and Bankruptcy Code, 2016 was struck down by the Hon’ble Supreme Court in the matter of Committee of Creditors of Essar Steels India Pvt. Ltd. v Satish Kumar Gupta in 2020(8) SCC Page 531, this Tribunal



comes to a resultant conclusion that ordinarily the time taken pertaining to the Corporate Insolvency Resolution Process of the Corporate Debtor must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consume in legal proceedings). However, the exercise of power by the Adjudicating Authority to extend the time period in negation of statutory provision of the Insolvency and Bankruptcy Code, 2016 may be desirable in an exceptional/extraordinary circumstance given is by exercising sound ‘judicial discretion with a view to find a suitable resolution plan to prevent an aberration of justice’.

**Finding:**

35) Before parting with the main Judgment, this Tribunal intend to give a finding on the Application filed by the Max Vision Eye Hospital bearing IA/456/2021 seeking for intervention to assist this Tribunal in adjudicating the Appeals and contended that the Applicant filed the Resolution Plan on 21.08.2020 before the last date i.e. 22.08.2021, within the period prescribed under the Code and before the CIR Process directed to be completed by 22.08.2021. However, the Applicant in IA/497/2021 i.e. Dr. Agarwal’s Health Care Ltd. submitted that the Applicant submitted the Resolution Plan on 29.10.2020 notifying the last date of submission of Resolution Plan would be 29.11.2020. Further, the applicant i.e. Dr.

Agarwal's Healthcare Ltd. submitted that pursuant to the second Expression of Interest the Applicant again submitted its plan on 13.09.2021. This Tribunal without going into the merits of the Applications and it is not desirable to decide the aspect of who filed the plan before the cutoff date, etc. which is not subject matter before this Bench. However, in both the Applications the Common object and the stand taken by the Applicants i.e. to consider all the prospective Resolution Applications by the Committee of Creditors on par along with other Applications. Therefore, this Tribunal is not going into dwelt the issue which is not before this Tribunal.

36) From the above analysis, it is unequivocal that the Appellants have shown exceptional circumstances i.e. pendency of Judicial Proceedings before the Hon'ble Courts, imposition of nationwide lockdown, change of RP, calling fresh Expression Of Interest and the nature of business of the Corporate Debtor which admittedly spread over to many parts of the Country. It is also an admitted fact that many interested prospective Resolution Applicants have submitted their plans evincing their interest in the bid process of the Corporate Debtor. This Tribunal is of the view that Corporate Debtor cannot be pushed into Liquidation. Further, the Hon'ble Supreme Court held that the Liquidation is the last resort.

37) In view of the aforesaid reasons, the Appellants have made out a prima facie case praying this Bench to extend the time for completing the

CIR Process till 30<sup>th</sup> November 2021 as prayed in IA/510/CHE/2021 in CA/1/2017 filed by the Resolution Professional before the Adjudicating Authority. However, the Adjudicating Authority by Impugned Order dated 03.08.2021 extended the time only upto 22.08.2021.

**Conclusion:**

38) This Tribunal comes to a resultant conclusion that based on the facts and keeping in view of exceptional circumstances existed, viewing in that perspective and to avoid Liquidation as a last resort and to comply with the object of the Code i.e. maximization of value of asset of the Corporate Debtor and the law laid down by the Hon'ble Supreme Court in the matter of Swiss Ribbons and Essar Steel, that the outer limit of 330 days can be extended in an exceptional circumstances, this Tribunal sets aside the order of the Adjudicating Authority dated 03.08.2021 with the following direction/order.

- i. The reliefs sought in IA/510/CHE/2021 in CA/1/2017 filed by the Resolution Professional of the Corporate Debtor before the Adjudicating Authority, Chennai Bench is hereby allowed by setting aside the order of the Adjudicating Authority dated 03.08.2021.
- ii. The time is extended till 30<sup>th</sup> November 2021 for completing the CIR Process.
- iii. The time spent in filing these Appeals before this Tribunal i.e. from 18.08.2021 to 25.11.2021 is also excluded.

39) With the above directions the Company Appeal bearing No.CA (AT)(CH)(INS) 223 of 2021 is allowed. No orders as to cost.

40) In view of the above Judgment/Order, no separate orders are necessary in the Applications filed by the Applicants/Interveners. Accordingly, all the Applications pending if any, stand disposed of. No orders as to cost.

**[Kanthi Narahari]**  
**Member (Technical)**

**[Justice M. Venugopal]**  
**Member (Judicial)**

**25.11.2021**  
**SE**