

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT  
CHENNAI  
(APPELLATE JURISDICTION)  
Company Appeal (AT) (CH) (INS) No. 224 of 2021  
(Under Section 61(1) of the Insolvency and Bankruptcy Code, 2016)  
Against the Impugned 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:**

**MR. S. RAJENDRAN**

Resolution Professional of M/s. Vasan Health Care Private Limited  
2<sup>nd</sup> Floor, Hari Krupa, 71/1, McNichols Road,  
(Off Poonamallee High Road),  
Chetpet, Chennai – 600031.

**...Appellant**

**IA No. 470 of 2021 in Company Appeal (AT) (CH) (INS) No. 224 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**

**IA No. 475 of 2021 in Company Appeal (AT) (CH) (INS) No. 224 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**  
Vasan 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,  
Vasan Healthcare Pvt. Ltd.  
Having its registered office at:  
No.70, Radhakrishnan Salai,  
Westminister Complex, Mylapore,  
Chennai – 600 004.

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

**Present for Parties:**

For Appellant : Mr. P. S. Raman, Sr. Advocate  
Ms. M. Savitha Devi, Advocate  
Ms. M. S. Elamathi, Advocate  
For Intervenor : Mr. A. R. L. Sundaresan, Sr. Advocate  
Ms. Adeesh Anto, Advocate  
Mr. S. Kaushik Ramaswamy, Advocate

**In IA 470/2021**

**For Applicant : Mr. Suhrith Parthasarathy, Advocate**

**In IA 475/2021**

**For Applicant : Mr. J. Sivanandaraaj, Advocate**

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

**JUDGMENT**

**(VIRTUAL MODE)**

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

**Brief Facts of the Case:**

1) The present Appeal is filed against the Order dated 03.08.2021 passed by the 'Adjudicating Authority' (NCLT, Division Bench-1, Chennai) contending that the 'Adjudicating Authority' did not consider the reliefs sought in IA No.510 of 2021 in CA/1/2021 filed by the Appellant herein. Aggrieved by the same, the present Appeal is filed praying this Bench to set aside the above Impugned Order and allow the reliefs as prayed for.

2) The Learned Senior Counsel for the Appellant submitted that the Appellant is the Resolution Professional of the Corporate Debtor namely Vasan Health Care Pvt. Ltd., preferred the Instant Appeal and contended that the Appellant filed an application under Section 12 and 60(5) of the Code read with Regulations, 40(A) and 40(C) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking exclusion of 165 days and for extension of CIRP Period by another 15 days constituting a total of 180 days.

3) The Learned Senior Counsel for the Appellant submitted that the Hon'ble Adjudicating Authority failed to appreciate the exceptional circumstances under which the entire CIR Process of the Corporate Debtor has taken place. The process has not been a continuous one right from beginning when the order of admission was passed on 03.10.2019 till date. It is submitted that the CIR Process was stayed by an order of stay passed by

the Hon'ble High Court of Madras and the process was disrupted due to the Nationwide lockdown and restrictions imposed by State Government in movement during the year 2020-21.

4) The Learned Senior Counsel for the Appellant submitted that the first round of Expression Of Interest only one resolution plan was received which was rejected by the COC. Thereafter, the Appellant herein was appointed as Resolution Professional on 23.04.2021 issued second round of 'Expression Of Interest' and 7 prospective Resolution Applicants have been shortlisted and the access to the virtual room data have been shared with them and the COC is awaiting Resolution Plans by 13.09.2021.

5) The Learned Senior Counsel for the Appellant submitted that on earlier occasion, 150 days was excluded in light of the nationwide lockdown. It is also submitted that the erstwhile Resolution Professional cited the reasons that caused hindrance for the prospective Resolution Applicants in travelling to the southern states of Karnataka, Telangana, Andhra Pradesh, Pondicherry, Tamil Nadu, etc. where the Corporate Debtor has several functional centers so as to ascertain the assets and health facilities. It is submitted that after taking charge as a Resolution Professional by the Appellant the transition was hit by delays due to testing positive for COVID of the Staff of the erstwhile Resolution Professional. As stated supra, 7 bidders were shortlisted after scrutiny and placed before the COC in the

14<sup>th</sup> Meeting held on 29.07.2021. It is submitted that the Appellant filed application seeking extension/exclusion of 180 days till 30<sup>th</sup> November 2021, however, the Hon'ble Adjudicating Authority did not consider the same and granted time upto 22<sup>nd</sup> August, 2021.

6) The Learned Senior Counsel for the Appellant submitted that the Hon'ble Supreme Court in the Committee of Creditors of Essar Steel India Ltd. v Satishkumar Gupta and Ors. In CA Nos.8766-67 of 2019 held that in exceptional circumstances time can be extended and observed that the outer limit is 330 days in general, in completing the CIR Process beyond which, the Corporate Debtor is driven to liquidation.

7) The Learned Senior Counsel for the Appellant submitted that the Learned Adjudicating Authority failed to observe the timelines prescribed under Section 12 of the Insolvency and Bankruptcy Code, 2016 was held to be directory and not mandatory in nature where the Hon'ble Supreme Court in the above decision struck down the word 'mandatorily' from the Proviso as the word 'mandatorily' is manifestly arbitrary as per Article 14 of the Constitution of India and an unreasonable restrictions on the rights of the litigants to carryon business under Article 19(1)(g) of the Constitution of India.

8) The Learned Senior Counsel also relied upon the Judgment of this Tribunal in Vivek Raheja, Resolution Professional in Company Appeal

(AT)(INS) No.331 of 2021 NCLAT, New Delhi. This Tribunal observed thus “Adjudicating Authority ought to have considered the situation as exceptional circumstances for the reason of prevailing pandemic in the country and the CIR process was still at nascent stage” and noted that the CIR Process can be extended beyond a period of 330 days. This Hon’ble Tribunal had further observed that “Hon’ble Supreme Court in a number of cases clearly held that the liquidation is the last resort”.

9) Further, the Learned Counsel relied upon the Judgment of this Tribunal in Ravishankar Devarakonda v Committee of Creditors of Meenakshi Energy Ltd. in Company Appeal (AT)(CH)(INS) No.15 of 2021 dated 24.03.2021, this Tribunal held that ‘extending timeline by the Adjudicating Authority in negation of this Statutory Provision of the Code may be desirable in exceptional/extraordinary circumstances of the case to prevent aberration of justice.

10) The Learned Senior Counsel also relied upon the Judgment of the Hon’ble Supreme Court in P Mohanraj and Ors. v M/s. Shah Bros. Ispat Pvt. Ltd. reported in 2021 SCC online SC 152 the Hon’ble Apex Court held that liquidation of the Corporate Debtor should be a matter of last resort and the IBC recognizes a wider public interest in resolving Corporate Insolvencies and its object is not just recovery of outstanding dues but the revival of the Corporate Debtor preventing it from a Corporate Death.

11) The Learned Senior Counsel submitted that as stated supra the Corporate Debtor is in Healthcare Industry and more than 200 Doctors and 2000 Staffs associated with the Corporate Debtor have been contributing selflessly during this pandemic period without even receiving salaries on time with the fervent hope that the Corporate Debtor would be revived. Further the Corporate Debtor is spread over to 94 centers located in five states and one union territory and the vast ecosystem of vendors, housekeeping, security and other service providers for relying highly on the revival of Corporate Debtor.

12) It is submitted that the Corporate Debtor is gradually reviving its business and generating a revenue approximately Rs.20 Crore a month with substantial increase in footfalls at the eye-care centers.

13) In view of the aforesaid reasons the Learned Senior Counsel for the Appellant prayed this Bench to allow the appeal and set aside the Impugned Order of Adjudicating Authority dated 0.08.2021 by extending/excluding the time period for completing the CIR Process of Corporate Debtor till 30<sup>th</sup> November 2021.

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

**Appraisal:**

15) 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 relief. 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.

16) Further, the applications filed by Max Vision Eye Hospitals Pvt. Ltd. ASG Hospitals 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.

17) 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**

1) 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.”

2) 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.

3) 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.

4) 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

5) 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.

6) 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.”

7) 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.”

8) 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.

9) 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.

10) 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.

11) 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.”

12) 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.



13) 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.”

14) 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.

15) 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.

16) 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."

17) 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".

18) 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:**

19) 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.

20) 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.

21) 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:**

22) 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 is 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.

23) With the above directions the Company Appeals bearing No. CA (AT)(CH)(INS) 224 of 2021 is allowed. No orders as to cost.

24) In view of the above Judgment, no separate orders are necessary in the Applications filed by the Applicants/Intervenors. 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**