

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERBAD

IA No. 986/2020
In IA No. 634/2020
In CP (IB) No. 294/7/HDB/2017

In the matter of
M/s. IVRCL LIMITED

Between:

M/s. Gabs Megacorp Limited
Regd. Office: Plot No.5, Syedjalal Gardens,
West Maredpally, Secunderabad – 500 026.

Having its corporate office at
Plot No.3, Railway Colony,
Picket, West Marredpally,
Secunderabad – 500 026.

...Applicant

AND

1. Mr. Sutanu Sinha
Liquidator for IVRCL Ltd
Floor No.4, Duck Back House,
#41, Shakespere Sarani, Kolkata,
India - 700017

...Liquidator/
Respondent

2. IVRCL Limited
(formerly known as IVRCL Infrastructures & Projects Ltd)
M-22/3 RT, Vijaynagar Colony,
Hyderabad – 500057, Telangana, India.
Also at “MIHR”, 8-2-350/5/A/24/1B,
Road No.2, Panchavati Colony, Bangajara Hills,
Hyderabad – 500034, Telangana, India.

... Corporate Debtor/
Respondent

Date of Order: 11.11.2020

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical



Parties/Counsel Present:

For the Applicant:

Mr. Gaddam Aniketh Reddy and Mr. TPS Harsha, counsels

For the Respondent:

Mr. Sutanu Sinha, Liquidator,
Mr. Nirav Shah and Mr. Alay Rizvi. Counsels

**Per: Dr. Binod Kumar Sinha, Member Technical
ORDER**

1. The present Application bearing IA No.986/2020 in IA No.634/2020 is filed by the Applicant i.e., Gabs Megacorp Limited in the matter of M/s. IVRCL Limited under section 60(5) of the IB Code, 2016, against the Liquidator/Respondent, inter-alia seeking to modify order dated 29.09.2020 in IA No.634/2020 to exclude the time taken to prosecute IA No.634/2020 and the present Application in computing the extension of 90 days granted by this Adjudicating Authority vide order dated 29.09.2020 in IA No.634/2020.
2. The brief facts of the case are as follows:
 - i. That this Adjudicating Authority vide its order dated 23.02.2018 admitted for CIRP against the Corporate Debtor (IVRCL Limited) and appointed Mr. Sutanu Sinha as the Interim Resolution Professional (IRP). Later, he was confirmed as Resolution Professional in the 1st CoC meeting.
 - ii. That the Adjudicating Authority vide its order dated 26.07.2019 in IA No.544/2018, passed an order of liquidation under section 33 of the Code and appointed Mr. Sutanu Sinha as the Liquidator of the Corporate Debtor.
 - iii. That the Applicant herein participated in the auction conducted for the sale of the Corporate Debtor as going concern by the Liquidator and emerged as the successful bidder of the Corporate Debtor on 27.02.2020. The Applicant had agreed to pay Rs.1654.77 Crores for purchasing the Corporate Debtor as a going concern.

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- iv. That the Liquidator after vacation of all interim orders against the sale of the Corporate Debtor as going concern, issued Demand Notice of sale dated 03.06.2020 to the Applicant, wherein the Liquidator requested the Applicant to complete the payment for the sale of the Corporate Debtor as going concern within three months at the agreed upon consideration of Rs.1654.77 Crores, with no interest for the first month and interest at the rate of 12% per annum for the remaining two months in terms of Regulation 33 read with Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- v. That the Applicant had bid for the Corporate Debtor in February, 2020, however the sale could not be confirmed and effected upon immediately due to an interim order dated 06.09.2019 of Hon'ble NCLAT, which was eventually vacated on 29.05.2020 by the Hon'ble NCLAT. That the Applicant had bid for the Corporate Debtor in the month of February, 2020, and the Applicant did not foresee the devastating impact of Covid-19 pandemic on the businesses across the world. However, the devastating impact of Covid-19 pandemic and the lockdowns imposed as a result thereof, disrupted the financial proposal submitted by the Applicant.
- vi. That the Applicant filed IA No.634/2020 before this Adjudicating Authority seeking an extension of 90 days w.e.f. 03.09.2020 in payment schedule and waiver of interest till December, 2020 due to the difficulties caused by Covid-19.
- vii. That this Adjudicating Authority vide its order dated 29.09.2020, allowed the Application i.e., IA No.634/2020 by granting an extension of a period of 90 days from 03.09.2020 for completion of the sale of the Corporate Debtor as a going concern relying on several decisions of the Hon'ble NCLAT and Regulation 47A of the Liquidation Regulations.
- viii. That the Applicant herein filed the instant application for modification of the order dated 29.09.2020 as the deadline for making

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payments under Demand Notice of Sale dated 03.06.2020 expired on 03.09.2020, i.e., before the pronouncement of order dated 29.09.2020 in IA No.634/2020 as the Adjudicating Authority while passing order dated 29.09.2020 did not exclude the duration taken to prosecute IA No.634/2020 while calculating the extended 90 days.

- ix. That it is no longer *res integra* that extension or exclusion of period under the Code are to be calculated from the date of receipt of the order as the time taken for prosecuting the said application ought to be excluded. That the extension of 90 days granted by this Adjudicating Authority vide order dated 29.09.2020 be made applicable from the date of passing of corrigendum orders in the instant application by excluding the time taken to prosecute IA No.634/2020 and the present Application as well.
 - x. That as the Applicant is not seeking for a renegotiation of the bid amount accepted by the Applicant in February, 2020 itself, no prejudice would be caused to any of the parties if the extension of 90 days is granted from the date of corrigendum orders in this Application by excluding the time taken to prosecute IA No.634/2020 and the present Application.
 - xi. Reiterating the above, the counsel for the Applicant prayed to allow the instant Application as sought for.
3. Mr. Sutanu Sinha, Liquidator along with Mr. Nirav Shah, counsel for Liquidator reported no counter and further stated that the lenders have conducted a meeting on 10.11.2020 and discussed in relation to the prayers sought in the instant IA and have opined to submit to the decision of this Adjudicating Authority. Submissions made by the Liquidator and his counsel are recorded.
 4. Heard both sides and perused record.
 5. It is a fact on record that the Applicant herein has emerged as the sole bidder for purchase of the Corporate Debtor as a going concern for a consideration of Rs. 1654.77 Crores. Further, the Applicant has

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approached this Adjudicating Authority vide IA No. 634/2020 with the following prayer:

"To grant an extension of three months to the Applicant w.e.f. 03.09.2020 for completing the sale of the Corporate Debtor as a going concern at the agreed upon auction price of Rs.1654.77 Crores without any interest on the agreed upon auction price from 03.07.2020 to 03.12.2020 and pass any other order(s) as deem fit."

6. After duly considering various aspects, this Adjudicating Authority vide its order dated 29.09.2020, allowed the above extracted prayer by granting extension of period of 90 days from 03.09.2020. Extract of the relevant portion of the said order is as under:

"In view of the above discussion, this Adjudicating Authority is of the opinion that the extension of 90 day's time period for completing the sale of Corporate Debtor as a going concern is justiciable and would be in the interest of the Corporate Debtor and its stakeholders. Accordingly, this Adjudicating Authority hereby grants an extension of a period of 90 days from 03.09.2020, to the Applicant for completing the purchase of the Corporate Debtor as going concern, which shall be completed in accordance with Regulation 33 read with Schedule – I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016."

7. As regards the other prayer for waiver of interest up to December 2020, this Adjudicating Authority has given the following directions:

"Insofar as the waiver for payment of interest for the period from 03.10.2020 to 03.12.2020 is concerned, in view of the aforesaid discussions and observations, this Adjudicating Authority is of the opinion that the same shall be left to the commercial wisdom and discretion of the stakeholders. The Applicant may place the said request with the stakeholders for arriving at a decision."

8. Now, the Applicant herein is seeking for modification of order dated 29.09.2020 in IA No. 634/2020 for exclusion of time period taken in prosecuting IA No. 634/2020 and also the present Application in computing the extension of 90 days granted by this Adjudicating Authority.

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9. The point for consideration is whether this Adjudicating Authority can modify its own order or not?
10. It is pertinent here to quote the judgment of Hon'ble NCLAT in the matter of Santosh Wasantrao Walokar Vs. Vijay Kumar V.Iyer and ors. in [CA(AT)(Ins)No. 871-872 and others], wherein it is held as under:-

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IV. Whether the Adjudicating Authority has power to modify its own order?

Section 420(2) of the Companies Act, 2013 provides as under:

The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties.

Rule 154 of the NCLT Rules, 2016 provides that:

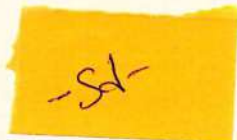
- a. Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on Application of any party by way of rectification.*

Accordingly, the NCLT does not have power to modify its own order but can only correct mistake apparent from the record. The Hon'ble Supreme Court has held in "Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited" that a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of record and can be corrected. An error cannot be said to be apparent on the face of the recorded if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long-drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. This does not include the power to modify any substantial part of the judgment which determines rights of one party or the other.....”

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11. Keeping in view the guidance available in Hon'ble NCLAT's judgment *supra*, it is observed that the applicant herein had made two specific prayers in IA No.634/2020 :
- (a) To grant extension of 90 days w.e.f. 03.09.2020 in payment schedule; and
- (b) Waiver of interest for the period 03.07.2020 to 03.12.2020.
12. This Adjudicating Authority vide it's Order in IA No.634/2020 granted extension of 90 days w.e.f. 03.09.2020 as prayed for and gave specific observation about the prayer regarding waiver of interest keeping in view the relevant Liquidation Regulations. This Adjudicating Authority cannot modify its own order dated 29.09.2020, more particularly when no clerical or arithmetical mistake apparent from record has been brought to the notice of this Adjudicating Authority in the said order. Thus, there is no mistake apparent from record which would require rectification. Therefore, this Adjudicating Authority is of the considered view that the prayers made in the instant Application cannot be acceded to.
13. However, the Applicant is at liberty to approach the Liquidator and stakeholders/lenders for consideration of relief(s) as prayed, and in turn, Liquidator and stakeholders may take appropriate decisions/steps keeping in view, the observations made in IA No. 634/2020, in accordance with Law.
14. With the above observations, the Application bearing IA No. 986/2020 stands disposed of.



Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL