

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERBAD**

**IA No.634/2020**  
In CP (IB) No.294/7/HDB/2017  
Under Section 60(5) of the IB Code, 2016

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

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

**Date of Order: 29.09.2020**



**Parties/Counsel(s) Present:**

**For the Applicant:**

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

**For the Respondent:**

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

**Per: Shri. K. Anantha Padmanabha Swamy, Member Judicial.**

**ORDER**

1. The instant Application is filed by Auction purchaser of the Corporate Debtor i.e., Gabs Mega Corp Limited under Section 60(5) of the IB Code, 2016, seeking to grant an extension of three months to the Applicant w.e.f. from 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.
2. Brief facts as stated by the Applicant are as under:-
  - a. That the Corporate Debtor herein was admitted for CIRP under Section 7 of IB Code, 2016 on 23.02.2018 and appointed Mr. Sutanu Sinha as the IRP. Later he was confirmed as Resolution Professional.
  - b. Since no Resolution plan was approved during CIRP, this Adjudicating Authority vide order dated 26.07.2019 r/w order dated 31.07.2019, passed an order of Liquidation under Section 33 of IB Code, 2016 and appointed Resolution Professional as the Liquidator.
  - c. That aggrieved by the order of Liquidation, First Global Finance Private Limited, being unsuccessful Resolution Applicant, filed Company Appeal (AT)(Insolvency) Nos. 918-919 of 2019 before Hon'ble NCLAT.
  - d. That the Hon'ble NCLAT vide order dated 06.09.2019 in Company Appeal (AT)(Insolvency) Nos. 918-919 of 2019, directed the



Liquidator not to sell or transfer or alienate movable or immovable property of the Corporate Debtor nor create any third party encumbrance on the same, without prior approval of the Hon'ble NCLAT and the Liquidation order would be subject to the decision of the appeal.

- e. During the pendency of appeal, Liquidator had commenced the process of Liquidation of the Corporate Debtor and invited Expression of Interest dated 05.09.2019 to submit bid for the Corporate Debtor as a going concern. The Liquidator also issued e-process information document dated 05.09.2019 for e-auction schedule to be conducted on 04.10.2019. Subsequently, addendum to E-auction process Information document dated 05.09.2019 was issued on 30.09.2019, whereby the last date of submission of EOI was extended to 14.10.2019 and date of e-auction was extended to 15.10.2019. By way of another addendums dated 15.10.2019, 23.10.2019, 24.10.2019, 06.12.2019, 07.01.2020 and 28.01.2020, the last date for submission of EOI and date of E-auction was extended from time to time. That vide addendum to E-auction process Information document dated 20.02.2020 invitation for EOI to submit bid for the Corporate Debtor under liquidation as going concern was issued, whereby the last date of EOI was extended to 26.02.2020 and date of e-auction was extended to 27.02.2020.
- f. That the Applicant herein participated in the e-auction conducted on 27.02.2020, wherein he was the sole participant in the e-auction and bid for the Corporate Debtor as a going concern for a reserve price of Rs. 1654.77 Crores. That the applicant was the successful bidder into the e-auction on 27.02.2020.
- g. That the Applicant has tendered Rs. 5 crores as EMD on 26.02.2020/27.02.2020 to take part in the e-auction on 27.02.2020. That after completion of e-auction formalities, the liquidator intimated to the stock exchanges vide letter dated 03.03.2020 that the Corporate Debtor was sold as a going concern to the Applicant herein.

- h. That the process of effectuating the sale of the Corporate Debtor as a going concern was put on hold by the Liquidator in view of the pending appeal before Hon'ble NCLAT and interim order dated 06.09.2019. That the Hon'ble NCLAT vide its final order dated 29.05.2020 dismissed the appeal filed by First Global Finance Private Limited and vacated the interim order dated 06.09.2019.
- i. That upon vacation of interim order, the Liquidator issued Demand Notice of sale dated 03.06.2020 to the Applicant, wherein the Liquidator requested the payment for the sale of the Corporate Debtor as a going concern to be completed within three months at agreed upon consideration of Rs. 1654.77 Crores, with no interest for the first month and interest at the rate of 12% p.a for the remaining two months.
- j. That the levy of interest for the remaining two months is onerous, especially in the light of the prevailing Covid-19 pandemic. That the timeline prescribed under demand notice of sale dated 03.06.2020 expires on 03.09.2020. That the sale of the Corporate Debtor was not effectuated immediately by the liquidator after the completion of the bid due to the interim order of Hon'ble NCLAT dated 06.09.2019. Subsequently, due to Covid-19 pandemic situation, it has become difficult for the Applicant to immediately arrange for the funds required to complete the purchase of the Corporate Debtor as a going concern.
- k. That the Applicant is willing to continue with the purchase of the Corporate Debtor at the agreed upon price, even though the Covid-19 pandemic situation being in the nature of act of god, was not foreseen by the parties concerned at the time of auction. That though the Covid-19 pandemic situation decreases the value of the Corporate Debtor significantly, the Applicant is still willing to honor the auction price in purchasing the Corporate Debtor as going concern.
- l. That the prevailing Covid-19 pandemic has made it difficult for the Applicant to immediately raise huge amounts to the tune of around

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1654.77 crores when compared to the situation before the prevailing Covid-19 pandemic. That the applicant is extremely confident of raising the required funds if some additional time is granted, as the Applicant requires the additional time to navigate the difficulties caused by the Covid-19 pandemic.

- m. That the Applicant is not seeking for any revaluation of the agreed upon auction purchase price and is merely seeking extension of the payment schedule without any interest levied due to the unfortunate and unforeseen Covid-19 pandemic which has completely disrupted the business across the country. That the granting of extension for three months for the Applicant is in the interest of the Corporate Debtor and in accordance with the intentions of the code.
  - n. That a request by the Applicant was made to the Liquidator for seeking extension of time and for interest waiver by letter dated 17.08.2020. That the Applicant undertakes to arrange for funds and complete the transaction by remitting the agreed upon auction price of Rs. 1654.77 Crores by December, 2020.
  - o. Reiterating above, counsel for the Applicant prayed to allow the Application as prayed for.
3. Counsel for the Liquidator filed reply, inter-alia stating as under:-
- a. That the Applicant is the successful bidder in the liquidation process of the Corporate Debtor and has filed present Application inter-alia seeking directions from this Adjudicating Authority for an extension of three months from 03.09.2020 for completion of sale of Corporate Debtor as a going concern. The applicant has also sought directions for a waiver of interest applicable on the price agreed to be paid by the Applicant in the sale.
  - b. That the Liquidator has filed an Application before this Adjudicating Authority vide IA No. 843 of 2019 inter-alia seeking directions that the period of sale be one year and 90 days, the same was disposed vide order dated 21.10.2019.

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- c. That the liquidator herein has issued a demand notice dated 03.06.2020 to the Applicant and requested the Applicant to pay the sale amount within 30 days, failing which, the Applicant will be liable to pay an interest on the sale amount at the rate of 12% p.a for the balance two months. That on 01.07.2020, the liquidator issued a reminder to the Applicant and on 17.08.2020, the Liquidator issued another reminder to the Applicant as the last date for payment under demand letter was 03.09.2020. The Applicant has therefore filed the present IA, seeking orders for extension.
- d. That the Liquidator has called a meeting of stakeholders on 19.08.2020. After consultation with the stakeholders, the outcome of the meeting was that the stakeholders were willing to provide the Applicant with an extension of 1 month subject to submission of a bank guarantee of an appropriate amount. As far as the interest component is concerned, since it is a matter prescribed by Regulation 33 read with Schedule I of the IBBI (Liquidation Process) Regulations, 2016, the stakeholders were of the opinion that the waiver sought for payment of interest cannot be provided by the Liquidation.
- e. In this regard, it is submitted that this Adjudicating Authority may consider Regulation 47A of the Liquidation process Regulations. The relevant portion of the said Regulation is as under:-

***[Exclusion of period of lockdown.***

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

- f. It appears that the period commencing from 25.03.2020 till such time the lockdown imposed by the central Government is/was operative must be excluded from the sale period as it is a timeline prescribed under the Liquidation process Regulations.

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- g. That the liquidator attempted to set out the legal position in relation to the reliefs claimed in the present IA and accordingly, submit to the orders of this Adjudicating Authority with regard to the waiver of interest as well as the time limit within which Liquidator have to complete the sale of the Corporate Debtor as going concern.
4. Counsel for the Respondent/Liquidator filed further affidavit on 04.09.2020, *inter-alia*, inter-alia stating as under:-
- a. That as per Regulation 47A of the Regulations, the period of lockdown imposed by the central Government in wake of Covid-19 outbreak shall now be counted for the purpose of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any Liquidation process. In view of the aforesaid circumstances and as per Regulation 47A of the Regulations, this Adjudicating Authority has power to decide the prayers sought for by the Application viz., extension of 3 months and waiver of interest.
5. Heard both sides and perused the record.
6. The instant Application is filed by M/s. Gabs Mega Corp Limited, Auction purchaser, who is the sole successful bidder in the E-Auction process conducted by the Liquidator on 27.02.2020 for sale of the Corporate Debtor as going concern for an amount of Rs. 1654.77 Crores. Although Liquidator has conducted e-auction for sale of Corporate Debtor as a going concern, the same was not effectuated and was kept on hold in view of the interim order passed by the Hon'ble NCLAT vide order dated 06.09.2019 in Company Appeal (AT)(Insolvency) Nos. 918-919 of 2019.
7. The Hon'ble NCLAT vide its final order dated 29.05.2020, dismissed the Appeal against the order of Liquidation and vacated the interim order dated 06.09.2019. Subsequent, to the said order, the liquidator has issued demand notice dated 03.06.2020 to the Applicant, requesting for payment of the sale consideration to be completed within three months at agreed upon consideration of Rs. 1654.77 Crores, with no interest for the first month and interest @12% p.a. for the remaining two months. The said

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period of three months completed on 03.09.2020. Now that the Applicant herein is seeking to grant an extension of three months to the Applicant with effect from 03.09.2020 for completing the sale of the Corporate Debtor as a going concern at the agreed auction price of Rs. 1654.77 Crores without any interest from 03.07.2020 to 03.12.2020.

8. It is submitted before this Adjudicating Authority that the Applicant is willing to continue with the purchase of the Corporate Debtor at the agreed upon price, even though, the Covid-19 pandemic situation being in the nature of an act of God, was not foreseen by the parties concerned at the time of auction. It is further submitted that though the Covid-19 pandemic situation decreases the value of the Corporate Debtor significantly, the Applicant is still willing to honour the auction price, in purchasing the Corporate Debtor as a going concern. It is therefore, clear that the Applicant is not seeking for any re-evaluation of the agreed auction purchase price but is only seeking extension of payment schedule without any interest due to the unforeseen Covid-19 situation.
9. It is a fact that the current Covid-19 pandemic and its fall out has thrown before us unprecedented challenges and has put the entire global economy into an uncertain situation of total disorder. Owing to the situation caused by the Covid-19 pandemic, many a restructuring plans have been jeopardized and it is not uncommon in the present days to see corporate entities to come up with pleas of waivers, exclusions, concessions, relaxation etc.,
10. In view of the Covid-19 pandemic and complete disruption of the economic activities in the country, the Government of India has announced a number of concessions, relaxations, waivers, extensions etc., in relation to the economic sector. The IBBI has amended the CIRP Regulations as well as the Liquidation Regulations by inserting Regulation 40C and 47A, respectively, which are read as under: -

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

*Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the*

*purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.]*

***[Exclusion of period of lockdown.***

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

11. Considering the submissions, facts and circumstances of case, as well as the economic scenario emerging due to Covid-19 Pandemic and its fall out, this Adjudicating Authority observes that extension of time period enabling for completion of the purchase of the Corporate Debtor as a going concern would be in the interest of all stakeholders, rather than going for liquidation in a piecemeal manner, which should only be initiated as a last resort. That a sale as a going concern would at any time realize a better value than that of a piecemeal sale, which undoubtedly would result in diminishing the value of the Corporate Debtor. Therefore, when the Corporate Debtor is sold as a going concern, it results in continuation of the economic activities. The object of the code is maximization of the value of the Corporate Debtor. The value maximization of the Corporate Debtor takes place when it is kept as a going concern, since, it will result in putting back the Corporate Debtor on track, further leading to promotion of entrepreneurship and balance the interest of the stakeholders.
12. The Hon'ble NCLAT, in the matter of S. C. Sekaran Vs. Amit Gupta & Ors., *inter-alia*, has held as under:

*".....Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law."*

13. In view of the above discussion, this Adjudicating Authority is of the opinion that the extension of 90 days' 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 the Regulation 33 read with Schedule – I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
14. With regard to the prayer of the Applicant seeking for waiver of interest from 03.07.2020 to 03.12.2020, since, this Adjudicating Authority has granted extension of 90 days period for completing the sale as going concern from 03.09.2020 to 03.12.2020, the obligation to pay the interest shall commence from 03.10.2020 in terms of Regulation 33 read with Schedule – I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Accordingly, the Applicant shall be liable to pay interest @ 12% p.a for the period commencing from 03.10.2020 to 03.12.2020.
  15. 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.
  16. With the above observations, IA No. 634/2020 stands disposed of.

**K. Anantha Padmanabha Swamy**  
**Member Judicial**