
(2020) 07 NCLT CK 0095

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 471 Of 2020 In Company Petition (IB) No. 492/07/HDB Of 2019

In Re: Sumit Binani, Resolution Professional Of Ksk Mahanadi Power Company Limited Vs

Date of Decision : 07-07-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 12(2), 12(3)
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 40
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) (Third Amendment) Regulations, 2020 — Regulation 40(C)

Citation : (2020) 07 NCLT CK 0095

Hon'ble Judges : K. Anantha Padmanabha Swamy, J

Bench : Single Bench

Advocate : Sankarnarayana, Allwyn Godwin

Final Decision : Disposed Of

Judgement

K. Anantha Padmanabha Swamy, J

1. Under consideration is an Interlocutory Application bearing IA No.471 of 2020 in CP (IB) No.492/7/HDB/2019, filed by the Applicant/Resolution Professional (in short IiP) in the matter of M/s. KSK Mahanadi Power Company Limited, under section 12(2) of the Insolvency and Bankruptcy Code, 2016 Read with Regulation 40 of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulation, 2016, inter-alia seeking the following relief(s):

a) That the period of (i) six (6) days from 13.12.2019 to 1{8.12.2019 pertaining to the period during which the IRP was directed not to conduct any CoC meeting in terms of the NCLT order dated 13.12.2019; (ii) seven (7) days from 15.03.2020 to 21.03.2020, in terms of the Hon'ble Supreme Court's Order extending the period of limitation; and (iii) eight (8) days from 09.06.2020 to 16.06.2020 for confirmation of the IBBI on replacement of the interim resolution professional with the Resolution Professional be excluded for the purpose of calculating the period of 180 days granted for the CIRP of the

Corporate Debtor.

b) That in light of the Hon'ble NCLAT's order, the period of 78 days from 22.03.2020 until 07.06.2020, due to the COVID-19 lockdown, stands excluded for the purpose of calculating the period of 180 days granted for the CIRP of the Corporate Debtor.

c) Declare that in terms of the prayers sought for in (a) and (b) above, the period of 180 days granted for the CIRP of the Corporate Debtor accordingly, expires on 08.07.2020.

d) That the time period for the CIRP of the Corporate Debtor is extended for a period of 90 days, after conclusion of the 180 days period on 08.07.2020 and the CIRP of the Corporate Debtor can continue till 07.10.2020.

2. Brief facts of the case as submitted by the Applicant are as follows:

i. That this Adjudicating Authority vide its order dated 03.10.2019, admitted the Application filed under section 7 of the IBC, 2016 in CP (IB) No.492/7/HDB/2019 for CIRP of the Corporate Debtor i.e., KSK Mahanadi Power Limited and appointed Mr. Mahender Kumar Khandelwal as Interim Resolution Professional (IRP). Later he was replaced with Mr. Sumit Binani as Resolution Professional (RP) by this Adjudicating Authority vide its order dated 16.06.2020 in IA No.234/2020, upon the Application filed by CoC who resolved in the 4th meeting held on 22.01.2020.

ii. That this Adjudicating Authority vide its order dated 13.12.2020 in IA No. 1128/2019, directed the IRP not to conduct any CoC meetings until the next date of hearing on 18.12.2019 and six (6) days have been lost in carrying out the CIRP of the Corporate Debtor.

iii. That in the th CoC meeting held on 22.01.2020, decided to replace the IRP with the Applicant, Mr. Sumit Binani as RP for the CIRP of the Corporate Debtor. The CoC with 89.60% of voting shares resolved for replacing the IRP to RP, but IRP disputed the same and challenged the decision of CoC by filing an Application bearing IA No.23 5/2020 before this Adjudicating Authority. On 09.06.2020, This Adjudicating Authority had pronounced the orders in the said Applications and posted the same for confirmation of proposed RP from IBBI on 16.06.2020 during which eight (8) days has been lost for replacement of RP. However, in light of the present Covid-19 lockdown situation and other circumstances hindering the operation of the CIRP, a substantial amount of time has been lost in carrying out the CIRP of the Corporate Debtor. Set out below is the number of days that are to be excluded for the purpose of calculating the 180 (one hundred and eighty) days CIRP period.

S.No.

Reason for exclusion

Excluded dates

No. of days excluded

1.

Exclusion period due to Covid-19 as per Supreme Court Order

15 March 2020 - 21 March 2020

7

2.

Exclusion period due to lockdown in Telangana

22 March 2020 - 07 June 2020

78

3.

Period during which the IRP was directed not to conduct any CoC meeting in terms of the NCLT order dated 13 December 2019

13 December 2019 - 18 December 2019

6

4.

Period for confirmation of the IBBI on replacement of the interim resolution professional with the Resolution Professional

9 June 2020- 16 June 2020

8

Total

99

iv. That pursuant to the publication of the invitation of EoI on 08.01.2020 and its subsequent corrigendum, a total of Nine (9) PRAs have shown interest in the CIRP of the Corporate Debtor. The CoC has been constantly updated with respect to the number of PRAs as and when they have indicated their interest in participating in the CIRP. However, due to lockdown imposed by the Government on account of COVID-19 travel to various plants sites for conducting due diligence by the PRAs has been severely impacted which resulted in delays in receipt of EoIs by few of them. Accordingly, the due date for submission of EoIs has been further extended till 21.06.2020 with the prior approval of CoC members through email.

v. That the COC felt that an extension of the CIRP for a further period of 90 (ninety) days is necessary for the success of the CIRP of the Corporate Debtor as the RP could not complete the process even after the exclusion of the 99 days as

detailed in the above table. Accordingly, the extension of 90 (ninety) days for the CIRP period was put to vote the following resolution as 'Agenda Item No. 4' on the 5th CoC meeting held on 24.03.2020, and the CoC with 97.5% of votes agreed for such extension as under:

"Resolved that approval of the Committee of Creditors be and is hereby granted to the IRP/RP to file an Application under section 12(2) of Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Hyderabad Bench, for extension of Corporate Insolvency and Resolution Process of the Corporate Debtor by 90 days."

3. Stating the above and circumstances, the counsel for the Applicant prayed to allow the instant Application for completion of CIRP.

4. RP/Applicant submitted that the present Application is bona fide one and the extension sought for is as provided under section 12(2) and (3) of Insolvency and Bankruptcy Code, 2016 and to meet ends of justice. Further, no prejudice will be caused to the parties herein.

5. Heard and perused the record.

6. The present Application is filed inter-alia seeking extension of 90 days' time period beyond 180 days and also exclusion of a period of 99 days lost due to various reasons.

7. In this case, the commencement of CIRP was approved by this Adjudicating Authority vide its order dated 03.10.2019 in CP (IB) No.492/7/HDB/2019 and 180 days was completed on 31.03.2020. in view of the progress made in the CIRP and 97.5% voting shares of the CoC members in favour of the Resolution passed by the CoC in its 5th meeting held on 24.03.2020, this Adjudicating Authority hereby grants extension of CIRP period in the matter of M/s. KSK Mahanadi Power Company Limited beyond 180 days by further 90 days.

8. It is further made clear that the computation of such extension of time period shall be computed in accordance with the Regulation 40C of IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020.

9. Further, upon considering the aspect of extension of period of 90 days, this Adjudicating Authority deems it proper not to adjudicate upon the aspect of exclusion of period of 99 days at this point of time. However, Applicant/RP is at liberty to approach before this Adjudicating Authority at appropriate juncture of time, if desired so.

10. Accordingly, this Application bearing IA No.471/2020 in CP (IB) No.492/7/HDB/2019 is hereby disposed of.