

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

IA No.661 of 2020

In CP (IB) No.492/07/HDB/2019

Under section 60(5) of the IB Code, 2016.

In the matter of:-

M/s. KSK MAHANADI POWER COMPANY LIMITED

Mr. Sumit Binani
Resolution Professional of
M/s. KSK Mahanadi Power Company Limited,
Commerce House, 4th Floor, Room No.6,
2A Ganesh Chandra Avenue,
Kolkatta – 700013.

...Applicant/
Resolution Professional

Date of Order: 07.09.2020

Parties/Counsel Present:

For the Applicant/RP : Mr. Shankarnarayana, senior counsel along
with Mr. Allwyn Godwin, counsel.

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. Under consideration is an Interlocutory Application bearing IA No.661 of 2020 in CP (IB) No.492/7/HDB/2019, filed by the Applicant/Resolution Professional (in short **RP**) in the matter of M/s. KSK Mahanadi Power Company Limited, under section 60(5) 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) Exclude a period of 76 days as on 21 July 2020 and extend the period of CIRP till 23 November 2020 taking into account the statutory exclusion provided under Regulation 40C
- b) Declare that the applicability of the provisions of Regulation 40C will extend to any complete or partial lockdown within the state of Telangana or such other states where the principal business of the Corporate Debtor is being conducted.

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

- a. 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 initiation of CIRP against 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.
- b. That in terms of the CIRP Order, the 180 (one hundred and eighty) day CIRP period of the Corporate Debtor was expired on 31.03.2020, and an application had been filed vide I.A. No.471 of 2020 for extension of the CIRP period for a further period of 90 (ninety) days, along with certain exclusions and subsequently, the Adjudicating Authority vide its order dated 07.07.2020 granted the extension of the CIRP of the Corporate Debtor for a further period of 90 days, along with the statutory exclusions provided under Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020.
- c. That the nationwide lockdown due to the Covid-19 pandemic, the CIRP of the Corporate Debtor has been significantly slowed down, due to which it is pertinent that the exclusion of 7 (seven) days granted in the SC Order from 15 March 2020 to 21 March 2020 be provided so that the CIRP may successfully be completed. The

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increased uncertainty due to the nationwide lockdown imposed on account of the Covid-19 outbreak has adversely affected the effective progress of the CIRP of the Corporate Debtor.

- d. That 6 (six) EOIs have been received as on date, and many other potential persons have shown interest in the CIRP of the Corporate Debtor, it may be in the interest of value maximization to encourage more investors to participate in the process and provide them the flexibility to submit resolution plans. However, the present lockdown situation has caused various hardships in sharing of information with prospective resolution applicants. The Resolution Professional/Applicant and COC would require the benefit of such exclusions to allow submission of resolution plans for the Corporate Debtor
- e. That an application has been filed by Punjab National Bank for the consolidation of the CIRP of the Corporate Debtor along with that of KSK Water Infrastructures Private Limited which is still pending for adjudication before this Hon'ble Tribunal. The decision of the said application may have a substantial bearing on the CIRP of the Corporate Debtor and the PRAs would want a conclusive determination of the aforesaid application before submitting a definitive resolution plans for the Corporate Debtor. In light of the current lockdown situation and considering various operational difficulties, it has not been possible for the PRAs to meet the existing deadlines and also for the COC to evaluate and analyse the submitted plans by the end of the CIRP Period.
- f. That a period of 6(six) days have been lost in carrying out the CIRP of the Corporate Debtor due to the direction of the Adjudicating Authority, to the interim resolution professional not to conduct any COC meeting until the next date of the hearing on 18.12.2019 by way of an order dated 13.12.2019 in I.A. No.1128 of 2019.
- g. That a period of 59 (fifty nine) days has been lost between passing the resolution by the COC for replacement of the interim resolution

professional on 22.01.2020 and receiving final confirmation from the IBBI on 16.06.2020.

- h. That additionally, while the lockdown has been relaxed in the area of the registered office of the Corporate Debtor, large parts of the State of Telangana and States in which the principal business of the Corporate Debtor is being carried out are still notified as containment zones, causing great difficulties to the resolution applicants to travel and conduct the required due diligence on the Corporate Debtor, thus considerably slowing down the resolution process of the Corporate Debtor. While the registered office of the Corporate Debtor is located at Hyderabad, its primary business is set up at Champa District, Chhattisgarh. It has become increasingly difficult for the PRAs to travel across states in order to carry out the due diligence and other necessary processes for formulation of effective resolution plans. That some PRAs who have shown interest in submitting resolution plans also belong to foreign countries. With the present restrictions on both national and international travel and non-availability of flights, it has become very difficult for such PRAs to effectively carry out the due diligence that is required for submission of an effective resolution plan. Therefore, the statutory exclusion provided under Regulation 40C will have to take into consideration not only the complete lockdown in the area where the registered office of the Corporate Debtor is located, but also any complete/relaxed lockdown within the State of Telangana and the areas where the principal business of the Corporate Debtor is being carried out.
- i. Unless the time period exclusions sought for in the CIRP period of the Corporate Debtor are granted, the Corporate Debtor may not be able to complete the CIRP within the prescribed time period and will have to be liquidate, in view of failure to arrive at a resolution plan and thereby thwarting the process of maximizing the values



of the assets of the Corporate Debtor for the benefit of all stakeholders.

- j. Due to the above various circumstances, following are 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.	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
3.	Period for replacement of the interim resolution professional with the Resolution Professional	22 January 2020- 16 June 2020	59
4.	Period since filing of the application for extension of time in I.A. No.471/2020 in CP(IB) No.492/07/HDB/2019, till the matter was taken up for hearing	22 June 2020- 25 June 2020	4
Total			76

- k. Further, counsel for the Applicant filed memo stating that the CIRP of the Corporate Debtor had commenced vide order of this Adjudicating Authority dated 03.10.2019 and the CIRP period of 180 days was due to expire on 31.03.2020. Taking into account the statutory exclusions granted under Regulation 40C of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, this Adjudicating Authority vide order dated 07.07.2020 extended the CIRP of the Corporate Debtor for a further period of 90 days and the same currently expires on 12.09.2020. That the exclusion period of 76 days as detailed in the above table, the CIRP period of 270 days that is due to expire on 12.09.2020, would then expire on 23.11.2020.

1. Reiterating the above, the counsel for the Applicant prayed to allow the instant Application.
3. Heard and perused the record.
4. In this case, the commencement of CIRP was initiated by this Adjudicating Authority vide its order dated 03.10.2019 and period of 180 days got completed on 31.03.2020 further a period of another 90 days is going to end on 12.09.2020. Now that the instant Application is filed by RP seeking exclusion of 76 days from the computation of CIRP period in view of the reasons as stated in the Application (*para J supra*).
5. It is pertinent to quote the judgment of Hon'ble NCLAT in the matter of Quinn logistics India Pvt Ltd versus Macksoft Tech vide Company Appeal (AT) (Insolvency) No. 185 of 2018, wherein certain grounds justifying exclusion of time period are laid down. Relevant portion of the said judgment is as under:-
 9. *From the decisions aforesaid, it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances.*
 10. *For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:-*
 - (i) *If the corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*
 - (ii) *If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
 - (iii) *The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.*
 - (iv) *On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the*

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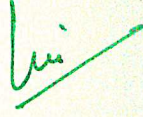
Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.

(v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.

(vi) Any other circumstances which justifies exclusion of certain period. However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code."

6. Considering the submissions, facts and circumstances of case, this Adjudicating Authority observes that the exclusion as sought in the instant case falls under the various parameters as laid down in the judgement of Hon'ble NCLAT in the matter of Quinn Logistics *supra*. further, this Adjudicating Authority having satisfied with the reasons as mentioned above and considering the economic scenario emerging due to COVID-19 pandemic and it's fall out, observes that exclusion of time period enabling for completion of CIRP would be in the interest of all stakeholders, to allow the completion of CIRP rather than going for liquidation of the Corporate Debtor which should only be initiated as a last resort. Accordingly, I hereby approve to exclude a period of another 76 days from calculation of CIRP period.
7. This exclusion is granted on having considered the steps already been taken by the RP/Applicant and the current stage of CIRP in the case of the present Corporate Debtor i.e., M/s. KSK Mahanadi Power Company Limited.
8. In relation to prayer (b), it is observed that this Adjudicating Authority vide its order dated 07.07.2020 in IA No. 471/2020, has already made it clear that the computation of CIRP period shall be computed in accordance with the Regulation 40C of IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020.

9. Accordingly, the present Application bearing IA No.661 of 2020 stands disposed of.



K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

Rk/santi