

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

IA No.929/2020
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

Between:

Mr. Sumit Binani
Resolution Professional,
Commerce House,
4th Floor, Room No.6,
2A, Ganesh Chandra Avenue,
Kolkata – 700013.

...Applicant/
Resolution Professional

Date of order: 26.11.2020.

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

Parties/Counsels present:

For the Applicant/
Resolution Professional

:

Mr. Shankarnarayana, Senior
Counsel along with Mr. Allwyn
Godwin, counsel

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. Under consideration is an Interlocutory Application bearing IA No.929 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, inter-alia seeking the following relief(s):
 - a) Exclude a period of 102 (one hundred and two) days from the CIRP period of the Corporate Debtor till 08.03.2021, due to the reasons

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stated in the instant IA, including the conclusion of the Consolidation Application from computing the period of 270 (two hundred and seventy) days for the purpose of completion of the CIRP of the Corporate Debtor under section 12 of the Code.

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 on the basis of resolution passed in the 4th CoC meeting held on 22.01.2020.
 - ii. This Adjudicating Authority vide its order dated 07.09.2020 in IA No.471/2020 granted the exclusion of 76 (seventy six) days from the CIRP period of the Corporate Debtor and the same is due to expire on 27.11.2020. The following are the reasons for exclusion of the 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 for hearing	22 June 2020 – 25 June 2020	4
Total			76

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- iii. That with a view to complete the CIRP of the Corporate Debtor successfully, the Applicant requires that the time periods lost due to various reasons be excluded for the purpose of calculating the period granted by the Adjudicating Authority for completion of the CIRP of the Corporate Debtor in order to facilitate the successful resolution of the Corporate Debtor in line with the stated objects of the Code.
- iv. That considering the total lockdown in containment zones and partial lockdown in all other areas as imposed by the Central Government vide its circulars dated 30.05.2020, 29.06.2020 and 29.07.2020, read with the government orders issued by the state of Telangana, in terms of Regulation 40C, the CIRP of the Corporate Debtor could not effectively be carried out even during the partial lockdown from 08.06.2020 to 31.08.2020.
- v. That the PRAs have also specifically written to the Applicant herein requesting for additional time for conducting all necessary processes and submitting effective resolution plans and have requested extension of the last date for submitting the resolution plan. The Corporate Debtor is running a large thermal power project which requires extensive on-site due diligence by the PRAs. The COVID-19 pandemic has made it not only difficult to travel to the site location at Chattisgarh, but also extremely unsafe, especially considering the steady rise of COVID-19 cases in the state.
- vi. That the PRAs have also shown high interest in submitting consolidated resolution plans for the Corporate Debtor, KSK Water and RCRIPL, in the event there is consolidation of the CIRP of all three entities. This would be very advantageous and profitable for all the stakeholders involved in the CIRP of the Corporate Debtor, KSK Water and RCRIPL.
- vii. That a substantial amount of time has been lost during the CIRP of the Corporate Debtor. Considering the above factors and the high potential of the Corporate Debtor to be effectively revived, a period of 102 (one hundred and two) days is to be excluded for the purpose

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- of calculating the CIRP period of the Corporate Debtor in order to facilitate the successful completion of the CIRP.
- viii. That the CIRP of the Corporate Debtor along with that of KSK Water and RCRIPL may lead the PRAs to offer discounted values for resolution of the Corporate Debtor, which will defeat the principles of value maximization as provided under the Code. However, if the period sought for are excluded, then it will be beneficial in resolving the uncertainty due to pending Consolidation Application as by that time a conclusive decision on the Section 7 Applications and the Consolidation Application may be arrived at.
- ix. That seven (7) EOIs have been received as on date, and PRAs are actively engaged in conducting the due diligence process, it may be in the interest of value maximization to provide more time to them to conclude the due diligence in a constructive manner to enable them to submit an effective resolution plan for consolidated asset. The situation within the country is still not encouraging with the rising number of COVID cases with various offices operating at less than full capacity leading to delays in conducting work, printing essential and confidential documents and seeking approvals from the competent authorities. All these circumstances have led to over-all delays everywhere and therefore, requests have come from PRAs to extend the last date of submission of the resolution plan from 14.10.2020.
- x. That unless the time period exclusions as sought for in the CIRP period of the Corporate Debtor are granted, the Corporate Debtor, through no fault of its own or that of the Resolution Professional, may not be able to complete the CIRP within the prescribed time period, and will have to be liquidated, 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.

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S.No.	Reason for exclusion	Excluded dates	No. of days to be excluded
1.	Period lost in deciding the Consolidation Application and Section 7 Applications which are currently pending	08 June 2020 – 30 September 2020	102 (excluding a period of 13 days for which exclusion has already been granted)
Total			102

- xi. Reiterating the above, counsel for the Applicant prayed to allow the instant Application as sought for.
3. Heard submissions of the Ld. Counsel for the Applicant and perused the record.
4. It appears that the CIRP in the case of the instant Corporate Debtor has got delayed due to the pandemic leading to the lockdown/ partial lockdown in the State of Telangana and the Country at large. Though there are Seven (7) EOI received, the PRAs have sought further time to submit their respective Resolution Plans. This Adjudicating Authority has already allowed exclusion of Seventy Six (76) days by order dated 07.09.2020 vide IA No.661/2020 and the extended period due to such exclusion granted is also due to expire on 27.11.2020.
5. The applicant has applied for further exclusion of a period of 102 days on account of "Period lost in deciding the Consolidation Application and Section 7 Applications which are currently pending". It is observed that the pendency of Section 7 Applications or Consolidation Application in other cases cannot be a reason for excluding any period from the CIRP period of the Corporate Debtor. However, considering the stage of the CIRP in the instant case and the negative impact of the lockdown/partial lockdown on the economic activities in the State of Telangana and the Country at large and in the interest of justice, this Adjudicating Authority is inclined to consider exclusion of remaining period of lockdown from the CIRP period.

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6. It is seen from the record that while granting exclusion of 76 days, periods between 13.12.2019 to 25.06.2020 have already been considered. Therefore, we hereby allow a further exclusion on account of lockdown period of sixty seven (67) days starting from 26.06.2020 and up to 31.08.2020. This exclusion will extend the CIRP period up to 2nd February 2021, by which time the Resolution Professional must complete the CIRP.
7. Accordingly, the instant Application bearing IA No. 929 of 2020 stands disposed of.

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Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL

Rathi/Rk

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K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL