

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 223/2019 in CP(IB)1103(MB)/2017

(Under Section 60(5)(c) of the IBC, 2016)

Rekha Shah

... Applicant/RP

In the matter of

Leo Duct Engineers & Consultants Ltd.

... Corporate Debtor

Order delivered on 08.03.2019

Coram:

Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Applicant: Adv. D. B. Pereira for RP, Ms. Rekha K Shah, RP

For Canara Bank : Adv. Nikhil Mengde, i/b/ SPS & Associates

For L & T Finance: Adv. Mohit Sahani, a/w Adv. Ashish Mehta for proposed Respondent

For erstwhile RP : Adv. Madhavi Nalluri

Per V.P. Singh, Member(Judicial)

ORDER

MA 223/2019 has been filed by the RP seeking exclusion of period under section 60(5) (c) of IBC, 2016, read with Rule 14 and Rule 34 of NCLT Rules, 2016.

2. It is stated in the application that the Corporate Debtor is presently undergoing CIRP pursuant to the order dated 21.3.2018 passed by this Tribunal in CP No.1103 of 2017 whereby Mr. Martin S. K. Golla was appointed as RP of the Corporate Debtor.

3. The applicant has sought exclusion of 82 days from CIRP for a reason given in the application. RP has annexed the chart in para 7 of the application wherein details of the period for which exclusion sought is given. The details are as under:

Dates during which exclusion is sought	No of Days
17.9.2018 to 2.11.2018	46
14.11.2018 to 2.1.2019	49
3.1.2019 to 11.1.2018	8
TOTAL	103
Less: 21 days exclusion granted vide order dated 3.1.2019	(21)
Total no of days to be excluded	82

4. The applicant has sought exclusion of 46 days, i.e. from 17.9.2018 to 2.11.2018 on the ground that on 12.11.2018, IBBI cancelled the registration of Mr. Martin S. K. Golla as Insolvency Professional for 10 years from the date of order.

5. It is pertinent to mention that RP has filed MA 1319/2018 for the exclusion of 46 days, i.e. from 17.9.2018 to 2.11.2018 which was considered by us and by a detailed order we have rejected the prayer for the exclusion of 46 days, i.e. from 17.9.2018 to 2.11.2018. It is pertinent to mention that by our order dated 7.12.2018, we have directed that till the appointment of new RP, erstwhile RP Mr. Martin S. K. Golla will look after the work of the RP and CoC was further directed to appoint the new RP within seven days from the date of order.

6. Ld. Counsel representing the RP has emphasized that erstwhile RP Mr. Martin S. K. Gola whose registration was cancelled by IBBI by order dated 12.11.2018, therefore, Mr. Martin S.K. Golla was not authorised to perform the duties of RP after 12.11.2018. It is pertinent to mention that vide our order dated 2.11.2018, we had directed the erstwhile RP to discharge his duties as RP till the appointment of new RP. Therefore, on the above ground, we have rejected MA 1319/2018 by detailed order of 3.1.2019. We have passed an order for appointment of the present RP Ms Rekha Kantilal Shah on 3.1.2019. Therefore, we have excluded the period, i.e. from 14.12.2018 to 3.1.2019, i.e. 21 days for computation of CIRP period, i.e. 270 days.

7. RP has stated that in view of the order dated 12.11.2018 passed by IBBI which was received on 14.11.2018, whereby registration of erstwhile RP Mr Martin S. K. Golla was cancelled and till the receipt of the order of appointing the applicant as RP, the entire period of 49 days was lost since no work was carried out by erstwhile RP despite order passed by this Tribunal.

8. We have passed a detailed order for exclusion of 21 days, i.e. from 14.12.2018 to 3.1.2019 for computation of statutory period for completion of CIRP, i.e. 270 days. If the applicant is aggrieved by this order, she should have approached the Appellate Authority. However, during argument, when it was enquired to the RP whether any resolution plan is under consideration, then it was informed by the RP that at present no plan is under consideration and there is no hope for getting any proposal in future, even after extension of time. It is pertinent to mention that 270 days, even after exclusion of 21 days, has expired on 6.1.2019.

9. There is no justifiable ground for exclusion of further period.

10. Hon'ble Supreme Court in case of K. Shashidhar has held that

“ As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which have now been forsaken”.

Para 64 of Hon'ble Supreme Court judgement has specifically held that "*as regards the application by the Resolution Applicant for taking his revised resolution plan on record, the same is also devoid of merits inasmuch as it is not open to the Adjudicating Authority to entertain a revised resolution plan after the expiry of the statutory period of 270 days.*"

11. Thus, it is clear that given the law laid down by Hon'ble Supreme Court in *K. Shashidhar*, in no circumstances statutory period for completion of CIRP can be extended beyond 270 days.

12. Hon'ble NCLAT in *Quinn Logistics India Pvt Ltd vs Mack Soft Tech Pvt Ltd in Company Appeal No.185 of 2018* has laid down the following guidelines for exclusion of period:

"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 the 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 the order is reserved by the Adjudicating Authority or the Appellate Tribunal or the 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 the exclusion of certain period."*

13. The present case is not covered in those criteria. It is also important to point out that neither resolution plan is under consideration nor there is any possibility of any resolution shortly. Therefore, no question arises for granting further exclusion of any period for computation of 270 days, since no resolution plan is under consideration and the statutory period has been expired. Therefore, under Section 33(1)(c), we pass an order for liquidation as under:

- a. That the Corporate Debtor is liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
- b. As to the appointment of Liquidator, the Resolution Professional, i.e. the applicant herein is at this moment appointed to act as a Liquidator for the liquidation of Corporate Debtor company with all powers as envisaged in the Code.
- c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to affect and shall be vested in the Liquidator.
- d. That the personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- e. That the Insolvency Resolution Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate/assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

- f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on the corporate debtor behalf, it may initiate such proceedings with prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
 - g. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continuing during the liquidation process by the Liquidator.
14. Moratorium declared vide Order dated 21.3.2018 in CP No.: 1103/2017 ceased to exist.
15. The registry is directed to communicate this order to the Applicant immediately even by way of e-mail.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)