

303

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**Coram : Shri Madan B. Gosavi,
Hon'ble Member (J)
&
Shri Virendra Kumar Gupta
Hon'ble Member (T)**

**CA(IB)No.1629/KB/2019
in
CP (IB) No.1340/KB/2018**

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules.

In the matter of:

Jindal Steel and Power Limited

Financial Creditor

-Versus-

In the matter of:

Bharat NRE Coke Limited, having its registered office at 22 Camac Street, Block C, 5th Floor, Kolkata-700016..

....Corporate Debtor

Sd

Sd

In the matter of:

Samir Kumar Bhattacharyya, the Resolution Professional Bharat NRE Coke Limited having its office at Sagar Club, 104 SP Mukherjee Road, Kolkata-700026.

Counsel appeared:

For Resolution Professional

1. Mr. Sameer Kumar Bhattacharyya, RP
2. Mr. Joy Saha, Senior Advocate
3. Mr. Rahul Auddy, Advocate

For shareholder

1. Mr. M.S. Tiwari, Advocate

For Suraksha ARC

1. Mr. Abrajit Mitra, Sr. Advocate
2. Mr. Chitranskul Sinha, Advocate
3. Mr. Shwetank Nigam, Advocate

Date of Pronouncement of Order: 11th December, 2019.

ORDER

Per Shri Madan B. Gosavi, Member(J)

1. Resolution Professional, Mr. Samir Kumar Bhattacharyya filed this application under Section 12(2) of Insolvency and Bankruptcy Code, 2106 with concurrence of Committee of Creditors with request to exclude period of sixty (60) days from total period of 270 days which is completed on 05.12.2019 on the ground that sixty days were wasted in pendency of legal proceeding.
2. We heard Ld. Senior Counsel for the RP and Ld. Senior Counsel for the dissenting members of CoC at length. We have gone through the





provisions of Section 12 of IBC, 2016 and rulings of Hon'ble Apex Court in case of SR Steel India Limited Vs. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-8767 of 2019) and some of the orders of the Hon'ble NCLAT passed in appeals.

3. The Corporate Debtor was admitted in CIRP vide order dated 11.03.2019. CIRP period of 180 days completed on 06.09.2019. However, by order dated 05.09.2019, CIRP period was extended for 90 days and CIRP of 270 days completed on 05.12.2019. The RP and the CoC did not receive any resolution plan for the Corporate Debtor till date.
4. The RP filed this application for exclusion of period of sixty days on the ground that the appeal against the order of admission of the Corporate Debtor in CIRP was pending in between 03.05.2018 till 20.12.2019.
5. Section 12(3) of IBC, 2016 is recently been amended by providing three provisos thereto. Second proviso of Section 12(3) of IBC states that

“Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceeding in relation to such resolution process of the corporate debtor”

Second proviso as noted above empowers this Authority to exclude certain period from counting total 270 days of CIRP period provided such excluded period must be the time taken in legal proceeding in relation to such resolution process of the Corporate Debtor.

6. It is not in dispute that in the Appeal against order of admission of the Corporate Debtor in CIRP, Hon'ble NCLAT did not stay CIRP of the

Sd

Sd

Corporate Debtor. In fact, the Hon'ble Appellate Tribunal directed the IRP to see that the Corporate Debtor remains as a going concern. Hence, the pendency of Appeal is ipso-facto does not allow exclusion of time as per the second proviso Section 12(3) of IBC. Apart from above, even after disposal of the appeal in July 2019, the CoC and the RP have four months period in their hands to call for the resolution plans from the prospective resolution applicant, to discuss the plans to make them workable etc. Record reveals that both the CoC and the RP did not make required efforts to use said period effectively.

7. We also took into consideration the object of Insolvency and Bankruptcy Code, 2016 that as far as possible, there should be resolution of the Corporate Debtor instead of passing order of liquidation. We are told that even as on today the RP and the CoC did not receive any resolution plan. They submitted that four proposed resolution applicants have only submitted expression of interest. In our considered opinion, if at all any of the four proposed resolution applicants, was really interested to submit resolution plan, it could have submitted the same long back.
8. From facts of the case and material on record, we noted that there are no ground available for us to exclude period of 60 days of CIRP period as claimed. Even on principles of equity, we cannot allow exclusion of such periods because the CoC and the RP did not have in their hand any resolution plan. Hence, we reject this application. Consequently, we pass order of liquidation of the Corporate Debtor. Considering the facts, we replace the RP by appointing some other professional as the Liquidator under Section 34(4) IBC. We pass the following order.

ORDER

1. By this order, Corporate Debtor- **Bharat NRE Coke Ltd.** is liquidated.

sd

sd

2. **Mr. Shashi Agarwal**, having registration no. IBBI/IPA-001/IP-P00470/2017-18/10813 of is appointed as the Liquidator.

3. The Liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.

4. The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

5. The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.

6. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.

7. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.

8. Upon proceeding with the liquidation the Liquidator shall file a **preliminary report** as per regulation 5 read with Reg.13 of the IBBI (Liquidation) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file **progress reports** as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.



9. The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.
10. Registry is hereby directed to communicate the order to the RP, Financial Creditor, Corporate Debtor and the Liquidator by Speed Post and also by email for information and for taking necessary steps.
11. CA(IB) No.1629/KB/2019 is rejected.
12. **CP(IB)No.1340/KB/2018 is disposed** of as the Corporate Debtor (Bharat NRE Coke Ltd.) is liquidated.

Let the certified copy of the order be issued upon compliance with requisite formalities.

(Virendra Kumar Gupta)
Member(Technical)

(Madan B. Gosavi)
Member(Judicial)

Signed on this, the 11th day of December, 2019.

Deeksha(steno)