IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 116
IA/164(MP)2021 in CP(IB) 32 of 2017

Order under Section 60(5) IBC,2016

IN THE MATTER OF:

Kuldeep Verma Liquidator of K S Oil Ltd ....**Applicant**
V/s
State Bank of India & Anr ....**Respondent**

Order delivered on ..01/10/2021

Coram:

Dr.Deepti Mukesh, Hon'ble Member(J)
Mr.Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD BENCH

IA 164 of 2021 in TP 60 of 2019
[CP (IB) No.32/7/NCLT/AHM/2017]

Under Section 60(5) of IBC, 2016 read with Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of NCLT Rules 2016

In the matter of:

M/s. K.S. Oils Limited

Mr. Kuldeep Verma
Liquidator of
M/s. K.S. Oils Limited
46 B.B. Ganguly Street
5th Floor, Unit 501
Kolkata-700 012 .... Applicant

Order Pronounced on : 01.10.2021

Coram: Dr. Deepti Mukesh, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)

Appearance: Mr. Vivek Sibal, Sr. Counsel along with
Mr. Aditya Pandey, Advocate, for the Applicant
Mr. Kuldeep Verma, Liquidator.

ORDER

[per Virendra Kumar Gupta, Member (Technical)]

1. The present application is filed by Mr. Kuldeep Verma, Liquidator of M/s. K.s Oils Limited (Corporate Debtor), seeking extension of period of Liquidation of Corporate Debtor company under Rule 2B of Insolvency Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

2. The facts, in brief, are that the Corporate Debtor, Viz., M/s K.S Oils Limited, was admitted in the Company Insolvency Resolution Process (CIRP) vide order of this Adjudicating Authority on 21.07.2017. Hon'ble NCLAT vide order dated 16.03.2021 passed Liquidation order in respect of the Corporate Debtor Company. During the Liquidation process, one scheme of arrangement under section 230 of the Companies Act, 2013 was proposed. The Liquidator, under Rule 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 proceeded with such Arrangement which was received in consequence of advertisement given by Liquidator on 26.03.2021. Two Expression of Interests (EOIs) were received. One of the parties, however, withdrew from the process. Other

party submitted Scheme under Section 230 of the Companies Act, 2013, within the timeline fixed by the Liquidator. Initially, the proposal was for Rs.320 crores which was revised upward to Rs.400 crores after Stakeholders Consultation Committee in its meeting dated 02.06.2021 asked the proposer of scheme to improve the offer.

3. In this background, the Ld. Sr. Counsel appeared and contended that due to Covid-19 Pandemic and Lockdown imposed in different parts of the country, there was delay in the process for getting valuation reports and carry out due diligence to verify the eligibility of the proposer of the Scheme under Section 29A of the IB Code, 2016. It was further contended that in addition to the present bidder there are three (3) more parties who wish to submit revival Scheme under Section 230 of the Companies Act, 2013 during the Liquidation process of the Corporate Debtor. It was also pointed out that the Stakeholders Consultation Committee has also decided to consider all the proposals and has passed resolution seeking extension of timelines by another 90 days to complete the process under Section 230 of the Companies Act, 2013. On query, as regard to the timelines, being

essence of IB Code, 2016, Ld. Sr. Counsel submitted that due to extraordinary conditions prevailing in the country on account of Covid-19 Pandemic situation even Hon'ble Supreme Court *Suo Moto* has extended the limitation period for enforcing legal rights and proceedings for maximisation of the value, being one of the prime objects of IB Code, 2016 need to be given due consideration. Our attention was also drawn to Rule 2B (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which provides that time taken on Compromise or Arrangement shall not be included in the Liquidation period.

4. The Ld. Sr. Counsel submitted that the 90 days period was not sufficient, having regard to process for completion of approval of the Scheme, but all efforts will be made by all Stakeholders involved in the process to complete the process in this time frame. Ld. Sr. Counsel further contended that the decision of the Hon'ble Supreme Court in the case of ***Ebix Singapore Private Limited*** would not come into the way because, even in that case, the decision of the Hon'ble Supreme Court in the matter of ***ESSAR Steel Ltd.*** has been referred to which laid-down that in

exceptional cases timelines could be extended by NCLT and NCLAT. The Ld. Sr. Counsel drew our attention to the chronology of events and prayed for extension of further period of 90 days to complete the process of approval of scheme of arrangement with respect to Corporate Debtor.

5. We have considered the submissions made on behalf of the Liquidator. It is noted that the Liquidation order was passed on 16.03.2021 by Hon'ble NCLAT and, thereafter, Liquidation process commenced with effect from 16.03.2021. One year period has not been completed. It is further submitted that there is no intention on the part of the Liquidator to extend the liquidation period beyond one year. However, within such period if a Scheme of Arrangement can be approved that would be beneficial to all Stakeholders of the Corporate Debtor. It is also noted that apart from one party, three more parties have come who have evinced interest to submit Scheme for revival of the Corporate Debtor. We have to consider these circumstances for the disposal of this Scheme in terms of Rule 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

2B. Compromise or arrangement.

1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of section 33.

(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.".

6. The said Regulation has been framed by IBBI with effect from 25.07.2019. The purpose of bringing this Regulation is to provide one more avenue for revival of the Corporate Debtor as a going concern in addition to what has been prescribed Regulation 32 of the Liquidation Process Regulations, 2016. It is also to be seen that the first priority is to be given to the Resolution of Insolvency through this route / mode. It has also been prescribed that time taken on Compromise or Arrangement shall not been included in

the overall period of Liquidation process. The preamble to IBC also talks of resolution rather than Liquidation and even during the Liquidation process several provisions have been made to transfer the Corporate Debtor as a going concern. Even the Hon'ble Supreme Court in the case of ***ESSAR Steel Ltd. and in the case of Ebix Singapore Private Limited*** has allowed such extension in exceptional cases and in our view the present case falls into that category so that the Corporate Debtor can be to put back on its foot. Thus, considering this spirit of legislature, in our view, efforts must be made to further this object rather than to frustrate it by not giving an extension as sought for. It is also a settled position of law that interpretation of any provision should be done in this manner only subject to one condition that such interpretation should be fit in overall Scheme and structure of the statute. Thus, taking que from this principle, we are of the view that extension of liquidation period for further 90 days as prayed needs to be given. We are also conscious of the fact that during second wave of Covid-19 Pandemic which erupted in the country since mid-week of April, 2021 and prevailed up to June 2021 which has caused delays and non-functioning due to Lockdown, safety aspects, etc. Accordingly, we accept the prayer

Of the applicant and extend period by further 90 days from the date of this order so as to enable the Liquidator to complete the process of compromise of arrangement.

7. Accordingly, this Application i.e. IA 164 of 2021 stands allowed in terms indicated above and disposed of.

Virendra Kumar Gupta
Member (Technical)

Dr. Deepti Mukesh
Member (Judicial)

Sudha