

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

IA No.516/KB/2021

in

CP (IB) No.634/KB/2017

In the matter of

Application under section 60(5)(c) of the insolvency and Bankruptcy Code, 2016

CP (IB) No.634/KB/2017

In the matter of:

Flsmidth Private Limited ... Operational Debtor

Versus

Jhabua Power Limited ... Corporate Debtor

IA No.516/KB/2021

In the matter of:

Abhilash Lall, Resolution Professional

of Jhabua Power Limited ... Applicant

Order reserved on: 01.06.2021

Order pronounced on: 02.06.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

For the Applicant/RP : Mr. Ratnanko Banerji, Sr Advocate
Ms. Mamta Binani, Adv
Mr. Rohit Sharma, PCS
Mr. Piyush Mishra, Adv
Ms. Anindita Roy Chowdhury, Adv
Mr. Raghav Chadha, Adv
Ms. Nikita Sinha, Adv
Mr. Kanishk Kejriwal, Adv
Mr. Abhilash Lall, RP

For the Committee of Creditors (CoC) : Mr. Joy Saha, Senior Advocate
Mr. Vijayant Paliwal, Advocate
Mr. Sagar Dhawan, Advocate
Ms. Trisha Mukherjee, Advocate
Mr. Nikhil Mathur, Advocate
Ms. Prabh Simran, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. IA No.516/KB/2021 in CP(IB) No.634(KB)/2017 has been filed by the Resolution Professional of Jhabua Power Limited (Corporate Debtor) under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016, and rule 11 of the National Company Law Tribunal Rules, 2016, seeking extension of time period for completion of the Corporate Insolvency Resolution Process (CIRP) from 01.05.2021 to 15.06.2021.
2. It is stated that Resolution Plans were submitted by two Resolution Applicants, namely, NTPC Ltd. and Adani Power Ltd., on 30.12.2019 and multiple rounds of discussion and commercial negotiations with the resolution Applicants were held. But due to Covid-19 pandemic and an order passed by the Karnataka State Electricity Regulatory Commission, a lot of time was taken in moving forward in the CIRP.
3. NTPC submitted an updated Resolution Plan on 16.04.2021 and the Resolution Professional presented the details of the Resolution Plan before the Committee of Creditors in the meeting held on 21.04.2021 and requested the Committee of Creditors to review the plan from commercial, legal and other aspects.

4. The Resolution Professional also presented the restructuring proposal submitted by the Promoters, Avantha Holdings Ltd. After due consideration of the proposal submitted by the Promoters, the members of the Committee of Creditors from PFC, SBI, Axis Bank, PNB and REC stated that they did not find the proposal to be commercially viable since the upfront payment as per the restructuring proposal was significantly lower than the offer of NTPC in its Resolution Plan. After considering the commercials of the Resolution Plan submitted by NTPC and proposal submitted by the Promoters, it was noted that the offer from NTPC is better. Some of the members of the Committee of Creditors also noted that some other accounts held by the Promoters are under examination by various Government authorities/Commissions. Hence, the Committee of Creditors found the proposal of the Promoters unacceptable and unanimously decided not to pursue that proposal further.
5. It is stated that the proposal submitted by the Promoters is not in the prescribed format. The proposal for withdrawal under section 12A of the IBC read with regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has to be routed through a lender who has filed the application for initiation of CIRP before the Adjudicating Authority along with a Bank Guarantee covering the entire CIRP cost.
6. It is also stated that the revised Resolution Plan is being discussed between the Committee of Creditors and NTPC and there is a likelihood of resolution of the Corporate Debtor since the plan submitted by NTPC on 16.04.2021 represents significant improvement from its earlier plan.
7. In the 14th meeting of the Committee of Creditors held on 21.04.2021, 93.07% of the members of the Committee of Creditors have voted for filing an application for extension of CIRP time from 01.05.2021 till 15.06.2021. Therefore, the Applicant has sought for an extension of the CIRP period

from 01.05.2021 till 15.06.2021 for completion of the CIRP of the Corporate Debtor.

8. We have considered the matter in all seriousness, and heard the learned senior counsel appearing for the Resolution Professional and for the Committee of Creditors.
9. In order dated 23.02.2021 in IA (IB) No.75/KB/2021, we had noted that the 330-day period for completion of the CIRP had ended on 19.02.2020. Extension and exclusion of time from the CIRP period had been granted by the Adjudicating Authority from time to time, as follows: -

Sl No.	Extension/ exclusion prayed for	Date of orders	Period
1.	CIRP commencement date	27.03.2019	-
2.	Expiration of 180 days	22.09.2019	-
3.	Extension of 150 days granted	23.09.2019	22.09.2019 to 19.02.2020
4.	Expiration of 330 days	19.02.2020	-
5.	Exclusion of 90 days	14.02.2020	19.02.2020 to 20.04.2020
6.	Exclusion of 28 days	06.10.2020	06.10.2020 to 03.11.2020
7.	Exclusion of 90 days	02.11.2020	03.11.2020 to 31.01.2021
8.	Exclusion of 90 days	23.02.2021	31.01.2021 to 01.05.2021

10. We had allowed the extension and exclusion only because the corporate debtor had a power plant that was a going concern and sending the corporate debtor to liquidation only on the ground that resolution could not be achieved within the time period stipulated under the Code would be against the basic objective of the Code itself, and this was not desirable.
11. Therefore, in the said order dated 23.02.2021 granting the exclusion of the period of 90 days from 31.01.2021 to 01.05.2021, we had specifically

mentioned in para 14 thereof that all possible ways of revival of the corporate debtor is to be considered, explored and decided by the Committee of Creditors within the said period, *i.e.*, upto 01.05.2021 positively, and that no further extension shall be granted.

12. Our exhortation to complete the CIRP on or before 01.05.2021 has fallen on deaf ears. Instead, we are being presented with a *fait accompli* once again, thinking that the Adjudicating Authority will grant the exclusion sought for, as a matter of course. It is almost as if the CoC and the resolution applicant are both under an impression that just because resolution is preferable over liquidation, and the resolution applicant is a State entity, any number of exclusions will be granted just for the asking. Granting the present request (*for exclusion upto 15.06.2021*) will mean that the CIRP has carried on for a period of 483 days beyond the outer limit of 330 days from the scheduled close on 19.02.2020 (*upon completion of 330 days in terms of the second proviso to section 12(3) of the Code*).
13. This sleight of hand in breaching the CIRP timeframe more than a year beyond the maximum period of 330 days for the completion of the process, but somehow fitting it into the legal time frame through the device of exclusions must be called out. The slow meandering pace at which the matter has been carried forward both by the Committee of Creditors and by the resolution applicant, must also be deprecated. The observation in the said order dated 23.02.2021 that the CIRP must be completed within the extended time frame of 01.05.2021 and that no further extensions would be granted has not only been ignored royally, the CoC has also thumbed its nose at such observations.
14. A well-meaning stratagem devised by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta &***

others,¹ declaring that if, on the facts of a given case, it can be shown to the Adjudicating Authority or the Appellate Authority under the Code that only a short period of time is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation, it may be open in such cases for the Adjudicating Authority to extend time beyond 330 days, is being misused time and again to cover up the tardy process of completion of CIRP. In the bargain, the immediately preceding sentence of the same judgment in the same page and paragraph, that *ordinarily* the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, has been completely relegated to the dustbin, while the Adjudicating Authority is left to salvage the situation.

15. Therefore, while we grant the prayer for extension of the CIRP from 01.05.2021 till 30.06.2021 (*since it may well-nigh be impossible to complete it by 15.06.2021 as prayed for*), for completion of the Corporate Insolvency Resolution Process of the Corporate Debtor, we also direct that a copy of this order be sent to the Chairman & Managing Director of NTPC Limited, and also to the Chief General Managers of the individual members who are banks, and to the Managing Directors of the other entities constituting the Committee of Creditors to enable them to have a hard look at the snail's pace at which the CIRP is progressing.

16. IA No.516/KB/2021 in CP(IB)/634(KB)/2017 is allowed with the above directions.

¹ (2020) 8 SCC 531, @ page 628, para 127

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA (IB) No.516/KB/2021 in
in CP (IB) No.634/KB/2017
In the matter of Jhabua Power Ltd

17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
18. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

02.06.2021