

7

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 09.03.2021

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittalana
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 122/BB/2017	For report of Liquidator IA 65/2021 For exclusion of time – Liquidation	Sec 7 of I&B Code 2016	M/s New Age Real Properties, LLP	-	Bhuvana Infra Projects Pvt Ltd	Mr Vijay Pitambaer Lulla, Liquidator Raina Birla for liquidator

ADVOCATE FOR PETITIONER/s:

Adv Raina Birla
Liquidator Vijay Lulla
N.A. Narsimhamurthy

ADVOCATE FOR RESPONDENT/s:

Raina
Vijay
N.A.
For Bank of Maharashtra

ORDER

Heard Ms. Raina Birla, Learned Counsel for the Liquidator, Shri Vijay Pitambaer Lulla, Liquidator and Mr. N.A. Narsimhamurthy, Learned Counsel for the Bank of Maharashtra.

I.A No. 65 of 2021 is allowed by separate order. Post the case on 08.04.2021.


MEMBER (T)


MEMBER (J)

Verified
Gy

Court Officer

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A. No.65 of 2021 in
C.P. (IB) No.122/BB/2017
U/s. 60(5) (c) of the IBC, 2016
R/w Reg. 44(2) & Reg. 47(A) of the IBBI
(Liquidation Process) Regulations, 2016

In the matter:

Mr. Vijay Pitamber Lulla,
Liquidator of
M/s.Bhuvana Infra Projects Pvt. Ltd.
R/Off: Flat No.528, K.R. Garden,
6th Block, First Floor, Koramangala,
Bengaluru – 560 095.

- Applicant /Liquidator

Date of Order: 09th March, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/Liquidator : Mr. Vijay P. Lulla, Liquidator a/w
Ms. Raina Birla, Adv.
For Bank of Maharashtra : Mr. N.A. Narsimhamurthy, Adv.

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A. No.65 of 2021 in C.P. (IB) No.122/BB/2017 is filed by Mr. Vijay Lulla, Liquidator of M/s. Bhuvana Infra Private Limited ('the Applicant/Liquidator') under Section 60(5)(c) of the IBC, 2016, read with Regulation 44(2) & Regulation 47(A) of the IBBI (Liquidation Process) Regulations, 2016 by inter alia seeking to pass an order excluding the period lost due to the lockdown declared, w.e.f. 25th March 2020 till lockdown was lifted in terms of the new IBC amendment vide Regulation 47 A which clearly stipulates that the period lost due to the lockdown in various states caused on account of Covid-19 will be excluded and shall not be treated as part of liquidation period till lockdown is not lifted and thereby excluding the period of days lost from



25.03.2020 to 31.07.2020 i.e. 129 days (129 days from 10th December, 2020 to 18th April, 2021), the period of Liquidation to be extended by one year w.e.f. 18.04.2021 for the reasons particularly as prayed for above, etc.

2. Briefs facts of the case, as mentioned in Application, which are relevant to the issue in question, are as follows:

- 1) Initially, the Company Petition bearing C.P.(IB) No.122/BB/2017 was filed by M/s. New Age Real Properties LLP ('the Financial Creditor/Petitioner') under Section 7 of the IBC, 2016 read with Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, was admitted by this Adjudicating Authority, vide order dated 17.01.2018 ('Admission Order') for initiating CIRP, appointing Mr. Pavan Kankani, as IRP, imposing moratorium, etc. Subsequently, the Adjudicating Authority vide its order dated 15.03.2018, allowed the Petitioner to change the IRP of the Corporate Debtor, and thus appointed Smt. Ramanathan Bhuvaneshwari as the RP in place of Mr. Pavan Kankani. Since the RP did not receive any Resolution Plans for the Corporate Debtor, CIRP of the Corporate Debtor could not be achieved and so an application for taking the Corporate Debtor into Liquidation u/s.33 was filed, bearing I.A No.600 of 2019. The said application was allowed by this Tribunal on 10.12.2019 and Mr. Vijay Pitamber Lulla was appointed as the Liquidator of the Corporate Debtor.
- 2) The Liquidator issued public announcement on 21.12.2019 in 'Form B' for the purpose of inviting claims against the Corporate Debtor. The said form was published in the following newspapers namely, Financial Express & Kannada Prabha (Bangalore Edition). Subsequent to which, the Liquidator has received one claim from the Bank of Maharashtra, as the 100% sole Financial Creditor and eight other claims from Operational Creditors.
- 3) After going through the Financials of the Corporate Debtor, it was found that dues outstanding from M/s.Golden Gate Properties Ltd., M/s. Commune Properties India Pvt. Ltd. & Prisha Properties are Debtors of Bhuvana Infra Projects Private Limited. The Liquidator has written letters to the said parties on 25.01.2020, who are debtors of the Corporate Debtor, reminding them to make payment of their outstanding dues on account of the work done for various projects for which they have issued confirmation of debt due and payable already during CIRP.

- 4) Being the sole Financial Creditor, Bank of Maharashtra, informed the Liquidator in this Stakeholders Committee meeting held on 19.03.2020 that, it has exclusive charge on the fixed assets of the Corporate Debtor. On 23.03.2020, the Liquidator has appointed valuers namely, Chirag Shah and Vishnu Upadhyay for financial assets and Rajubhai Kantilal and Anil Kakode for plant and machinery, as the erstwhile RP was unable to conduct valuation of the Corporate Debtor due to non-cooperation being received from the erstwhile management of the Corporate Debtor, Liquidator also was unable to locate the assets of the Corporate Debtor and after much follow-up was able to locate the asset and get them valued, which wasted substantial amount of time to carry out the process under Liquidation.
- 5) Further, the Liquidator informed that Bank of Maharashtra, the sole Financial Creditor addressed letter vide dated 05.07.2020 to the Liquidator, informing about their decision to enforce their security interest u/s.52 of the Code by selling the Plant & Machinery of the Corporate Debtor exclusively mortgaged to it under SARFAESI Act, 2002. On perusal of the records of the Corporate Debtor, the Liquidator learnt that they do not have exclusive charge over the Plant & Machinery of the Corporate Debtor and so they cannot enforce security interest in respect of the same. Furthermore, the Bank of Maharashtra, a Financial Creditor vide its email dated 07.09.2020 confirmed to the Liquidator that there is no hypothecation on Plant & Machinery of the Corporate Debtor and hence the same cannot be sold under SARFAESI Act, 2002.
- 6) Meanwhile, the Liquidator once again sent reminder letters to said outstanding debtors of Bhuvana Infra Projects Pvt. Ltd., and it was only after continuous follow up on 18.08.2020, the Liquidator has received unsigned response from the one of the Debtors namely, M/s. Golden Gate Properties Pvt. Ltd., who has cited reasons of Covid-19 pandemic and recession in real estate industry for not being able to pay the outstanding amount and requested time to make payment.
- 7) Based on the communication and confirmation received by Bank of Maharashtra vide email dated 07.09.2020 that there is no hypothecation on Plant & Machinery, the Liquidator immediately took steps for the sale of Plant & Machinery in order to move ahead with the Liquidation process as envisaged under the Code and



started interacting with various persons for sale of Machinery and accordingly publication of the first e-auction notice was issued on 24.10.2020 in the Financial Express (English) and Kannada Prabha (Kannada) Newspapers.

- 8) As per e-auction notice for selling Plant & Machinery of the Corporate Debtor which was published on 24.10.2020, and the e-auction was conducted on 06.11.2020 on the website of Right 2 vote with a reserve price of Rs.1.50 Crores. However, the said auction failed, as there was no interested buyers. Therefore, the Liquidator will have to conduct another e-auction for liquidating the Plant & Machinery of the Corporate Debtor. Therefore, Liquidator made another publication of e-auction notice on 21.01.2021 for liquidating the assets of the Corporate Debtor and second e-auction will be conducted on 06.02.2021 on the website of Right to Vote.
- 9) In reference to the letter dated 18.08.2020 sent by GGPL, one of the debtors of Corporate Debtor, the Liquidator vide its letter dated 20.10.2020, once against requested M/s. Golden Gate Properties Limited to immediately deposit the amount in the account of Corporate Debtor, contending that the amount due & payable by them is outstanding since the year 2019 i.e. prior to the outbreak of Covid-19 pandemic and so they cannot cite reasons of the pandemic to escape from its liability to pay off its old dues as they were supposed to deposit this payment a year ago, that is the day it made an acknowledgement to pay off this debt. There was no response from the above named debtors, except GGPL but who has also not paid off its liability. The Liquidator is making all such efforts to get the recovery of the outstanding amounts so that it can deposit this recovered amount in the Liquidation account of the Corporate Debtor.
- 10) The Liquidator on several occasions by way of emails & letters, reminded the debtors of Corporate Debtor for the payment of their outstanding dues. However, none of the debtors have deposited the amount payable to the Corporate Debtor and Liquidator failed to recover outstanding dues from outstanding debtors.
3. Heard Mr. Vijay Pitamber Lulla, learned Liquidator along with Ms. Raina Birla, learned Counsel for the Liquidator and Mr. N.A. Narsimhamurthy, learned Counsel for the Bank of Maharashtra. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the Rules made thereunder.

4. As per Regulation 44(2) of the I&B Code, 2016, if the Liquidator fails to liquidate the Corporate Debtor within one year, the Liquidator shall make an application to the Adjudicating Authority to continue such liquidation, and specifying the additional time and shall be required for Liquidation. Pursuant to the aforesaid Regulation, Liquidator enclosed a Report wherein a brief on the Progress made by the Corporate Debtor till date along with reasons accorded therein for requesting additional time required for carrying out the entire process of Liquidation as the same could not be completed for the reasons as specified in the present Application. As per Section 53 of the Code an additional period of one year for carrying out the smooth implementation of the liquidation process as the assets of the Corporate Debtor are yet to be liquidated.
5. IBBI has also inserted Regulation 47A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, vide notification dated 20.04.2020, which reads as under:

“Exclusion of period of lockdown”

47A. *“Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.”*

6. In the present IA the Applicant/Liquidator has also sought exclusion of time on account of the Lockdown announced by the Central Government and the various State Governments w.e.f. 25.03.2020 – 31.07.2020 i.e. 129 days (129 days from 10.12.2020 to 18.04.2021). We are inclined to accept this prayer in view of the fact that due to the Lockdown on account of the Covid-19 pandemic, business activity as also movement of men and material almost came to a standstill all over India. There was no possibility for the Applicant/Liquidator to have conducted the Liquidation process during this period. Hence, in exercise of the powers conferred upon this Tribunal by section 60(5) of the Code as well as Regulation 47 A of the Code (Liquidation Process) Regulations, 2016, we accede to the Prayer and allow an exclusion of 129 days from the Liquidation period. Further, under the power conferred upon this Tribunal under Section 53 allow the additional period of one year for carrying out the liquidation process in a smooth manner, as prayed.

7. In the result, I.A.No.65 of 2021 in C.P. (IB) No.122/BB/2017 is disposed of with the following directions:

- (a) A period of 129 days is excluded from the Liquidation period to enable the Liquidator to conclude the Liquidation Process in respect of Corporate Debtor and i.e. from 10.12.2020 to 18.04.2021.
- (b) The period of Liquidation is further extended by additional one-year w.e.f 18.04.2021.
- (c) We hereby direct the Liquidator to take all steps expeditiously to complete the Liquidation Process within the extended and excluded period.
- (d) Post the case for report of the Liquidator on **08.04.2021.**



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

Amar



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**