

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No.551/2020
In CP (IB) No.616/7/HDB/2018
Under section 12(3) of the IB Code, 2016.

In the matter of:-
M/s. Athena Chhattisgarh Power Limited

Mr. C. Bala Mouli,
Resolution Professional
Athena Chhattisgarh Power Limited
1-7-297118A, 125 M.G. Road,
Parsi Compound, Behind Godrej Showroom,
Secunderabad, Telangana – 500 003.

...Applicant

Date of Order: 03.09.2020

Parties/Counsel Present:

For the Applicant : Mr. P. Ravi Charan and
Ms. Niharika Agarwal,
Counsels.

Per: K. Anantha Padmanabha Swamy, Member Judicial.

ORDER

1. Under consideration is an interlocutory Application bearing IA No.551 of 2020 filed by the Applicant/Resolution Professional (in short **RP**) in the matter of M/s. Athena Chhattisgarh Power Limited u/s. 12(2) of the Insolvency and Bankruptcy Code, 2016, Read with Regulation 40C of Insolvency Resolution Process for Corporate Persons Regulations, 2016, inter-alia seeking the following relief(s):

- a) “Allow the instant application and grant exclusion of the period from 25.03.2020 to 30.06.2020 i.e. 97 days from the time period



for completion of CIRP of the Corporate Debtor in accordance with Regulation 40-C; and

- b) Allow the instant application and to grant extension of time of 120 days from 01.07.2020 to 28.10.2020 for completion of CIRP of Corporate Debtor after excluding the period spent on adjudication of this application i.e. from the date of filing of this petition i.e.14.07.2020 till passing of the orders”

2. The following are the brief facts of the case as submitted by the counsel for Applicant:

2.1 That this Adjudicating Authority admitted the Application filed under section 7 of the IBC, 2016 vide its order dated 15.05.2019 in CP (IB) No.616/7/HDB/2018 and appointed Mr. C. Bala Mouli as Interim Resolution Professional (IRP). Later he was confirmed as RP with approval of 95.83% of voting share of CoC members in its 1st meeting held on 21.06.2019.

2.2 That continuing the CIRP, the RP published Form G for Corporate Debtor in newspapers on 29.07.2019, against which Expression of Interest (hereinafter referred as **EoI**) were received from M/s. Adani Power Limited, M/s. Vedanta Limited and M/s. Megha Engineering & Infrastructure Limited. These Prospective Resolution Applicants (hereinafter referred as **PRAs**) were found eligible upon the scrutiny done under the purview of section 29A of the IBC 2016.

2.3 That pursuant to orders dated 05.11.2019 and 11.02.2020 in IA Nos. 956/2019 and 156/2020, CIRP period of 270 days and 330 days respectively has been completed.

2.4 That due to the outbreak of novel coronavirus-(COVID - 19) pandemic, the Government of India vide its announcement dated March 25, 2020 has announced a complete lockdown in the country and subsequently the said lock down was extended by Government of India from time to time and on account of such last extension the lock down was extended till 31.07.2020 in containment zones, with services resuming in phased manner as on the date of filing of this application.

2.5 That the time period of 330 days was completed on 09.04.2020 during the lock down period. However, by virtue of amendment brought in by way of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 which came into force on the 29th March, 2020 regulation section 40C was introduced regarding the Special provision relating to time-line. Accordingly, the Resolution Professional has sought exclusion of the time period of 97 days i.e. from 25-03-2020 till 30-06-2020 in terms of regulation 40C.

2.6 That currently APGENCO one of the Resolution Applicants along with Vedanta Limited which is a Government Entity is seriously interested to submit resolution plan against Corporate Debtor and have been putting consistent efforts since beginning.

2.7 That the plant of the Corporate Debtor is located in Chhattisgarh and officials of APGENCO could not travel to the plant for verification of the Equipments due to the lock down imposed by the Central Government and travel restrictions. Further, with the resumption of the domestic flights, the officials of APGENCO who are partly in Hyderabad and



Vijayawada are currently undertaking process of due diligence of Corporate Debtor along with trip to inspect of the plant and machinery at Chhattisgarh plant of the Corporate Debtor.

- 2.8 That APGENCO time and again emphasized their serious interest for the submission of the Resolution plan vide their letters dated 16.04.2020, 26.06.2020 and 01.07.2020 and in the CoC meetings also but for the Global and National prevailing restrictions on travelling and other related issues for evaluating the plant and that they need to be given time duly for submission of resolution plan.
- 2.9 That Resolution Professional has held six CoC meetings on 27 April 2020, 18 May 2020, 26 May 2020, 08 June 2020, 10 June 2020 and 29 June 2020. These meetings were basically held for deciding the future course of action for Corporate Debtor. In these meetings, the CoC members have been giving extension of time to APGENCO to submit its resolution plan against Corporate Debtor and understanding the difficulties faced by APGENCO in negotiating with main equipment supplier of Corporate Debtor of inspection of Equipments.
- 2.10 That Pendency of claim application filed by Abir Infrastructure Private Limited (Abir) against the Applicant seeking setting aside of RP's order dated 13.09.2019 for claim amount of Rs.770 Crores which is yet to be decided by this adjudicating authority.
- 2.11 That in the 17th CoC meeting held on 29.06.2020, has approved the following resolution for seeking extension of 120 days with a majority of 81.11% of voting shares for completion of CIRP Period.

“RESOLVED THAT the RP should file an application with NCLT seeking for extension of time for a period for four months”

Reiterating the above, the counsel for the Applicant prayed to allow the instant Application.

3. Heard and perused the record.
4. The present Application is filed inter-alia seeking exclusion of time period from 25.03.2020 to 30.06.2020 i.e., 97 days' time period for completion of CIRP of Corporate Debtor in accordance with Regulation 40C and further to grant an extension of 120 days from 01.07.2020 to 28.10.2020 for completion of CIRP of Corporate Debtor.
5. In this case, the CIRP period of 180 days has already been extended by another 90 days vide this Adjudicating Authority's order dated 05.11.2019 and by virtue of section 12 of IBC, 2016, a period another 60 days was extended vide order dated 11.02.2020. The period of 270 days + 60 days came to an end on 09.02.2020 and 09.04.2020 respectively. Now that the Applicant herein is seeking exclusion of period lost due to outbreak of Covid-19 pandemic. It is pertinent to note that the judgment of the Hon'ble Supreme Court has held in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors in CA No.8766-67 of 2019 as follows:

“79.....Thus, while leaving the provision otherwise intact, we strike down the work 'mandatorily' as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is 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, including extensions and the time taken in legal proceedings. However, on the facts of a given case,

4

if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period 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 and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days.”

6. Keeping the guidance of the Hon'ble Supreme Court as above in view and considering the submissions, facts and circumstances of case, interest envisaged by the Prospective Resolution Applicant for resolution of Corporate Debtor and in view of the decision of CoC in its 17th meeting dated 29.06.2020, as well as the economic scenario emerging due to COVID-19 pandemic and its fall out, this Adjudicating Authority observes that exclusion of time period for completion of CIRP lost due to lockdown imposed by Central Government and State Government from time to time would be in the interest of all stakeholders, to allow the completion of CIRP rather than going for liquidation of the Corporate Debtor which should only be initiated as a last resort. Accordingly, this Adjudicating Authority hereby approve the exclusion of another period of 97 days from calculation of CIRP period.
7. This exclusion is granted on having considered the steps already been taken by the RP, approval by the CoC with 81.11% and the current stage of CIRP in the case of the present Corporate Debtor i.e., M/s. Athena Chhattisgarh Power Limited. Further, upon considering the aspect of exclusion of period

of 97 days, this Adjudicating Authority is of the view that a sufficient time is already been granted for completion of CIRP. Therefore, it is not proper to adjudicate upon the aspect of extension of period of 120 days.

8. Accordingly, the present Application bearing IA No.551 of 2020 in CP (IB) No.616/7/HDB/2018 is hereby stands disposed of.


K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

Rk/Rathi