



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
KOLKATA**

IA(IBC)/316(KB)2023

In

CP(IB)/1536(KB)2019

An application under section 60(5) of the Insolvency and Bankruptcy Code,

In the matter of:

Phoenix ARC Private Limited

...*Financial Creditor*

-Versus-

Arambagh Hatcheries Limited

...*Corporate Debtor*

And

In the matter of:

Mr. Pinaki Sircar, Resolution Professional of Arambagh Hatcheries Limited

.... *Applicant/Resolution Professional*

Date of Hearing: 23/02/2023

Date of Pronouncement: 31/03/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances through hybrid mode:

For RP : Mr. Shaunak Mitra, Adv.
Mr. Vikash Singh, Adv.
Ms. Zeenat Shabab, Adv.
Mr. Pinaki Sircar, RP in person



- For applicant in IA/310/2023 : Mr. Rishav Banerjee, Adv.
Mr. Santosh Kumar Ray, Adv.
Ms. Rituparna Sanyal, Adv.
Ms. Sumana Mukherjee, Adv.
- For applicant in IA/369/2023 : Ms. Urmila Chakraborty, Adv.
Mr. Debashis Karmakar, Adv.
Mr. Arya Nandi, Adv.
Mr. Satyam Ojha, Adv.
Mr. Parikshit Lakhota, Adv.
- For applicant in IA/1074/2022 : Mr. Uttiyo Mallick, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/316(KB)2023 is an application filed by the Applicant/Resolution Professional u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**IBC 2016**”) praying for exclusion of 60 days from the CIRP period. This application is supported by an affidavit duly affirmed by the Applicant/Resolution Professional, which is at pages 18 to 20 of the application
3. This Adjudicating Authority *vide* order dated 13/05/2022 on a petition filed u/s. 7 of the IBC, 2016 filed by Phoenix ARC Private Limited, the Financial Creditor, had admitted Arambagh Hatcheries Limited, the Corporate Debtor under Corporate Insolvency Resolution Process (“**CIRP**”) appointing Mr. Sanjai Kumar Gupta as the Interim Resolution Professional (“**IRP**”). At the first CoC meeting held on 11/06/2022, it was resolved that Mr. Pinaki Sircar, the Applicant herein, shall be appointed as Resolution Professional (“**RP**”). This Adjudicating Authority *vide* its order dated 17/06/2022 had confirmed the appointment of Mr. Pinaki Sircar as RP.
4. **Form G** inviting Expression of Interest (“**EoI**”) from prospective resolution applicants was published on 25/07/2022 in three newspapers. In response, three prospective resolution applicants had submitted their EoI. But none of them had



submitted any resolution plan within the stipulated period. The CoC at its 8th meeting held on 25/10/2022 had recommended publication of another **Form G** as well as to apply for extension of the CIRP period by a further period of 90 days. Accordingly, Applicant/Resolution Professional had again published Form G inviting EoI from prospective resolution applicants on 31/10/2022 and filed an application, being IA(IBC)1398(KB)2022 for extension of the CIRP period by 90 days. This Adjudicating Authority *vide* its order¹ dated 09/11/2022 had granted the same, thereby the 270 days CIRP would come to an end on 06/02/2023.

5. Meanwhile, one M/s. Excel Merchants Private Limited had approached this Adjudicating by filing an application being IA(IBC)/1672(KB)2022 seeking condonation of delay in submission of EoI and subsequently Resolution Plan. Upon hearing the said application, this Adjudicating Authority had directed the said M/s. Excel Merchants Private Limited *vide* its order² dated 03/01/2023 to submit their EoI and Resolution Plan within three weeks i.e., 24/01/2023. However, the said M/s. Excel Merchants Private Limited did not file their EoI and Resolution Plan within the aforesaid stipulated period, instead *vide* e-mail dated 24/01/2023 seek 15 (fifteen) days' time to submit EoI and Resolution Plan. Since, the CoC does not have powers to act beyond the directions of the Adjudicating Authority, the same could not be acceded to.
6. It is stated in the application that one M/s. Square vision Properties Private Limited, has shown interest to submit their EoI and Resolution Plan and has submitted EMD of Rs.15,00,000/- by way of a cheque on 27/01/2023 along with an e-mail showing their keenness to submit Resolution Plan. Since the CIRP process is expiring on 06/02/2023 and it is practically not possible to allow further more time to Excel Merchants Private Limited and to further accept any new EoI received after the expiry of due date, the CoC at its 12th meeting held on 27/01/2023 passed a resolution with 89.49% voting share to file an application before this Adjudicating Authority for exclusion of 60 days from the CIRP period for resolution of the

¹ Annexure A at page 6 of the application

² Annexure B at pages 7 and 8 of the application



Corporate Debtor. Copies of the said e-mail dated 27/01/2023 received from Squarevision Properties Pvt. Ltd. along with the Minutes of the 12th CoC meeting also dated 27/01/2023 along with voting results are annexed to the application as Annexure C³. At the said 12th meeting the CoC has passed the following resolution:

“RESOLVED THAT the consent of the CoC be and hereby is accorded for taking 60 days’ exclusion in the CIRP period and the RP to file application before Hon’ble AA for taking the exclusion.”

7. We have heard the Ld. Counsel for the Liquidator, perused the application and the documents attached therewith.
8. *Vide* order dated 09/11/2022, this Adjudicating Authority had already granted an extension of 90 days. The Resolution Professional has not been able to complete the entire CIRP process within 270 days period. In terms of the judgment of the Hon’ble Apex Court dated 05/11/2019 in **Committee of Creditor of Essar Steel India Limited vs. Satish Kumar Gupta and Others, (2020) 8 SCC 531 (para 127)**, it was held that if, on the fact 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 process beyond 330 days and 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 upon the Adjudicating Authority in such case for to extend the time.
9. The main objective of the Code is to resolve the Corporate Debtor as “a going concern” by way of a resolution plan and productive resources of economy can be put to best use, whereas liquidation means death of the Corporate Debtor. Liquidation is the last option when there is no scope for resolution.
10. Here, in this case, the Resolution Professional has in his hand one prospective resolution applicant, who has shown its eagerness to submit resolution plan and the

³ At pages 9 to 17 of the application



CoC has consented for taking 60 days' exclusion. In the above scenario not granting some time to resolve the Corporate Debtor would go against the basic object of the code, i.e., to revive the Corporate Debtor as a going concern.

11. Therefore, we exclude the time within which this IA(IBC)/316(KB)2023 was under judicial consideration from 06/02/2023 to date of pronouncement of this order, and further grant an exclusion of 60 days as prayed for in prayer (a) of the application. We direct the Resolution Professional to **strictly adhere to this time frame and complete the CIRP within the given time.**
12. **IA(IBC)/316(KB)2023** shall stand disposed of in accordance with the above directions.
13. **List the Main C.P. on 17/04/2023.**
14. 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.
15. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Signed on this, the 31st day of March, 2023.

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