

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court - I)
KOLKATA**

IA (IB) No. 522/KB/2023
in
CP (IB) No. 223/KB/2021

*An application under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with
Rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

State Bank of India

..... Financial Creditor

-Versus-

SAV Wires Private Limited

.....Corporate Debtor

-And-

In the matter of :

**CA Santanu Brahma, Resolution Professional
of SAV Wires Private Limited**

.....Applicant

Date of pronouncement :16/08/2023

Coram:

**Bidisha Banerjee, Member (Judicial)
Balraj Joshi, Member (Technical)**

Appearances (through video conferencing/ physical):

1. Shaunak Mitra, Advocate : For the Resolution Professional
2. Manas Das, Advocate :

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This court was convened via hybrid mode.
2. The present application has been filed by Mr. Santanu Brahma, the Resolutional Professional of SAV Wires Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking exclusion of 61 days from the total time period of the Corporate Insolvency Resolution Process.
3. It is the case of the applicant that this Adjudicating Authority had admitted the petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 vide order dated 16.12.2022. By virtue of the said order one Mr. Uday Narayan Mitra was appointed as the Interim Resolution Professional (*hereinafter referred to as IRP*). However, owing to the expiry of the authorization for assignment he declined to continue as the IRP and accordingly an application was filed by the Financial Creditor seeking change and/or replacement of the IRP and appointment of the applicant in the instant application as the IRP.
4. The said application was allowed by this Adjudicating Authority vide order dated 07.02.2023 and the applicant came to know about the same on 15.02.2023 by visiting the website of NCLT web portal and as such it was not possible for the applicant to proceed with the CIRP during the period between 16.12.2022 to 15.02.2023 i.e., 61 days from the total CIRP period.
5. After obtaining knowledge about the same, the Applicant has constituted the Committee of Creditors of the Corporate Debtor apropos the Form A published by the erstwhile IRP in two newspapers on 17.02.2023 namely Business Standard (English) and Aajkal (Bengali) having wide circulation where the registered office of the Corporate Debtor is

situated and also in the 'The Pioneer' (English) and 'Pioneer' (Hindi) having circulation in the State of Chattisgarh where the business operation of the Corporate Debtor.

6. It is also stated that the Suspended Board of Directors of the Corporate Debtor have failed to co-operate and/or extend any support in providing necessary documents and/or records and/or information as required by the Applicant while performing a statutory duty. He intimated the same to the Suspended Board of Directors of the Corporate Debtor about the initiation of CIRP via email dated 20.02.2022 and had further requested cooperation in the ongoing CIRP. A followup email was also sent to them on 27.02.2023 but there has been no response from the other side. The Applicant had also sent a letter through Speed Post at the registered office but all such communications were returned undelivered by the Department of Post, Ministry of Communications, Government of India.
7. The Applicant had visited the registered office of the Corporate Debtor and came to know that the office premises has been sealed by the Official Liquidator of Hon'ble High Court at Calcutta. Therefore, the applicant also informed the CoC about the same that the said Directors were untraceable and had also reported the matter to Narendrapur Police Station, Baruipur Police District, West Bengal by way of a General Diary being G.D.E. No. 267 dated 04.03.2023.
8. It is further stated by the Applicant that during the 1st CoC meeting of the Corporate Debtor on 04.03.2023¹ at the concerned place and time, it was unanimously resolved to effect exclusion of the said period of 61 days commencing from 16.12.2022 and ending on 15.02.2023.
9. It is stated by the Applicant that there is a high likelihood that the CIRP of the Corporate Debtor may be successfully completed thereby preventing the corporate death of the Corporate Debtor via liquidation.

¹ Annexure A-3 at Pages 29-51 of the Application

Analysis and Findings

10. Heard the Learned Counsel appearing for the Applicant and perused the records.
11. The Applicant has stated in its application that the period from 16.12.2022 to 15.02.2023 i.e., a period of 61 days be excluded from the total CIRP period on the grounds as stated in the foregoing paragraphs.
12. We refer to a judgment of the Hon'ble NCLAT in Ashish Chaturvedi v. Inox Leisure & Ors². The extracts from the said judgment are reproduced as hereunder:

“9. The Learned Counsel for the Appellant refers to the judgment of this Tribunal in CA(AT) (Insolvency) No. 185 of 2018 in Quinn Logistics India Pvt. Ltd v.Mack Soft Tech Pvt. Ltd and ors., dated 08.05.2018, wherein at para 6 to 11 it is observed as under:

.....10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:-

- (i) If the corporate insolvency resolution process is stayed by ‘a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court.*
- (ii) If no ‘Resolution Professional’ is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
- (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the ‘Resolution Professional’ takes charge for completing the corporate insolvency resolution process.*
- (iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court and finally pass order enabling the ‘Resolution Professional’ to complete the corporate insolvency resolution process.*
- (v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon’ble Supreme Court and corporate insolvency resolution process is restored.*
- (vi) Any other circumstances which justifies exclusion of certain period.*

² Company Appeal (AT)(INS) No.05 of 2020 decided on 10.02.2020

19. The 'Insolvency Resolution Professional being a creature of the I&B Code is certainly entitled to project an application before an Adjudicating Authority' relating to the hardships/difficulties, he faces/faced during the 'Resolution Process'."

13. In view of the above position, we find that the circumstances as stated by the Applicant which led to the delay in initiating CIRP are reasonable and were beyond the control of the Applicant. Hence the period of 61 days i.e., from 16.12.2022 to 17.02.2023 shall stand excluded from the total CIRP period in the interests of successful completion of CIRP.
14. In the light of the above facts and circumstances, the present IA being I.A.(I.B.) No. 522/KB/2023 is **allowed** and **disposed of**.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

The order is pronounced on the 16th day of August, 2023

(FA_LRA)