

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
ALLAHABAD BENCH**

CA No.375 of 2019
IN
CP(IB) No.110/ALD/2017

IN THE MATTER OF :

SHREE BHAWANI PAPER MILLS LTD

..... CORPORATE DEBTOR

IN THE MATTER OF:

Ms Anju Agarwal,
Resolution Professional of
Shree Bhawani Paper Mills Ltd.

**..... APPLICANT
(RESOLUTION PROFESSIONAL)**

ORDER RESERVED ON :27.11.2019
ORDER DELIVERED ON : 06.12.2019

CORAM:

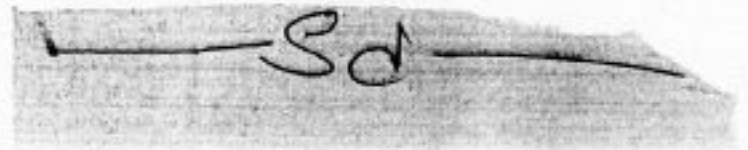
Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Resolution Professional: Mr. Abhishek Anand, Advocate

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

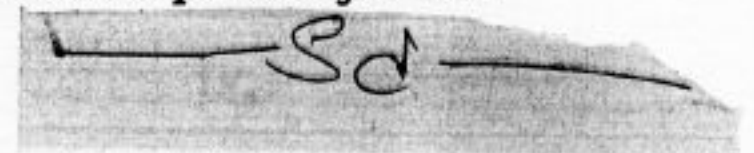
Order

1. The present application is filed on behalf of RP under Sec 60(5) and 12 (3) of IBC (Amendment Act)2019 read with Regulation 40 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 seeking exclusion of 32 days, which was lost during the disposal of the of CA 110/2019 & 133/2019 filed for withdrawal of the Resolution plan, during CIRP period.
2. The learned counsel stated that a period of 149 days was lost since the application for withdrawal of the Resolution plan was pending before this Adjudicating Authority.



3. It is further stated by the learned counsel for Resolution Professional that the corporate debtor in CA No.267/2019 has received the benefit of 58 days against 90 days under the third proviso of Section 12 of the Code which was partly disposed of vide order dated 17.09.2019 in which a period of 90 days from 16.08.2019 was granted for completing the CIRP in accordance with the latest amendment which is coming to an end on 14th November,2019.
4. It is stated in the application that a revise resolution plan was submitted by the resolution applicant on 12th November,2019 and it was impossible for CoC to seek approval of their competent authority and further e-voting to be done by 14th November, 2019. Therefore, CoC on its 16th Meeting which was convened on 11th November,2019 passed the resolution with 95.28% voting share of the members present in the meeting to file an exclusion application with the adjudicating Authority.
5. It is further stated that on account of the above stated situations, a period of 32 days to be extended for considering and finalizing the resolution plan received in order to complete the CIRP of the Shree Bhawani Paper Mills Limited.
6. Ld. Counsel appearing on behalf of RP relied on the judgment of Hon'ble NCLAT in **Company Appeal (AT) (Insolvency) No.185 of 2018** dated 08.05.2018 **In the matter of Quinn Logistics India Pvt. Ltd. v/s Mack Soft Tech Pvt. Ltd. & ors.** and contended that considering the circumstances that exist in this case justify the exclusion of 32 days and referred Para 9 and 10 which is as quoted below:

9. From the decisions aforesaid, it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the



purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances justify days.

10. For example, for following good ground 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.

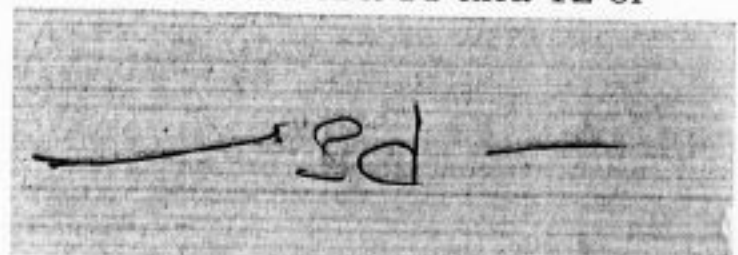
(iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.

(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.

7. The learned counsel for the RP also relies upon the judgment of Hon'ble Supreme Court ***In the matter of Swiss Ribbons Private Limited. And Others v. Union of India and Others dated 05.02.2019*** contending that if the time sought for by the Corporate Debtor to end of the CIRP is not granted then the consequence for the Corporate Debtor is to for liquidation which is not at all the objective of the Code and referred Para 11 and 12 of the judgment which is as quoted below:



11. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

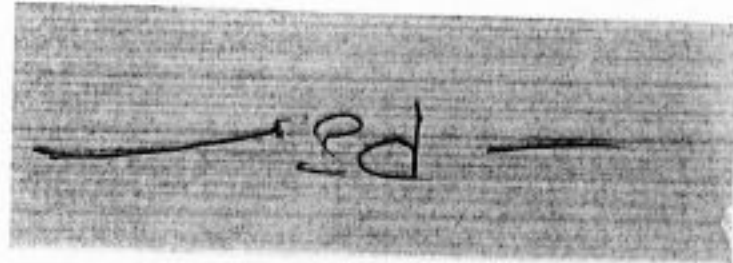
12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the

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corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.

8. In view of the decisions relied upon and the above said factual situation, this Authority is of the considered view that the circumstances justify the exclusion of 32 days from the CIRP period which was lost during disposal of applications filed for withdrawal of the Resolution Plan.
9. Accordingly, CA No.375/2019 is disposed of, excluding 32 days from the CIRP period from the date of this order.

Date: 06.12.2019



**JUSTICE RAJESH DAYAL KHARE
MEMBER (J)**