Addl 1

(2)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD

IA 42 of 2020 TP 161 of 2019 [CP (IB) No. 19 of 2017]

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)**
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.02.2020

Name of the Company: Abhishek Nagori, Liquidator of
Asian Natural Resources (India) Ltd.
V/s.
Asian Natural Resources (India) Ltd. & Ors.

Section : 24(1)(n) read with Reg. 44 of I.B. Code, 2016

S.NO. NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1. Nipun Singhvi	Adv.	Applicant	
2. Vishal J. Dave			
Pragati Tiwari			

ORDER

The Applicant is represented through its Learned Counsel.

In the present IA 42 of 2020 TP 161 of 2019 [CP (IB) 19 of 2017] as moved by the Liquidator, has sought for extension of period of liquidation process in respect of the Corporate Debtor under Liquidation. The present IA is filed under Section 34(1) r.w. Section 44 of Insolvency & Bankruptcy Code.

The reasons for seeking extension of the period are narrated well in the present application which appears to be reasonable and *bona fide,* hence, the present IA is allowed vide a detailed order recorded separately.

Partly

Therefore, the period of liquidation process is hereby extended to another six months from **8th February** on wards so as to complete the liquidation process. The liquidator is hereby directed to complete the liquidation process under the discipline of Insolvency & Bankruptcy Code. In case, any difficulty is faced then the Liquidator can move an application to this Court and seek for appropriate direction.

sen

It is further made clear that the time consumed during the pendency of the present I.A i.e., is from the date of filing of the present IA till its disposal and further time consumed in receipt of an authentic copy of this order, shall be excluded for the purpose of counting the period of Liquidation process.

Accordingly, with the aforesaid observation the IA No. 42 of 2020 TP 161 of 2019 [CP(IB) 19 of 2017] stands disposed of.

(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)

(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 28th day of February, 2020

sen

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
INDORE BENCH at AHMEDABAD

I.A. No. 42 of 2020 in TP No.161 of 2019 in

C.P. (I.B.) No. 19/7/NCLT/AHM/2017

[Application under Section 34(1)(n) read with Regulation 44 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016]

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)

Mr. Abhishek Nagori,
Liquidator of:
Asian Natural Resources (India) Limited,
Having office at:
JLN US and Company, Chartered Accountants,
330/ 348, Third Floor, Tower-A, Atlantis-K-10,
Opp. Vadodara Central, Sarabhai Main Road,
Vadodara-390007,
Gujarat, India.

.....**Applicant (Liquidator)**

<u>In the matter of:</u>

M/s. Asian Natural Resources (India) Limited,
Having its registered office at:
102, Sundaram Complex,
3, Gurmeet Nagar,
Indore,
Madhya Pradesh.

...... Respondent/ Corporate Debtor

Appearance:

Mr. Nipun Singhvi, Mr. Vishal J. Dave along with Ms. Pragati Tiwari, Advocates for the Applicant.

Order delivered on 28th February, 2020.

ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. By this Interlocutory Application, the Applicant, Mr.Abhishek Nagori being a Liquidator of M/s. Asian Natural Resources (India) Limited has sought for extension of the period of the liquidation process of the Corporate Debtor Company for another 365 days beyond two (02) years.

2. The present I.A. No.42 of 2020 pertains to the main Company Petition (IB) No.19/7/NCLT/AHM/2017, filed under Section 7 of the I.B. Code, which came to be admitted by this Adjudicating Authority dated 23.05.2017 and appointed Mr. Nitin H. Parikh as an Interim Resolution Professional to commence the CIRP in respect of the Corporate Debtor Company. Thus, it begun and the Committee of Creditors ("CoC") were constituted. It replaced the Interim Resolution Professional **Mr. Nitin H. Parikh** with **Mr. Anshuman Chaturvedi** to be appointed and to act further as a Resolution Professional in respect of the Corporate Debtor Company. The CoC passed necessary resolution on 04.10.2017. Pursuant thereto, this Court, vide its order dated 17.11.2017 confirmed the appointment of **Mr. Anshuman Chaturvedi** to act as a Resolution professional ("RP"), who discharged his duties as RP in the

matter. It is further stated that the CoC could not arrive at any resolution plan for Corporate Debtor within initial period of moratorium/CIRP. Hence. It resolved to go for Liquidation of the Company and it further replaced the RP, Mr. Anshuman Chaturvedi with the present applicant as RP with a view to further act as a Liquidator. In view of this, this Court, while allowing the liquidation application in respect of Corporate Debtor Company appointed **Mr.Abhishek Nagori** as a liquidator, who has performed his duties as a Liquidator by issuing public announcement and on 13.02.2018 under Form-B, by inviting attention of stakeholders of the Corporate Debtor Company to submit their claims before the Liquidator. The applicant has annexed copies of public announcement with the present interim application seeking for extension of liquidation process.

3. It is submitted that the Liquidator has filed an application before the Hon'ble Bombay High Court to vacate/lift/release the attachment/ restrainment on bank accounts of the Corporate Debtor and release the amount lying deposited with them on 14.09.2019. Such litigation is stated to be still pending before the Hon'ble Bombay High Court. A copy of the same is also annexed as Annexure I to the present application.

4. The applicant/Liquidator has further submitted a tabulated list comprising twenty-four (24) different matters that are either pending or disposed of before this Adjudicating Authority which consumed much time in liquidation process in order to carry out systematic liquidation proceedings which is mentioned at page no.9 to 12 of the present Interlocutory Application.

5. It is also reported that there is the pendency of some litigation process. Hence, the present applicant/Liquidator could not accomplish the proceedings in a proper manner and due to such pendency, some assets of the company in liquidation (Corporate Debtor) remained in dispute and could not got assessed during the present Liquidation process.

6. It is further informed that during the pendency of litigation, there was stay of Hon'ble NCLAT vide its order in respect to adjudication of matters pertaining to Madhya Pradesh and thus, this also has taken some considerable time.

7. It is submitted that the Liquidator has submitted preliminary report and progress reports from time to time and also submitted progress reports for the pending

litigations for the period of 01.10.2019 to 31.12.2019 for the F.Y. 2019-20. A copy of preliminary report and progress report has been annexed as Annexure J with the present application.

8. It is submitted that during the course of liquidation process, the liquidator has made payment of gratuity of two of the employees of the Corporate Debtor amounting to Rs.5,57,655/- and also the group company, i.e. Liquidator of Bhatia Global Trading Limited has also paid gratuity of employees on 11.03.2019 as requested by the present applicant. It is further submitted that the Liquidator has paid amount pertaining to provident fund and tax deducted at source.

9. It is reported that the Liquidation process and proceedings are still on-going and no unsold property has been made to its stakeholders till the date of filing of the progress reports. Therefore, the Liquidator requires some more time to dispose of the assets of the company.

10. It is further stated that, having submitted the progress report with this Bench earlier allowed the petitioner/ Liquidator to keep continue with the liquidation proceedings.

11. Thereafter, the Liquidator filed an application before the Hon'ble High Court of Madhya Pradesh at Jabalpur seeking for direction for appointment of an Arbitrator and in one of the matter, a party concern has also preferred an appeal against the arbitration. It is submitted that the Liquidator had to face difficult litigations that has caused delay in disposing of the assets of the Corporate Debtor.

12. It is stated that the present applicant/ Liquidator has preferred an application before this Bench seeking for permission/ clarification to look back of company's accounts beyond two years of the period and to get conduct its forensic audit. This application is pending and appropriate order /clarification is still awaited.

13. It is further contended that the litigation pertaining to the Corporate Debtor Company has been spread over in various Court(s) including the Hon'ble Supreme Court, Hon'ble High Courts of Bombay, Hon'ble High Court, Gujarat, Hon'ble High Court of MP at Jabalpur, Hon'ble High Court of Madras at Madurai Bench, Hon'ble High Court of Assam and also in other Tribunals/Courts/ forums. The petitioner has annexed the details of pending litigations in its 'Progress Report' as Annexure-III to the present application.

14. The applicant/Liquidator has further submitted the details of two assets of the Corporate Debtor which remained unsold.

    (a) Land and Building with a realisable value of Rs.1,33,65,000/- as per Sale Notice of Fifth Round of E-Auction.

    (b) Securities and Financial Assets worth Rs.44,50,000/- as per Sale Notice of Fifth Round of E-Auction.

    It is stated that the present applicant/Liquidator seeks further time to process (sell) these assets of Corporate Debtor.

15. It is stated that the applicant/Liquidator has proposed for 5th E-Auction of the properties.

16. Thus, it is therefore prayed that the applicant/Liquidator, needs to be provided with additional time of 365 days, so that he can be able to comply with and complete the liquidation process in respect of the Corporate Debtor Company.

17. We duly considered the above give facts and circumstances of the present application in the light of relevant provision(s) of the I.B. Code to consider the request of the Liquidator which reads as under the Section 35(1)(n) and states as under:

Section 35: Powers and duties of liquidator:

35. (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;

1[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.]

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name

any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

18. By following the above stated provisions and by perusing the material available and documents placed before us, we find that the present I.A. deserves to be allowed and the applicant Liquidator can be considered for grant of further time in the interest of justice so as to complete the liquidation process meant for the Corporate Debtor Company. Hence, it is **partly** allowed.

19. Therefore, **this Adjudicating Authority, in exercise of power conferred to it under Section 35(1)(n) of the I.B. Code, 2016 read with Regulation 44 of the IBBI Regulations, 2016, hereby grants additional six months of time to the present applicant/Liquidator, Mr. Abhishek Nagori to complete the liquidation process.**

20. The applicant/Liquidator is directed to complete the liquidation process as per the discipline of the I.B. Code, 2016.

21. It is further made clear that the time consumed during the pendency of the present I.A, i.e. from the date of the present I.A. till its disposal and further till the receipt of an authentic copy of this order, shall be excluded for the purpose of counting the period of Liquidation process.

22. With the aforesaid observations / directions, the present I.A. No. 42 of 2020 in TP No.161 of 2019 [CP (IB) No.19 of 2017] stands allowed and disposed of.

No order as to costs.

(Prasanta Kumar Mohanty) **Adjudicating Authority &** **Member (Technical)**	**(Harihar Prakash Chaturvedi)** **Adjudicating Authority &** **Member (Judicial)**

AT