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**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
SPECIAL BENCH (Video Conference)**

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.9.2020 AT 10.30 AM

TRANSFER PETITION NO.	IA NO. 107 2020 in TCP(IB) NO. 28/7/AMR/2019
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 18/7/HDB/2019
NAME OF THE COMPANY	Sembmarine Kakinada Ltd
NAME OF THE PETITIONER(S)	Axis Bank Ltd
NAME OF THE RESPONDENT(S)	Sembmarine Kakinada Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA allowed. Order pronounced vide separate sheets.

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MEMBER JUDICIAL

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NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

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IA No. 110 of 2020 in
TCP (IB) No. 28/7/AMR/2019in
[CP (IB) No.18/7/HDB/2019]

Under Section 12(3) of the Insolvency and Bankruptcy Code, 2016
and
In the matter of M/s. Sembmarine Kakinada Limited

By
Mr. Om Prakash Agarwal,
Resolution Professional for
Sembmarine Kakinada Limited,
Having his office address at BIA Merlin Chamber,
18, British Indian Street, 4th Floor, Room No.403,
Kolkata – 700 069, West Bengal.

... Applicant

Date of Order: 01.09.2020

CORAM:

Bhaskara Pantula Mohan, Member Judicial.

Appearance:

For the Applicant/RP: Ms. Titiksha Jain, PCS.

1. This is an application filed by the Resolution Professional viz. Mr. Om Prakash Agarwal under Section 12(3) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") read with Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (hereinafter referred to as "Regulations") for exclusion of 60 days for calculating Corporate Insolvency Resolution Process period ("CIRP period") of Sembmarine Kakinada Limited (hereinafter referred to as "Corporate Debtor") as approved by Committee of Creditors ("COC") in the 8th COC meeting held on 17th July, 2020.

2. The applicant submits that, Axis Bank Limited viz. the Financial Creditor filed the captioned Company Petition against the Corporate Debtor under Section 7 of the Code for seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor on account of default in repayment of Rs. 417,09,13,610/- as on 31st March, 2018 committed by the Corporate Debtor. The captioned Company Petition was allowed by this Hon’ble Bench vide order dated 23rd September, 2019 and thus, CIRP process of the Corporate Debtor was commenced with effect from 23rd September, 2019. This Hon’ble Tribunal also appointed the Applicant as Interim Resolution Professional (“IRP”) to carry out CIRP process of the Corporate Debtor in accordance with the provisions of the Code.
3. The IRP convened the first meeting of COC on 22nd October, 2019 wherein, the COC *interalia*, resolved to appoint IRP as a Resolution Professional (“RP”) of the Corporate Debtor, amongst other discussions, deliberations and resolutions passed in the meeting.
4. It is also submitted that, apart from the 1st COC meeting held, till date further 7 COC meetings have been convened on 6th December, 2019, 23rd December, 2019, 30th January, 2020, 24th February, 2020, 16th March 2020, 03rd June 2020 and 17th July, 2020 wherein various matters pertaining to operations of the Corporate Debtor as well as CIRP process of the Corporate Debtor were discussed and deliberated and also requisite approval of COC as required as per the Code were sought. The Applicant craves leave to refer and rely upon Minutes of COC meetings held on 6th December, 2019, 23rd December, 2019, 30th January, 2020, 24th February, 2020, 16th March, 2020, 03rd June, 2020 and 17th July, 2020 as and when required. As per Regulation 27 of CIRP Regulations, the RP/Applicant appointed two registered valuers

to carry out valuation of the Corporate Debtor and determine Fair Value and Liquidation Value of the Corporate Debtor. The Applicant has as per the provisions of the Code also prepared Information Memorandum.

5. The Applicant submits that whilst perusing the records of the Corporate Debtor, the Applicant is *prima facie* of the view that certain transactions carried out by suspended Board of Directors/promoters and management of the Corporate Debtor may fall within the ambit of fraudulent, preferential, extortionate and undervalued transactions. Accordingly, the Applicant/RP has appointed M/s Sarath and Associates as a transaction auditor to assist the Applicant in conducting the detailed review of the transactions of the Corporate Debtor which may be covered under Section 43,45,50 and 66 of the Code.
6. The Applicant further states he had always been deprived of support, assistance and co-operation from the directors/key managerial personnel of the Corporate Debtor because of which Applicant could not gather all requisite information and documents pertaining to Corporate Debtor including the documents and information as sought by transaction auditor from time to time for completion of transaction audit. The Applicant and his team tried to elicit whatever information and documents they could gather from the site of the Corporate Debtor and provided the same to the transaction auditor. However, due to non-cooperation from the directors/key managerial personnel of the Corporate Debtor, the Applicant could not provide complete set of documents and relevant information to the auditor. Therefore, the auditor could not conclude/complete the audits of various transactions of the Corporate Debtor.
7. The Applicant states that due to non-cooperation of the Respondents, the Applicant

- is unable to finalize the books of accounts of the Corporate Debtor for the Financial Year 2017-18 and Financial Year 2018-19. As a consequence, various statutory compliances such as MCA Annual filings, GST Audit, Income Tax Return, Tax Audit, FLA Return, Annual Statistical Returns, etc. are pending to be completed.
8. The Applicant also submits the auditor of the Corporate Debtor viz. Brahmayya & Co. at the instance of the Corporate Debtor had audited the financial statement of the Corporate Debtor for FY 2017-18 and 2018-19 however, as most of the information was not available and not provided by the suspended directors of the Corporate Debtor, the auditor has heavily qualified the financial statement for FY 2017-18 and 2018-19. The Applicant is thus, in the process of filing an application against the suspended directors seeking directions against them to approve, adopt and sign the Financial Statements of the Corporate Debtor and assist & co-operate the Applicant in completing CIRP process of the Corporate Debtor.
9. It is further submitted that, based on the preliminary Transaction Audit Report dated 20th July 2020 prepared by M/s Sarath & Associates with those transactions which are completely reviewed by them based on the documents and information available, the Applicant is in the process of filing avoidance applications. The Applicant craves leave to file another avoidance application, in the event any other transaction other than those mentioned in the Transaction Audit Report dated 20th July 2020 have been carried out in the Corporate Debtor. Apart from the aforesaid, the Applicant, had also filed I.A. No. 17 of 2020 (“IA”) under Sections 14(1), 14(2) read with Section 60(5) of the Code and Regulation 32 of CIRP Regulations on 10th January, 2020 for seeking appropriate Orders from this Hon’ble Tribunal against the Kakinada Seaports Limited (“KSPL”) *inter alia*, to not terminate the sub lease of the land area admeasuring around 22 acres situated inside Kakinada Port, Suryaraopeta Village, S. No. 312, Indrapalem Gram Panchayat, Kadinada Sub-Registry (“**sub-leased lands**”) subleased by the KSPL to the Corporate Debtor vide Sub-Lease Agreements dated 6th March, 2013 and 18th March, 2014,

CIRP period of the Corporate Debtor, amongst other reliefs. The said Application is also pending adjudication. The Applicant states that one of the reliefs sought by the Applicant in the aforesaid IA is that the Sub-Lease Agreements dated 6th March, 2013 and 18th March, 2014 are valid, binding and subsisting upon the parties and deemed termination on 23rd May, 2019 as alleged by the KSPL has never been given effect to and is illegal and invalid. The Applicant states the Corporate Debtor is a going concern and all its business operated and functioned from the said sub-leased lands. The Applicant submits that without sub-leased lands, running the business and operations of the Corporate Debtor would not be possible, the plant and equipment would not be functional, machines would be lying idle and their condition might deteriorate due to non-usage. Further, prospective resolution applicants have been sceptical on account of the status of the sub leased lands.

10. The Applicant also submits that at all the times, the Corporate Debtor was a going concern being controlled and managed by the Applicant/Resolution Professional and his team. The Applicant on 7th December, 2019 published Expression of Interest (“EOI”) viz. Form G for inviting the Resolution Plan for the Corporate Debtor from the interested and eligible prospective Resolution Applicants who fulfils eligibility criteria as detailed in the EOI with the approval of COC by 23rd December, 2019. The EOI was published in two newspapers Business Standard and Andhra Prabha. Form G was also published on Corporate Debtor’s website and on Insolvency and Bankruptcy Board of India’s (“IBBI”) website. As no EOIs were received by 23rd December, 2019, with the approval of COC, Form G was revised and published twice and last date of submission of EOI was extended till 13th January, 2020 and 24th January, 2020 respectively.

- a. The Applicant states that upon receiving the EOI’s, the following

were qualified as prospective Resolution Applicants for the Corporate Debtor:

- b. Asset Reconstruction Company (India) Limited; and
- c. Chowgule & Company Private Limited;

11. It is submitted that as per Regulation 36B of CIRP Regulations, the Applicant has issued information memorandum, evaluation matrix and a request for resolution plans to every prospective Resolution Applicant on 8th February, 2020 with the last date for submission of Resolution Plan by 9th March, 2020. As no Resolution Plan was received by 9th March 2020, the Applicant re-published EOI viz. Form G on 19th March 2020 for inviting the Resolution Plan for the Corporate Debtor from the interested and eligible prospective Resolution Applicants who fulfils eligibility criteria as detailed in the EOI with the approval of COC by 30th March 2020. The EOI was published in two newspapers Financial Express (All India edition) and Andhra Prabha (AP+TS Edition). Form G was also published on Corporate Debtor's website as well as IBBI website.

12. It is further submitted that due to the imposition of Central Government mandated lockdown pursuant to COVID-19 pandemic w.e.f 25th March 2020, the interested prospective Resolution Applicant requested for extension of last date for submission of EOI. Hence, with the approval of CoC the last for submission of EOI was time-to-time extended till 10th June, 2020 by way of issuance of revised Form G on the Corporate Debtor's website and IBBI website.

13. The Applicant states that upon receiving the EOIs, the following were qualified as prospective Resolution Applicants for the Corporate Debtor:

- a. Garden Reach Shipbuilders & Engineers Ltd. ("GRSE"); and

b. Chowgule & Company Private Limited (“Chowgule”)

14. The Applicant has invited aforesaid prospective Resolution Applicants for submitting a Resolution Plan by issuing Information Memorandum, Request for Resolution Plan along with evaluation matrix on 18th June, 2020. A virtual data room (“VDR”) was also set-up and the access for the same was provided to the aforesaid prospective Resolution Applicants on 19th June, 2020. The last date for submission of resolution plan was 18th July, 2020.
15. The Applicant submits that CIRP period of 180 days of Corporate Debtor was due on 21st March, 2020. The Applicant, with the approval of COC in its meeting dated 24th February 2020, moved an application before this Hon’ble Tribunal for extension of 90 days under Section 12(2) of IBC 2016 beyond 180 days i.e. for a period of 270 days and the same was allowed and CIRP period was extended by this Hon’ble Tribunal vide Order dated 20th March 2020.
16. It is also submitted that in terms of the afore-mentioned Order dated 20th March 2020 passed by this Hon’ble Tribunal, the CIRP process was extended for a period of 270 days upto 19th June 2020. However, immediately after the passing of the said extension Order, in the wake of the ongoing pandemic situation prevailing on account of the spread of Covid-19 disease, strict lockdown measures were commenced by order of the Ministry of Home Affairs (“MHA”), Government of India w.e.f. 25.03.2020, which have periodically been extended from time to time by passing successive orders and revised guidelines. Similarly, in terms of the periodical MHA Orders and guidelines (revised from time to time), the State Government of Andhra Pradesh has also been extending the period of lockdown applicable throughout the State, until 31.05.2020 with certain exemptions. The Applicant states that the registered office of the Corporate Debtor is in Andhra Pradesh.

17. That in addition, in the wake of the Covid-19 outbreak, the IBBI in exercise of its powers conferred under Section 196(1)(t) read with Section 240 of the IBC Code, brought forth a Notification dated 29.03.2020 whereby it issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020, amending the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) w.e.f. 29.03.2020. By way of the said amendment, Regulation 40C was added in the CIRP Regulations, which provides as under:

- i. “40C. Special provision relating to time-line.
- ii. Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

18. The applicant submits that during the strict lockdown measures as imposed by order of the MHA, Government of India w.e.f. 25th March 2020 till 31st May 2020, lot of activities of CIRP could not be completed viz. resolution plan process given EOI has to be extended till 10th June 2020, transaction audit, valuation as well as ongoing legal matters before this Hon’ble Tribunal. The Applicant discussed about these issues in the CoC meeting held on 03rd June 2020 via video conference.

19. Accordingly, on reading of the Regulation 40C of CIRP Regulations, a period of 68 days of lockdown starting from 25th March 2020 till 31st May 2020 is not counted for the purpose of CIRP timeline. The exclusion of this period of lockdown and keeping the overall time-limit of 270 day of CIRP, the revised last date of CIRP is 26th August 2020. Further, By virtue of the MHA Order No. No. 40-3/2020-DM-I(A), dated 30.05.2020, the Government of India had ordered the extension of lockdown measures only in “containment zones” till 30.06.2020,

while focusing on phased re-opening (termed as, "Unlock - 1") of prohibited activities in areas falling outside containment zones. Alongside, various State Governments have also been extending the period of lockdown with certain exemptions in their state till 31st July 2020.

20. The Applicant submits that GRSE, Prospective Resolution Applicant, is actively pursuing the resolution plan proposal for the Corporate Debtor and is raising various queries in relation to conduct of the Corporate Debtor for which Applicant and his team is suitably replying. Additionally, GRSE has also reportedly engaged a consultant for the purpose of preparation of a Resolution Plan. GRSE had vide its letter dated 7th July, 2020 requested the Applicant for extension of timeline for submission of Resolution Plan by 60 days to 16th September, 2020, primarily due to following reasons:
- The State of West Bengal, where GRSE is located, has clamped lockdown in the entire state till 31st July 2020, imposing severe constraints for the officials to attend office and arrange for preparation and submission of resolution plan.
 - The State Government of West Bengal has also banned operation of airline services from six locations to Kolkata due to which GRSE is not able to arrange for visit of consultants/Advisors and also site inspection by their officials/ valuers.
21. It is also submitted that in the 8th COC meeting held on 17th July, 2020, the Applicant informed to the COC members about the difficulties being faced by the Prospective Resolution Applicant and extension of resolution plan due date sought by GRSE vide its letter dated 07th July 2020. The Applicant proposed to extend the last date for submission of resolution plan by 27 days from 18th July, 2020 to 14th August, 2020. The

said proposition was approved by the CoC by 83.88% voting in favour of the proposition.

22. In the aforesaid CoC meeting dated 17th July 2020, the applicant also proposed for exclusion of additional 60 days period starting from 1st June 2020 till 30th July 2020 from the CIRP timeline given the disruption in the following activities of CIRP due to continued lockdown in various States of India due to pandemic situation: GRSE requested for extension of Resolution Plan due date by 60 days given the lockdown imposed in the state of West Bengal till end of 31st July 2020. However, due to limited CIRP timeline available, the Applicant could provide the extension of Resolution Plan due date by only 27 days with the approval of CoC. The Applicant and the COC members have sanguine hopes that GRSE would submit the effective Resolution Plan for the Corporate Debtor. The Applicant states that in the event due to further extension of lockdown, if GRSE would not be in a position to submit the Resolution Plan by 14th August, 2020, the Applicant may again seek approval of the COC members for extending time for submitting the Resolution Plan. Thereafter, time would be required for the purpose of evaluating the resolution plan and taking necessary approval of COC. In between, the office of the Corporate Debtor was also shut for the period of 11 days from 2nd July till 12th July, 2020 as one of the persons at site of the Corporate Debtor was tested positive of Coronavirus. A copy of the email intimating about temporary shut down of office site is annexed hereto and marked as **Exhibit "M"**. Apart from the aforesaid, the Applicant states that two of the IAs filed by the Applicant in January, 2020 viz. I.A No. 17 of 2020 for seeking declaration that sub-lease in favour of the Corporate Debtor in respect of

sub-leased lands is valid, legal and binding and has not been terminated and I.A. No. 40 of 2020 against the management of the Corporate Debtor seeking directions against them to assist and co-operate the Applicant and provide required information and documents are still pending adjudication.

- a. The proposition to exclude additional period of 60 days starting from 1st June 2020 till 30th July 2020 from the timeline of CIRP with the approval of this Hon'ble Tribunal, due to various challenges being faced during current pandemic situation, was put up for voting before CoC in the said 8th CoC meeting. The said proposition was approved by the CoC by 83.88% voting in favour of the proposition. The last date of CIRP shall revise from 26th August 2020 to 25th October 2020.
23. The Applicant states that no prejudice would be caused if additional period of 60 days is excluded for calculating CIRP period of the Corporate Debtor and thereby extending the CIRP period of the Corporate Debtor till 25th October, 2020 from 26th August, 2020. On the other hand, if CIRP period is not extended than the Corporate Debtor would not receive any Resolution Plan, then the Corporate Debtor would not be able to get revived, which is against the very objective of the Code. The objective of the Code is maximization of value of assets of the Corporate Debtor and the Applicant would like to strive towards resolution and save the Corporate Debtor from liquidation.

It is therefore prayed to allow the present application and pass an order excluding a period of 60 days from June 01, 2020 to July 31, 2020 from the timeline of CIRP and/or; pass any order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

ORDER

Taking into consideration the averments made in the Application, the Application is allowed excluding a period of 60 days form 01.06.2020 to 31.07.2020 from the time line of CIRP. Hence, this order.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER JUDICIAL**

Nitesh