

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.234 of 2019 in
C.P. (IB) No.06/BB/2018
U/s 60(5) of IBC, 2016

Shri Amit Chandrakant Shah
Resolution Professional of
M/s. BCIL Red Earth Developers India Pvt. Ltd.
Office situated at
BDO Restructuring Advisory LLP
The Ruby-Level 9, NW Wing Senapati
Bapat Marg, Dadar (West),
Mumbai – 400 028.

- Applicant/
Resolution Professional

In the matter of:

M/s. Reliance Nippon Life Asset
Management Limited and Anr.

- Petitioner

Versus

M/s. BCIL Red Earth Developers
India Pvt. Ltd.

- Corporate Debtor

Date of Order: 06th June, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

R.P. : Shri Amit Chandrakant Shah
Counsel for the RP : Shri C.K. Nandakumar
along with Shri S. Varun

ORDER

Per: Dr. Ashok Kumar Mishra, Member (Technical)

1. I.A. No.234 of 2019 in C.P. (IB) No.06/BB/2018 is filed by Shri Amit Chandrakant Shah, Resolution Professional of M/s. BCIL Red Earth Developers India Private Limited ('Applicant/RP') under Section 60(5)

of the IBC, 2016, by inter alia seeking to pass an order excluding 2 (Two) days from the statutory period of the CIRP of the Corporate Debtor, etc.

2. Brief facts of the case, as mentioned in the Application, are as follows:

- (1) It is stated that the Applicant has filed the present Application under Section 60(5) of the IBC, 2016 to seek exclusion of time period of 2 days from the Corporate Insolvency Resolution Period (CIRP) of 270 days of the Corporate Debtor.
- (2) It is stated that the application for initiation of the CIRP of the Corporate Debtor, M/s.BCIL Red Earth Developers India Private Limited, was filed by M/s.Reliance Nippon Life Asset Management Limited and another, a financial creditor, under Section 7 of the IBC, 2016 read with Rule 4 of the I&B (AAA) Rules, 2016 and the same was admitted by this Hon'ble Tribunal vide order dated 09.08.2018 and appointed Mrs. Nidhi Seksaria as the Interim Resolution Professional, imposed moratorium, etc. Subsequently, the Committee of Creditors (CoC) of the Corporate Debtor in their 1st meeting held on 07.09.2018 confirmed the appointment of Mrs.Nidhi Seksaria as the Resolution Professional.
- (3) It is stated that the copy of the admission order appointing Mrs.Nidhi Seksaria as the IRP of the Corporate Debtor was made available to the Applicant only on 11.08.2018, after two days of the date of Admission Order being 09.08.2018.
- (4) In compliance with Regulation 6 of the IBBI (IRP for Corporate Persons) Regulations, 2016, the IRP made a public announcement in Times of India and Vijaya Karnataka on 14.08.2018.
- (5) It is further stated that this Tribunal vide its order dated 31.01.2019 extended CIRP of the Corporate Debtor by further 90 days beyond 180 days starting from February 05, 2019 i.e.

till May 06, 2019 upon an application filed by then Resolution Professional Mrs. Nidhi Seksaria under Section 12 of the Code read with Regulation 40 of the CIRP Regulations.

- (6) It is also stated that the Tribunal vide its order dated 01.04.2019 allowed the application filed on behalf of the CoC of the Corporate Debtor to change the RP of the Corporate Debtor and appointed Shri Amit Chandrakant Shah having IP Regn. No.IBBI/IPA-001/IP-P00821/2017-2018/11397 as the RP in place of Mrs. Nidhi Seksaria.
- (7) In terms of the provisions of the IBC, the IRP is inter alia required to (i) collect all information, inter alia, relating to the assets and finances of the Corporate Debtor; (ii) take control and custody of the assets of the Corporate Debtor.
- (8) It is stated that due to the lapse of time period of 2 (Two) days from the passing of the Admission Order till receipt of the copy of the Order, the Applicant was not able to take control of the Corporate Debtor and perform his duties as the insolvency resolution professional of the Corporate Debtor. This has resulted into an inadvertent loss of 2 days out of the period available to the Applicant for conducting the CIRP of the Corporate Debtor under the Code.
- (9) The Applicant relied on the decision of the Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No.185 of 2018, *Quinn Logistics India Private Limited Vs. Mack Soft Tech Private Limited and Mr. Mohd. Sabir Parvez and Mr. M.L. Jain*, wherein, the Hon'ble NCLAT has laid down certain grounds that may be considered as good grounds for exclusion of time for counting of the total period of CIRP, which inter alia, includes the time period between the date of passing of order of admission/moratorium and the actual date on which the Resolution Professional takes charge for completing the CIRP, the relevant extract of the Order is reproduced below:

“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.”

(10) In view of the aforesaid, it is stated that the aforesaid period of 2 (Two) days may be excluded from the CIRP period of the Corporate Debtor as the said Two days’ period is on account of the time elapsed between the date of passing of the Admission Order and the actual date on which the IRP received a copy of the said Order and took control of the affairs of the Corporate Debtor.

(11) It is stated that during the 9th CoC meeting dated 12.04.2019, the filing of the application for exclusion of the aforesaid period of 2 days was deliberated by the CoC and the RP was authorised

to file necessary application seeking exclusion of time period commencing from the date of the Admission Order till the date that the IRP received a copy of the said Order and took actual control and custody over the assets of the Corporate Debtor for counting of the total period of 270 days of the resolution process. Accordingly, the CoC with the requisite majority resolved to instruct the Applicant to file an application to the Adjudicating Authority to exclude time period commencing from the date of the Admission Order till the date that the IRP received a copy of the said Order and took actual control and custody over the assets of the Corporate Debtor. The relevant extract from the 9th CoC Meeting is reproduced as under:

“RESOLVED THAT pursuant to applicable provisions of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder the Resolution Professional be and is hereby authorised to make an application with the Hon’ble NCLT, Bengaluru Bench for extension of the CIRP period of M/s.BCIL Red Earth Developers India Pvt. Ltd. for additional 2 (Two) days, on account of delay in receipt of the certified true copy of Order of commencement of the Insolvency proceedings against M/ s. BCIL Red Earth Developers India Pvt. Ltd.

RESOLVED FURTHER THAT the Resolution Professional of M/s.BCIL Red Earth Developers India Pvt. Ltd. be and is hereby authorised to take such steps as may be necessary, in relation to the above if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid Resolution.”


- (12) It is stated that as per the results of e-voting declared on extension of duration of CIRP was passed by the CoC with 73.3% votes. Keeping in view the above circumstances and given the

strict timelines prescribed under the Code for completion of CIRP, it is submitted that a loss of even a single day in the CIRP period may have an adverse impact on the CIRP of the Corporate Debtor and hence, the present Application is being filed to seek necessary orders.

3. Heard Shri Amit Chandrakant Shah, learned Resolution Professional and Shri C.K. Nandakumar, learned Counsel for the RP. We have carefully perused the pleadings of the party and the extant provisions of the Code.
4. We are convinced with the reasons cited by the learned Resolution Professional and therefore we are inclined to exclude 2 (Two) days from the statutory period of the CIRP of the Corporate Debtor.
5. In the result, we hereby allowed I.A. No.234 of 2019 in C.P. (IB) No.06/BB/2018 by excluding the time period of 2 (Two) days from the CIRP period of the Corporate Debtor. No order as to costs.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Krishna