

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CA(IB) No. 948/KB/2019 in
CP(IB) No. 129/KB/2018

In the matter of:

SREI Equipment Finance Limited

Vs.

Maa Durga Thermal Power Co. Ltd.

...Corporate Debtor

And

Mr. Pankaj Dhanuka,

Resolution Professional for the Corporate
Debtor

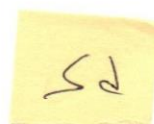
Coram: Mr. Jinan K.R., Member(Judicial)

For the Financial Creditor :

1. Mr. Rishav Banerjee, Advocate
2. Mr. Shounak Mitra, Advocate

For the resolution Professional :

1. Mr. Joy Saha, Senior Advocate
2. Mr. Deepanjan Dutta Roy, Advocate



Date of pronouncement of Order : 20.02.2019

Per Shri Jinan K. R., Member(Judicial)

O R D E R

1. The CA(IB) No. 948/KB/2018 is an Application filed by the Resolution Professional praying for exclusion of 64 days in counting the period of CIRP for the Corporate Debtor contending the following grounds :

In pursuance of the Order of Admission of the Application CP(IB) No. 129/KB/2018 dated 8th June, 2018, one Mr. Rajesh Kumar Agarwal was appointed as the Interim Resolution professional. The Interim Resolution professional has not diligently proceeded with the process. The first meeting of the Committee of creditors were held on 10th July, 2018 i.e. 32 days after the date of admission of the Application. In the second COC meeting held on 27-07-2018, the committee of creditors proposed the removal of the IRP and in the third meeting of the COC held on 09.08.2018 and on 13th August, 2018, the committee of creditors with 72.01 percentage voting confirmed the appointment of Mr. Pankaj Dhanuka, who is the Applicant herein, as the Resolution Professional of the Corporate Debtor and an Application CA(IB) No. 816/KB/2018 was filed on behalf of the Committee of creditors for replacement of the IRP with the RP. That Application has finally considered by the Adjudicating Authority and in its Order dated 05-09-2018, the Adjudicating Authority approved the appointment of Mr. Pankaj Dhanuka and in the meanwhile, the IRP, though was not prevented from proceeding with the resolution process, the Committee of Creditors being proposed a different Resolution Professional he did not call for EOI by way of issuing publication and therefore, the incoming Resolution professional who has to continue with the CIRP has issued the publication calling for EOI after taking charge on 12-09-2018.

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The fourth meeting of CoC has been convened only on 19-09-2018, nearly about 64 days after the appointment of the erstwhile IRP. Since those days till the new RPs appointment was confirmed by the AA has not been effectively and diligently not utilised, the Committee of Creditors has decided to submit this Application for exclusion of 64 days for enabling them to explore the possibility of finding out the prospective Resolution Applicant so as to resolve the stressed assets of the corporate Debtor. Upon the above said grounds, the RP prays for exclusion of the period of 64 days in counting the period of CIRP.

2. Heard the Ld. Senior Counsel appearing for the Resolution Professional. He would submit that immediately after the appointment of the Resolution Professional EOI was called for and the COC was in receipt of three expression of Interest from interested resolution applicant and it is pending for the consideration of the CoC. According to him the nature complexity of the business carried in by the Corporate Debtor, the Resolution Applicants sought time to verify the Corporate Debtor's functions and its operations inclusive of the feasibility of the arrangement already in existence for supply of end products of the Operational Creditor and thereby it is impracticable to complete the CIRP on or before 4th March, 2019 and therefore, filed this application for exclusion of the period.

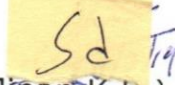
3. On going through the submission put forward on the side of the Resolution Professional and on going through the progress reports filed by the IRP and the RP, it is understood that there is delay in getting the report from the Valuers, there is delay in constitution of the Committee of Creditors, there is delay in publication of EOI. There was no active functioning of IRP due to pending proposal for his removal. Considering the complex nature of business in operation of the Corporate Debtor, i.e. production of electricity, it appears to me that the period unutilised by the IRP and the inability of the RP in continuing with the process from where

the IRP has finished, the prayer for exclusion of a period of 64 days for the calculation of the CIRP for the Corporate Debtor is to be granted.

4. The above said view is also supported as per the guidelines laid down in Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. and Ors.(Company Appeal(AT)(Insolvency) No. 185 of 2018 of Hon'ble National Company Law Appellate Tribunal, New Delhi.

5. In view of the above, the intervening unutilised period of 64 days is hereby excluded for counting the total period of total 270 days for enabling the Resolution Professional so as to find out a prospective Resolution Applicant for taking over of the stressed assets of the Corporate Debtor.

6. The CA(IB) No. 948/KB/2018 is disposed of, accordingly.


(Jinan K.R.)
Member(Judicial)