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NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 29-05-2020 AT 11.30 AM THROUGH
VIDEO CONFERENCING :

PRESENT: SHRI R. VARADHARAJAN, MEMBER-JUDICIAL
SHRI S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

APPLICATION NUMBER : SR-217/18-02-2020

PETITION NUMBER : CP/1307/IB/2019

NAME OF THE PETITIONER(S) : S.JAYARAM CHOWDHARY
(THE JEYPORE SUGAR COMPANY LTD)

NAME OF THE RESPONDENT(S) : V.VENKATA SIVAKUMAR (RP) THE JEYPORE SUGAR
COMPANY LTD

UNDER SECTION : SEC 60(5)

ORDER

Counsel namely Mr. Niranjan Rajagopalan for the Applicant and Mr. V.Venkata Sivakumar, Resolution Professional for the Respondent appeared and Order pronounced through Video Conferencing, attached vide separate sheet.

SD

[S. VIJAYARAGHAVAN]
Member (Technical)

SD

[R. VARADHARAJAN]
Member (Judicial)

sr

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

**IA/205/IB/2020 in CP/1307/IB
2019** filed under Section 12 and 33
of the IBC, 2016 and **SR No.
217/2020 in CP/1307/IB 2019**
filed under Section 60(5) of the IBC,
2016 r/w Rule 11 of the NCLT Rules,
2016

In the matter of M/s. The Jeypore Sugar Company Limited

IA/205/IB/2020:-

V. Venkata Sivakumar

Resolution Professional of
M/s. The Jeypore Sugar Company Limited,
No. 10/11, Dr.Subbarayan Nagar Main Road,
Kodambakkam, Chennai-600021.

---Applicant/ RP

Vs

Mahendra Mohan Naik

General Manager (Recovery)
IDBI Bank Limited
No. 115, Anna Salai, NMG Centre,
Opp. To Ashok Leyland,
Guindy, Chennai-600015

Committee of Creditors

Represented by IDBI Bank Limited
No. 115, Anna Salai, NMG Centre,
Opp. To Ashok Leyland,
Guindy, Chennai-600015

---Respondents

SR No. 217/2020:-

S. Jayaram Chowdhary

No. 19-3-20G/I, Kakathiya Nagar,
Thiruchanur Road, Tirupathi-517501

--- Resolution Applicant

Vs

V. Venkata Sivakumar

Resolution Professional of
M/s. The Jeypore Sugar Company Limited,

---Respondent/RP

CORAM:

R.VARADHARAJAN, MEMBER (JUDICIAL)

S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

IA/205/IB/2020:-

For the Applicant : *Shri. V. VenkataSivakumar, RP*

For Respondent-1 : *Ms. B. Nivedita, Advocate*

For Respondent-2 : *Shri. S. Sathyanarayanan, Advocate*

SR No. 217/2020:-

For the Applicant : *Shri. NirajanRajagopan, Advocate*

Shri. AbhinavParthasarathy, Advocate

For Respondent : *Shri.V. Venkata Sivakumar, RP*

Order Delivered on: 29.05.2020

COMMON ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order Pronounced on: 29.05.2020

1. The IA/205/IB/2020 is filed by the Resolution Professional under Section 12 and 33 of the IBC, 2016, seeking relief as follows;

1. Extend the CIRP period by 60 days starting from 22nd Jan, 2020 unanimously decided by the Financial Creditors in the 17th COC thus making in all a period of 420 days so that a resolution may be found preventing the 100 year old company going into liquidation.

2. Direct the 2nd Respondent contribute for all the CIRP expenses as agreed in the 17th COC.

2. The SR No. 217/2020 is an application filed under section 60(5) of the IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016 by one Mr.Jayaram Chowdary (hereinafter referred as "Resolution Applicant") for claiming to be a resolution applicant seeking an extension of CIRP period as under:-



"It is therefore humbly prayed that this Honourable Tribunal may kindly be pleased to grant additional time for consideration of Resolution Plan by Committee of Creditors of the Corporate Debtor and consequently direct the Committee Creditors to consider the Resolution Plan submitted and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice."

3. From the perusal of the records, after hearing the arguments the following are the relevant facts considered for the purpose adjudicating the petition.

- i. The corporate debtor is a hundred-year-old company located in Andhra Pradesh and Orissa, and engaged in the manufacture of sugar and allied products. The CIRP in relation to the Corporate Debtor started on 25.02.2019 and already 375 days of CIRP period have been completed as on 12th March, 2020.
- ii. The operations of the corporate debtor was shut down since 2016 and the resolution professional focused on the protection and maintenance of the property –land and buildings and the plant and machinery, the essential staff, to keep the company as a going concern.
- iii. The resolution professional conducted 17 COC meetings, complying with all the timelines and a reputed consultancy firm was appointed as the process advisers for getting a suitable resolution applicant for achieving the object of maximum realization to the creditors with no success.
- iv. The resolution professional brought to the notice of this Tribunal, that the maximum period of 330 days expired on

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21stJan, 2020. Form G was issued four times and in spite of which no resolution applicant came forward to submit any proposal. On 21st Jan, 2020, when the 17th COC, was held, without any resolution plan for the consideration of the COC, one Mr. Jayaram Chowdary, the applicant in the SR No. 217 of 2020, came forward and made a representation promising to deposit EMD money of Rs.2 Crores and submit a resolution plan, on or before 29th of Jan, 2020, and the COC decided to wait for the submission of resolution plan.

4. The Resolution Professional pointed out that Mr. Jayaram Chowdary in the resolution plan mentioned that he owes Rs.192 Crores to SBI which declared his account as NPA in 2018, the same was also confirmed in the petition filed refer to *page 2....para 3*.

"The resolution professional had called upon the Resolution Applicant herein to satisfy the requirements as per Section 29 A of the Insolvency and Bankruptcy Code, 2016. At this juncture, it is important to note that the resolution Professional was already informed about the existence of Non-Performing Assets of the Resolution Applicant in a Company in which he is a Director. Further, the Resolution Applicant had also informed the Resolution Professional that he would clear the said NPAs within a short span of time and the same was also agreed by the Resolution Professional".

5. During the course of the hearing, the learned Counsel for the committee of creditors and Mr. Jayaram Chowdary vehemently sought for the extension on the grounds that the corporate debtor is 100 year old company, if the CIRP period is not extended it will result in pushing the company into liquidation, jeopardizing the

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interest of the stakeholders, while admitting that there is no resolution plan under consideration of COC.

6. This Tribunal is well aware of the fact that the intention of legislature is to find resolution in a time bound manner, within a maximum period of 330 days and further the Honourable Supreme Court in the matter of "**Committee of Creditors of Essar Steel India Ltd. -Vs- Satish Kumar Gupta &Ors.**" in *Civil Appeal No.8766 – 67 of 2019* has laid down that the period of 330 days can be extended only in exceptional circumstances such as delays due to litigation which are having direct nexus, affecting the CIRP or if there is a very good chance of finding resolution for the corporate debtor which is under the final stages of consideration and approval of the COC, needing 10 to 15 days.

7. Admittedly in the present case, there is no Resolution Plan which has been placed before the CoC for consideration of the same. Also the Applicant has sought for the extension beyond 330 days only in order to consider the Resolution Plan, if any, to be submitted by the prospective Resolution Applicant. The IBC was amended by the IBC, Amendment Act, 2019, which came into force on 06.08.2019 and for the sake of brevity Section 12 of IBC, 2016 is extracted hereunder;

12. Time-limit for completion of insolvency resolution process.



(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

8. Even if the term "mandatorily" provided in proviso to Sec. 12(3), if the delay or a large part there of is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in

such cases for the AA and/or NCLAT to extend time beyond 330 days. In this connection it is significant to refer to the decision of the Hon'ble Supreme Court in the matter of **Essar Steels (supra)**;

“While leaving the provision otherwise intact, the term “mandatorily” is struck down as being manifestly arbitrary under Article 14 of the Constitution of India and as being unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. If the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days. It is only in exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the CD must take place beyond which it is to be driven into liquidation.

9. Furthermore, even assuming for a moment that the liquidation order in relation to the Corporate Debtor is passed, Regulation 2B of the Liquidation Process Regulations contemplates that a period of 90 days has to be provided for completion of a Scheme of compromise or arrangement from the date of the order of liquidation, during which period the prospective Resolution Applicant can very well submit his Scheme under Section 230 of the Companies Act, 2013.

10. The submissions of the Applicant as well as the averments contained in the application were considered by this Tribunal. As rightly submitted by the Counsel for the Petitioner/Applicant, in the



appropriate case, namely in exceptional circumstances, this Tribunal as held by the Hon'ble Supreme Court can extend the period beyond 330 days as prescribed under the provisions of IBC, 2016 for the completion of the CIRP. It should be noted that the Hon'ble Supreme Court has held that the CIRP timeline can be extended beyond 330 days only under "**exceptional circumstances**". In the present case, as to the averments made in the application, this Tribunal is of the considered view that such an "exceptional circumstances" to grant extension beyond the period of 330 days has not arisen. Further, no Resolution Plan has been received till date and the lead banker is hoping of clinching a deal with an NRI, who till date has not even submitted the proper Expression of Interest, but assuring to deposit the funds to settle the creditors in full. Thus, in view of the discussions made supra, this Tribunal is not inclined to grant any further extension of the CIRP beyond 330 days as sought for by the Resolution Professional and the prayer sought for by the Resolution Applicant is liable to be **rejected** and therefore, **IA/205/IB/2020** filed by the Resolution Professional stands **dismissed** and as a consequence thereof, the unnumbered Application **SR No. 217/2020** stands **dismissed as infructuous**.

11. Section 33(1) of the IBC, 2016 contemplates that if the maximum period permitted for completion of the CIRP has expired then this Tribunal has to order for the liquidation of the Corporate



Debtor. Since this Tribunal has not granted the extension of the CIRP beyond the stipulated period of 330 days, as per operation of Section 33(1) of the IBC, 2016, the Corporate Debtor should be ordered for liquidation. Section 33(1) of the IBC, 2016 is extracted hereunder;

33. (1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

12. It is seen from the Application that the Resolution Professional has appointed 2 IBBI Registered Valuers on 22.05.2019 for valuation assets of the Corporate Debtor and the Resolution Professional has also filed **Form-H** from which it is evident that fair value and liquidation value of the Corporate Debtor are as follows;

S. No	Particulars	Valuation Amount
1	Fair Value	446.56 crores
2	Liquidation Value	332.56 Crores

13. The Resolution Professional expressed his willingness to continue as the liquidator and has also filed his written consent, which is placed along with the typed set to the application and a perusal of the same discloses the fact that the Resolution Professional is willing to act as the Liquidator of the Corporate Debtor, if appointed by this Tribunal. In the circumstances, **V. Venkata Sivakumar**, having Reg. No IBBI/IPA-001/IP-P00184/2017-18/10852 is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential

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transactions/ undervalued transactions and such other like transactions including fraudulent preferences in light of the forensic audit report recently as well as his own investigation and file suitable application before this Adjudicating Authority.

- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authority which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation



commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

- j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

14. Thus, the Applications stand **disposed of** with the aforesaid terms.

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[S. VIJAYARAGHAVAN]
Member (Technical)

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[R. VARADHARAJAN]
Member (Judicial)

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Order Pronounced by the concord in terms of NCLT Circular dated 14.04.2020 through video conferencing platform, Member (J) and Member (T) are present in person at Chennai and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 29.05.2020 for Chennai Bench - II


N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
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