

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI

COURT-III

CA No. 840/C-III/ND/2019

In

IB-1440 (ND)/2018

IN THE MATTER OF:

M/s. K.K.R. India Financial Services Ltd.

....Financial Creditor

Vs

M/s. Kwaliti Ltd.

...Corporate Debtor

Order delivered on 14.11.2019

**Under Section 60(5) r/w
Sections 12(3), 30(4) of IBC, 2016**

Coram:

Shri Ch. Mohd. Sharief Tariq, Member (Judicial)

Shri K. K. Vohra, Member (Technical)

For the Applicant: Ms. Priya Pathania, Ms. Ami Jain, Mr Vaibhav Sethi,
Ms. Bhanu Gulati, Advocates.

For RP of CD : Mr. Sumant Batra, Ms. Kiran Sharma (CS).

ORDER

1. The Ld. Counsel for the Resolution Applicant viz., **Haldiram Snacks Pvt. Ltd.**, in consortium with Pioneer Securities Private Limited is present. At this stage, Ld. Counsel for Resolution Professional caused appearance and accepted the notice.

2. The Counsel for the Resolution Applicant seeks directions *inter alia* to the Resolution Professional to place the revised offer of the Resolution Applicant dated 04.11.2019 before the Committee of Creditors ('CoC') for its

consideration. The reason shown is that the Resolution Applicant has offered to the Financial Creditor the increased value of Rs.3.30 crores i.e. Rs.139 crores to Rs.135.64 crore and consequently the total offer value comes to Rs.144.95 crores.

3. It has briefly been mentioned by the Ld. Counsel for the Resolution Professional that the Resolution Applicant had modified the Resolution Plan twice which was placed before the CoC and could not take off and rejected due to the required voting percentage, this was communicated to the Resolution Applicant. After rejection, the Resolution Applicant has again approached the Resolution Professional with improved offer as stated above, but due to time constraint, the CoC did not agree to consider the revised offer given. As per the submissions of the Ld. Counsel for the Resolution Professional, CIR Process was initiated on 11.12.2018 and a period of 330 days was completed on 6.11.2019. It is on record that the Resolution Professional has sought extension of CIR Process after expiry of 270 days on 6.9.2019 and the extension was granted by another 60 days which has expired on 6.11.2019.

4. As per record, the period of 330 days as provided under second proviso of Section 12 of I&B Code, 2016 has completed in the present matter. However, as per the third proviso, extension of 90 days from the date of notification of the amendment can be granted notwithstanding the maximum period of time provided under second proviso to Section 12 I&B Code,2016. The Ld. Counsel for the Resolution Professional has submitted that the amendment that came into effect on 16.8.2019 has two implications. One is about the category of those cases in which the CIR Process was initiated prior to the amendment; second is about the category of those cases in which the CIR Process is initiated after the amendment. In relation to first category, the maximum period for CIR Process is 270 days, plus 90 days, which may be granted under third proviso of Section 12. In relation to second category, the mandatory maximum period for CIR Process is 330 days including exclusion of time, if any, spent in litigation.


5. The Ld. Counsel for Resolution Professional further submitted that the amendment which has been enforced w.e.f.16.8.2019 is prospective in nature and the CIR Process initiated prior to the amendment cannot be made subject to the maximum mandatory period of time provided under second proviso to Section 12. In other words, as per his submissions, the Adjudicating Authority has the discretion to grant reasonable time in the first category of cases, even after the expiry of 330 days, provided a suitable Resolution Plan be on hand for consideration of the CoC. The Ld. Counsel for the Resolution Professional further submitted that the amendment dated 16.08.2019 is under challenge before the Hon'ble Supreme Court in ***Essar Steel India Limited's case***.

6. The issue involved in the present matter is with regard to the interpretation of second and third provisos to Section 12 of I&B Code, 2016 which were brought into force on 16.08.2019. This issue is kept open and will be decided in the appropriate matters.

7. It is submitted by the Counsel for the Resolution Applicant that a considerable improvement is made in the Resolution Plan. However, due to time constraint, the CoC could not make it possible to consider the proposed Resolution Plan. In case the period of CIR Process is extended, the CoC will have an opportunity to consider the improved Resolution Plan which will be in the best interest of the Creditors. It is further submitted by the Counsel for the Resolution Applicant that the matter was mentioned on 8.11.2019. But due to holidays, the matter was not taken up, therefore, the Resolution Applicant should not suffer and the Resolution Plan which the CoC may consider viable and suitable should not be ignored due to the paucity of time which will defeat the very purport and object of the I&B Code, 2016.

8. In view of the submissions made by Counsel for the Resolution Applicant and the Counsel for the Resolution Professional, the period of CIR Process in relation to the Corporate Debtor is hereby extended for three weeks from the date of passing of this order. Accordingly, the Resolution Professional is

directed to issue short notice to the CoC for convening its meeting to consider the improved Resolution Plan as proposed by the Resolution Applicant and file Status Report before completion of the extended period. Issue a copy of the order in **Dasti**, with the signature of the Court Officer. Accordingly, the Application is **disposed of**.


(Madhu Narula)
Court Officer

U.D.Mehta