

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI BIKKI RAVEENDRA BABU – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.09.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 226/2018 IA No. 213/2018 CP(IB) No. 134/10/HDB/2017
NAME OF THE COMPANY	Nizam Deccan Sugars Limited
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
CS R. Ramakrishna Gupta	PCS	ramakrishna@ ona-cs.com	
A Nagaraj Kumar	Advocate	+99630 33314	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
J. Ramachandra Rao Anandpali Sanjeev Kumar	Advocate	9440234074	
D.V.A.S. Ravi Prasad G. Sai Prasan			

ORDER

Learned PCS Mr. Ramakrishna Gupta and learned counsel Mr. A. Nagaraj Kumar present for Petitioner. Learned counsel Mr. J. Ramachandra Rao, Mr. A. Sanjeev Kumar, Mr. D. V. A. S. Ravi Prasad and Mr. G. Sai Prasan present for Applicant in IA 213/2018.

Common Order pronounced in open court.

IA 226/2018 is dismissed.

IA 213/2018 is disposed of.

Vide separate *Common* order.

MEMBER JUDICIAL 3/9/18

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

I.A.No. 213 of 2018

In

C.P.(IB)No.134/10/HDB/2017

In the matter of:

M/s.Nizam Deccan Sugars Limited
40-15-14, Brindavan Colony,
Labbipet Vijayawada – 520 010.
Andhra Pradesh, India
(Rep. by Mr.Racharla Ramakrishna Gupta,
Resolution Professional.)

**...Applicant/
Corporate Debtor**

I.A.No. 226 of 2018

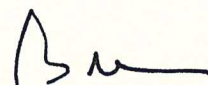
In

I.A.No. 213 of 2018

In

C.P.(IB)No.134/10/HDB/2017

1. State of Telangana, Rep. by its Principal Secretary,
Industries and Commerce (IE, SUGAR&IFR)
Department
Having its Office at 2nd Floor, D-Block,
Telangana Secretariat,
Hyderabad.



2.State of Telangana, Rep. by its Director of
Sugar and Cane
Commissioner, Hyderabad, having its Office at
5-10-174,
First Floor, Shakar Bhavan, Fathe Maidan
Road,
Khairtabad, Hyderabad – 500004.

**...Applicants/
Implead Petitioners**

Vs

Nizam Deccan Sugars Limited,
Rep. by its Resolution Professional Sri R
Ramakrishna Gupta,
T-202, Technopolis, H.No.1-10-74/B, Above
Ratnadeep Super Market,
Chikoti Gardens, Begumpet, Hyderabad –
500016, Telangana.

...Respondent

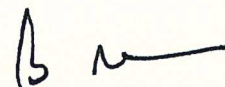
Date of Order: 03.09.2018

CORAM:-

**Hon'ble Shri Bikki Raveendra Babu, Member
Judicial**

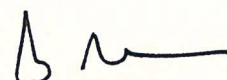
Parties/Counsel present:-

1. Learned counsel Mr.A.Nagaraj Kumar and
Learned RP Mr.RamaKrishna Gupta
Racharla present for Petitioner.
2. Learned counsel Mr.J.Rama Chandra Rao,
AAG along with Mr.A.Sanjeev Kumar,
Mr.D.V.A.S.Ravi Prasad and Mr.G.Sai
Prasen present for Respondent in IA
226/2018.



Common Order

1. IA 226/2018 is filed by the State of Telangana, represented by its Principal Secretary, Industries and Commerce (IE, SUGAR & IFR) Department and Director of Sugar and Cane Commissioner, Hyderabad U/s. 60 of the Insolvency and Bankruptcy Code, 2016 R/W rule 11 of National Company Law Tribunal Rules, 2016 seeking permission to implead the Applicant in IA 213/2018 and to permit to submit Resolution Plan to revive the Corporate Debtor and for a direction to the CoC to consider the Resolution Plan.
2. IA 213/2018 is filed by the Resolution Professional seeking the following reliefs:-
 - a) To permit the Government of Telangana to submit the Resolution Plan to revive Nizam Deccan Sugars Limited (NDSL).
 - b) To permit the Resolution Professional to receive the Resolution Plan submitted by the Government of Telangana.
 - c) To direct the Committee of Creditors to consider the Resolution Plan that may be submitted by the Government of Telangana.
 - d) To extend the period of Corporate Insolvency Resolution Process for a further period of 60 days from the expiry of 270 days i.e., from 16.06.2018.
 - e) To permit the Resolution Professional i.e., R.Ramakrishna Gupta to act as the

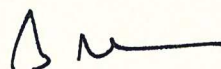


Resolution Professional till the completion of extended period of CIRP Process.

3. IA 213/2018 is filed on 14.06.2018 i.e., 2 days before the expiry of 270 days.
4. NDSL filed petition U/s.10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 vide CP(IB) No.134/10/HDB/2017 seeking commencement of CIRP in respect of NDSL.
5. This Adjudicating Authority by its order dated 20.09.2017 commenced the CIRP Process.
6. The IRP constituted CoC on 13.10.2017 comprising the following Secured Financial Creditors:-
 - i) Andhra Bank, Sultan Bazar Branch, Hyderabad.
 - ii) Syndicate Bank, Nizam Sahahi Road Branch, Hyderabad.
 - iii) UCO Bank, Mid-Corporate, Banjara Hills, Hyderabad.
 - iv) Indian Overseas Bank, Andhra Loyola College Campus, Vijayawada.
7. It is stated that Unsecured Financial Creditors being related parties, did not form part of CoC. The Operational Creditors do not qualify to be part of CoC.
8. The 1st meeting of the CoC was held on 20.10.2017. The IRP filed his 1st Report dated 23.10.2017 before this Tribunal on 24.10.2017.



9. The CoC in its 1st meeting held on 20.10.2017 resolved to continue the IRP as RP.
10. The RP called for Expression of Interest to invite Prospective Resolution Applicants for submission of Resolution Plans. The last date for Expression of Interest was 09.12.2018.
11. The following persons showed interest to submit Expression of Interest:-
 - Phoenix ARC Private Limited, Mumbai
 - Hindustan Infrastructure Projects & Engineering Private Limited, Bangalore.
12. In view of the amendment to Regulation 36A of the Insolvency and Bankruptcy Code of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018, The Resolution Professional issued Evaluation Matrix to the Prospective Resolution Applicants.
13. The CoC in its 4th meeting held on 14.02.2018 noted that none of the persons that showed Expression of Interest are meeting the criteria fixed for CoC i.e., Experience in manufacturing of Sugar.
14. This Adjudicating Authority by its Order dated 23.02.2018 has extended period of CIRP Process for a further period of 90 days beyond 180 days.
15. In the 5th CoC, the draft Evaluation Matrix was deliberated. Thereafter, invitation of Resolution Plans was published.



16. M/s.Palco Recycle Industries Limited, Ahmedabad; M/s. MyCFO, Mumbai; M/s. a'XYKno Capital Services Pvt. Ltd, Nagpur asked the Resolution Professional to share information memorandum.
17. The Resolution Professional extended the Confidentiality Undertaking to the above mentioned persons but no response is received from them.
18. The Resolution Professional did not receive any Resolution Plan. The Resolution Professional prepared the statement mentioning the amount of claim admitted.
19. In the 7th CoC Meeting, the Resolution Professional moved the proposal for recommending the Hon'ble NCLT to order for liquidation and to pass a resolution for appointment of liquidation and to authorize the Resolution Professional to file the Application seeking necessary orders from the NCLT.
20. The CoC in its 7th meeting decided to refer the proposal to recommend to Hon'ble NCLT to order liquidation of Corporate Debtor to their respective higher officials and kept silent.
21. The Resolution Professional as a last resort approached the Industries and Commerce Department, Government of Telangana by writing letter dated 01.06.2018.
22. The Resolution Professional asked the Government of Telangana to fulfil the obligations that arise out from G.O.Ms.No.28 dated 29.04.2015.



23. The last date for the receipt of the Resolution Plans was 26.05.2018. Due to the efforts of the Promoters of the Company, Government of Telangana, Industries and Commerce (IE, SUGAR&IFR) Department issued vide Memo No.266/IE,SUGAR&IFR/2015, dated 11.06.2018 conveying the following decisions:-

a) Constitution of the following committee to evaluate all the options related to each of the issues and give recommendations on the best options in the wider interest of all the Stakeholders:

- | | |
|---|----------|
| 1. Special Chief secretary to Government Revenue Department | Chairman |
| 2. Principal Secretary to Government Industries & Commerce Department | Member |
| 3. Principal Secretary to Government Finance Department | Member |
| 4. Principal Secretary to Government Agriculture Department | Member |
| 5. Secretary to Government, Legal Affairs | Member |
| 6. Director of Sugar & Cane Commissioner And Managing Director, Nizam Sugars Limited. | Convener |

b) The Director of Sugar & Cane Commissioner, Hyderabad was directed to convey the decision of the Government to NCLT, Hyderabad



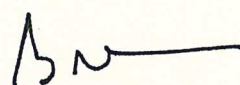
regarding constitution of the Committee for revival of NDSL Units.

- c) The Resolution Plan from the Government will be submitted to Resolution Professional as early as possible to place the same before the Hon'ble Bench of NCLT, Hyderabad.

24. The Resolution Professional also received a letter from the Director of Sugar & Cane Commissioner, Government of Telangana dated 12.06.2018 requesting the Resolution Professional to file necessary Applications in National Company Law Tribunal, Hyderabad Bench, in connection with the Corporate Insolvency Resolution Process U/s. 10.

25. The letter of the Government of Telangana is placed before the CoC meeting held on 13.06.2018. The CoC in its 8th Meeting resolved a follows:-

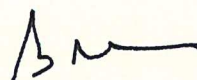
- To allow the Resolution Professional to receive the Resolution Plan that may be submitted by the Government of Telangana to revive NDSL only if it is submitted at the earliest period, but in any case, not later than 15th July, 2018.
- To allow the Resolution Professional to examine the Resolution Plan that may be submitted by the government of Telangana for placing before the Committee of Creditors.
- To allow a further period of 30 days after the aforementioned 15th July, 2018, to enable the Resolution Professional to



examine the Resolution Plan, to present before the Committee of Creditors for its approval, and to submit the approved Resolution Plan, if any, to the Hon'ble National Company Law Tribunal, Hyderabad Bench, Hyderabad.

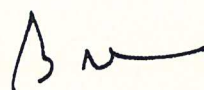
26. Resolved Further that the suitable application (s) be made to the Hon'ble National Company Law Tribunal, Hyderabad Bench at Hyderabad for its approval for the following purposes:-

- To permit the Government of Telangana to submit the Resolution Plan to revive NDSL to the Resolution Professional at the earliest, but in any case, not later than 15th July, 2018;
- To permit Resolution Professional to receive the Resolution Plan that may be submitted by the Government of Telangana for revival of Nizam Deccan Sugars Limited;
- To direct the Committee of Creditors to consider the Resolution Plan that may be submitted by the Government of Telangana and examined by the Resolution Professional;
- To extend the period of Corporate Insolvency Resolution Process Period for a further period of 60 days from the expiry of 270 days i.e., 16th June, 2018;
- To permit the Resolution Professional i.e., R.Ramakrishna Gupta to act as the Resolution Professional on the existing terms till the completion of extended period



of Corporate Insolvency Process Period;
and

- To pass such other orders as may deem appropriate by the Hon'ble NCLT in this regard.
27. In IA 226/2018 Government of Telangana Stated the circumstances under which G.O.Ms.No.28 dated 29.04.2015 was issued.
28. It is further stated that pursuant to the letter dated 01.06.2018 written by the Resolution Professional, the Government of Telangana Industries and Commerce(IE, SUGAR&IFR) Department issued a letter vide Memo.No.266/IE,SUGAR&IFR/2015, dated 11.06.2018.
29. It is stated that the Government of Telangana has itself come forward to submit the Resolution Plan in the interest of the Corporate Debtor, its employees, Farmers dependent on the Corporate Debtor and various stakeholders.
30. It is stated that the timeline give in IBC, 2016 are procedural conditions to achieve the predictable resolution as enshrined in its preamble. The Applicant also referred to the decision of the Hon'ble NCLAT in Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. CA(AT) No.185 of 2018, wherein, the National Company Law Tribunal laid down various grounds for extending the period of CIRP Process and the same are as follows:-
- (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.**

31. It is also pointed out that following the principle laid down in the decision of the Hon'ble NCLT, Kolkata Bench, in the matter of M/s. State Bank of India VS Adhunik Metaliks Limited in C.A.(I.B.)Nos. 422 & 404/KB/2018 in CP(IB)No.373/KB/2017, extended the period of



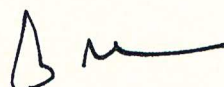
the CIRP process period beyond 270 days to facilitate the consideration of the Resolution Plans submitted therein.

32. It is also stated that in deserving cases, timelines should not be an impediment to achieve the resolution.
33. The Promoter and Shareholder of NDSL by name G.Laila filed reply stating that she invested an amount of Rs.17,47,325/- in the NDSL by way of Unsecured Loan and Equity Share Capital. She stated that she has no objection to implead Application 226/2018 filed by Government of Telangana.
34. G.Vani Raju, the Promoter & Director of NDSL filed reply. It has no objection to implead Application 226/2018 filed by Government of Telangana.
35. During the pendency of IA 213/2018, RP filed the extract of the Resolution of 9th CoC held on 26.06.2018, wherein it was resolved rejecting the proposal of the Government of Telangana seeking further 12 weeks time to submit the Resolution Plan.
36. The CoC in the 9th meeting held on 26.06.2018 resolved to recommend to the Tribunal for liquidation of NDSL and appointment of liquidation. The CoC in its 10th meeting held on 31.07.2018 in suppression of the Resolution passed in the 9th CoC meeting held on 26.06.2018 passed a Resolution, giving 06 weeks time from 01.08.2018 to the Government of



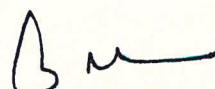
Telangana to submit Resolution Plan subject to the approval by this Authority.

37. First of all, I would like to consider the intervene application IA 226/2018 filed by Government of Telangana. Government of Telangana is only proposing to submit a Resolution Plan.
38. Government of Telangana constituted a Committee of Secretaries to examine the possibilities and feasibilities to revive the NDSL in the interest of all the stakeholders with a minimum finance burden on the Company.
39. This course of action adopted by the Government of Telangana is highly appreciable.
40. Unless and until the Government of Telangana evolved a Resolution Plan or the Government of Telangana secured a viable Resolution Applicant it has no cause to interfere in IA 213/2018.
41. The interest of the Government can be recognized when it filed a Resolution Plan either by itself or through an investor or through a Resolution Applicant. Till such time this Adjudicating Authority is of the considered view that Government of Telangana has no reason/interest to intervene in IA 213/2018.
42. Moreover, Government of Telangana already made a request to the Resolution Professional and the said request is placed by the Resolution Professional before the CoC and the CoC ultimately resolved in its 10th meeting held on 31.07.2018 giving their consent for the Government of Telangana to submit Resolution



Plan within 06 weeks commencing from 01.08.2018.

43. Therefore, the very purpose for which this intervention application is filed is already achieved by the Government of Telangana in view of the Resolution passed by the CoC in its 10th meeting held on 31.07.2018.
44. All that is required for the CoC is a Resolution Plan by a Resolution Applicant and the permission of this Authority to consider such Resolution Plan after the expiry of duration of 270 days of CIRP period.
45. Therefore, in view of the above said observations IA 226/2018 in IA 213/2018 in CP(IB)No.134/10/HDB/2017 is dismissed.
46. Now coming to IA 213/2018 filed by the RP, initially the RP sought extension of CIRP Process period only till 15.07.2018.
47. In the 9th CoC meeting it was resolved not to permit the Government to file Resolution Plan after 12 weeks.
48. In fact, the CoC in its 9th meeting held on 26.07.2018 resolved to go for liquidation. But the CoC reconsidered its decision in its 10th meeting held on 31.07.2018 and resolved to permit the Government to submit the Resolution Plan within six weeks from 01.08.2018.
49. 270 days period of CIRP ends by 16.06.2018. The 9th CoC and as well as 10th CoC meeting were held on 26.07.2018 and 31.07.2018 after the CIRP Process period ends without there



being any extension of CIRP Process period by this Authority.

50. In fact, CoC in its 9th meeting passed a Resolution to go for liquidation of the Company. However, considering the fact that before expiry of 270 days period, Resolution professional on 14.06.2018 filed IA 213/2018 seeking extension of CIRP Process period of 60 days from 16.06.2018 basing on the Resolution of CoC in the eighth meeting held on 13.06.2018 and in view of the pendency of the said application it may not be just straight away not to consider the Resolutions passed by the CoC on 26.07.2018 and 31.07.2018.

51. It is contended by the Resolution Professional and as well as the counsel for intervening Applicant that the Hon'ble NCLAT in Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. CA(AT) No.185 of 2018, held that CIRP Process period can be extended on the following grounds:-

- 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.

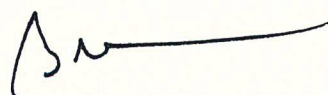
- iv. On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.
- v. If the corporate insolvency resolution process 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.**

52. The same principle was followed by the Hon'ble NCLT, Kolkata Bench, in the matter of M/s. State Bank of India VS Adhunik Metaliks Limited in C.A.(I.B.)Nos. 422 & 404/KB/2018 in CP(IB)No.373/KB/2017.

53. In the case on hand the Resolution Professional filed CA 39/2018 during the CIRP period seeking permission to sell certain assets of the Corporate Debtor. The said Application was filed on 21.02.2018 and it was disposed of by this Authority on 09.05.2018. That means, CA 39/2018 is pending for adjudication for 78 days before this Adjudicating Authority.



54. The period under gone for the purpose of disposal of CA 39/2018 can be excluded from the 270 CIRP period.
55. Moreover, in the case, the Corporate Debtor is a Company with Historical back ground holding large chunk of land Bank as its asset, involved in production of sugar taking sugarcane raised by most of the farmers of that area. Several employees also worked in the Corporate Debtor Company. The sugarcane farmers are also interested in the revival of the Company than the liquidation of the Company. In fact all the stakeholders expressed that revival is preferred than liquidation. The promoters expressed that they are no longer in a position to spend money for the protection of assets of Corporate Debtor and to bear the expenses of CIRP Process. The Government of Telangana has not come forward so far to bear the CIRP expenses and expenses relating to safeguarding properties of Corporate Debtor, in spite of such request came from CoC.
56. Considering the interest of all the stakeholders and considering the fact Government of Telangana wants to submit a Resolution Plan in order to revive Corporate Debtor and considering the fact that CA 39/2018 consumed a period of 78 days from out of 270 days of CIRP process period this Adjudicating Authority is of the view that 78 days can be excluded from the 270days CIRP period in order to enable the Government of Telangana to submit a Resolution Plan and for the CoC to consider it and take appropriate decision.



57. In the result IA 213/2018 is disposed of excluding the 78 days from the CIRP process period that came to an end by 16.06.2018 giving liberty to Government of Telangana to submit a Resolution Plan before Resolution Professional for placing the same before CoC for its consideration according to provisions of IB Code and relevant Regulations.

58. In the result IA 226/2018 is dismissed. IA 213/2018 is disposed of accordingly.

 39.11 ✓
BIKKI RAVEENDRA BABU

Member Judicial