

IN THE NATION COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB-22/ND/2018

IN THE MATTER OF:

Oriental Bank of Commerce

vs

M/s Shekhar Resorts Ltd. & Ors.

.....PETITIONER

.... RESPONDENT

SECTION

Under Section 7 IBC, 2016

Coram:

R.VARADHARAJAN,

Hon'ble Member (Judicial)

Ms. Deepa Krishan,

Hon'ble Member (Technical)

Order delivered on 12.06.2019

For the Petitioner/Applicant

For the RP

For the Corporate Debtor

:

: Mr. Abhishek Anand, Mohak, Adv.

: Mr. Rakesh Kumar, Pranav, Chetna, Adv.

ORDER

CA No. 427/C-III/ND/2019 ✓

This is an application moved by the RP under Section 19(2) read with section 70(1) of the IBC Code, 2016 seeking for the following prayers :-

- a. Direct the Respondents, the Directors of the corporate debtor to cooperate and give access to all documents and details as sought by the applicant vide various emails dated 14.09.2018, 27.09.2018, 23.10.2018, 30.10.2018, 09.11.2018, 13.11.2018, 19.11.2018, 08.11.2018, 26.11.2018, 27.11.2018, 28.11.2018, 01.12.2018.
- b. Direct the Respondents to immediately deposit in the bank account of the corporate debtor maintained at Oriental bank of Commerce, Fatehabad Road Brach, Agra, bearing account No. 1372112000679, the cash balance of Rs. 17,40,873.55/- as being reflected in the books of accounts as on 30.09.2018

Q

- c. Pass such other further order/order (s) as may be deemed fit and proper in the facts and circumstances of the case.

Learned counsel for RP represents that despite repeated communications to the Board of Directors whose powers stand suspended as well as to the auditor of the company/corporate debtor cooperation is not coming from their end and that the CIRP is coming to a close and he is not able to be proceed^{ed} with the matter as contemplated under the provisions of IBC, 2016. In relation to the Information Memorandum, learned counsel for the RP represents that RP was able to prepare the Information Memorandum only in part, in view of lack of particulars he is not able to prepare and incorporate in the Information Memorandum the unencumbered assets of the corporate debtor. In relation to this application filed eventhough an opportunity was given to the respondent to file reply or send a copy of the reply to the learned counsel for RP in relation to the information as has been provided to the RP in view of repeated assertions made by the learned counsel for the respondents that all the information which has been sought for by the RP has been duly provided, learned counsel for RP represents that no such reply has been filed even as of today. However on the other hand, learned counsel for respondent seeks for some more time to file reply. We are not able to grant any further time as it is pointed out by learned counsel for RP that CIRP is coming to a close and an application seeking for an exclusion of time has been filed before this Tribunal in CA No. 386 of 2019. Taking into consideration the above representations, we are constrained to allow this application. Let the respondent comply with the details as required to be given and as sought for in the application by the RP, in view of the emails sent and ~~returned~~^{reflected} to in the prayer portion. Further in relation to the other prayers as well as same is allowed and compliance is also required to be made by the respondents. All the compliance shall be made within two weeks from today by the

Q

D

respondents failing which this Tribunal will be constrained to take note of disobedience of the order of this Tribunal. With the above directions this application stands allowed.

CA No. 254/C-III/ND/2019 ✓

Learned counsel for RP bring to the notice of this Tribunal that submissions of the RP was heard in detail and the matter was fixed on 03.06.2019 for making the submission of the respondents namely State Bank of India, as none was present for the State Bank of India/respondent on the said date. Even today when the application is called there is no appearance on the part of the State Bank of India. However from the proceedings it is seen that a reply is stated to have been filed by State Bank of India/respondents which is not available on record. Learned counsel for the RP represents that copy of reply has been duly served upon him by the respondent. In the circumstance Bench Officer is directed to update the records of this Tribunal with the reply as filed by the State Bank of India. Copy of this order be made available by learned counsel for RP to Learned counsel for the Bank/respondents in relation to the next date of hearing which is fixed on 08.07.2019 and for the presence of the respondent bank on the said date.

CA No. 386/C-III/ND/2019 ✓

This is an application filed by the RP on the strength of the Resolution passed by the COC in the 14th meeting held on 02.05.2019 seeking for exclusion of time period in relation to CIRP, in view of ~~all certain material applications being~~ non-cooperation of the directions and which is pending before this Tribunal for disposal all arising out of non-cooperation on the part of the Directors of the corporate debtor and concerned audit professional in Company Application CA No. 427/C-III/ND/2018. Learned counsel for RP in support of the application mentions that the non-cooperation of the Board of Directors whose powers stands suspended being respondents in the application namely CA No. 427 of 2019 crippled the

✓

CIRP completely and he was not able to proceed and since the said application has been disposed only today on 12.06.2019 in the fitness of things the exclusion of time period as sought for in the above application is fully justified ^{and} for the said purpose a judgement of the Hon'ble NCLAT as placed Quinn Logistics India Pvt. Ltd. vs M/s Mack Soft Tech Pvt. Ltd. & Ors. 185/2018 dated 08.05.2019 ^{is relied} In view of the above submission and taking into consideration the said facts as averred in the application as well as representation as made by learned counsel for RP also relying upon the decision of Hon'ble NCLAT in Quinn Logistics (supra) time period of 179 days as sought for is excluded from CIRP. With the above

direction this application stands allowed.

— sd/ —

MEMBER (TECHNICAL)

Varinder Kumar

— sd/ —

(R. VARADHARAJAN)
MEMBER (JUDICIAL)