

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.132 of 2021 in
C.P. (IB)No.69/BB/2018
U/s.60 (5) of the IBC, 2016

In the matter of:

Bhadrashree Steel and Power Limited

R/o. at 2/37, 4th Floor,
Ansari Road, Daryaganj,
New Delhi – 110 002

- Applicant

Date of Order: 06 .08.2021

Coram: 1. Hon'ble Shri Bhaskara Pantula Mohan, Acting President
2. Hon'ble Shri Hemant Kumar Sarangi, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Shri Kumar Mihir
The RP : Shri B. Parameshwara Udpa

ORDER

Per: Bhaskara Pantula Mohan, Acting President

1. I.A.No.132 of 2021 is filed by Bhadrashree Steel and Power Limited (Applicant), U/s.60 (5) of the IBC, 2016, by seeking to allow the instant Application and grant an extension of 120 days to the Applicant for balance payment of Rs.12.78 Crores from the date of approval by this Tribunal; to direct the Resolution Professional (RP) to complete all formalities including but not limited to opening of Bank Account, transfer of shareholding and directorship and hand over the management of the Corporate Debtor to the Resolution Applicant herein forthwith.



2. Brief facts of the case, as mentioned in the instant Application, which are relevant to the issue in question, are as follows:

- (1) Initially, C.P.(B)No.69/BB/2018 was filed by M/s. Shantha Projects Ltd. (Corporate Applicant), U/S.10 of the IBC, 2016 and the same was admitted by the Adjudicating Authority vide its Order dated 07.10.2018 by initiating CIRP appointing Shri B. Parameshwara Udpa as IRP; imposing moratorium etc. Subsequently, the IRP was appointed as RP.
- (2) The Applicant herein submitted his Resolution Plan for the Corporate Applicant on 22.03.2019 and the said plan was duly approved in the Committee of Creditors which had State Bank of India as the Sole Financial Creditor having 100% voting share as its members in the meeting held on 20.07.2019. The said plan was approved by the CoC. Subsequently, the Adjudicating Authority vide its order dated 26.09.2019 approved the said plan with directions.
- (3) Pursuant to the aforesaid order, the Applicant in terms of the order dated 26.09.2019, started its activities to implement the Resolution Plan approved by this Adjudicating Authority. However, due to the inaction on the part of the RP despite repeated requests on the part of the Applicant to fulfil the directions of this Adjudicating Authority and complete the formalities, the implementation was delayed.
- (4) In view of the above, the Resolution Applicant sent an email dated 11.03.2020 to the Financial Creditor and the Resolution Professional stating as under:

“We are in advance stage of getting finance by Punjab National Bank, New Mandi Muzaffarnagar and HDFC Bank, Hyderabad for balance payment as per resolution plan approved by NCLT, Bangalore in favour of Resolution Applicant, M/s. Bhadrashree Steels and Power Limited. But our Bankers are unable to go



ahead as Form INC-28 and Form DIR-12 has not been filled till date. We request to your highness to kindly complete all compliance as required”.

- (5) Subsequent to the above, lockdown was imposed in the entire country since 24.03.2020. However, the Financial Creditor sent an email on 27.03.2020 to the Resolution Applicant seeking balance payment of the Plan amount and accordingly, the Resolution Applicant sent a letter on 28.03.2020 to the Financial Creditor informing that the management of the Corporate Debtor was still not handed over nor were the shares allotted in favour of the Resolution Applicant apart from the lock down and therefore, some more time may be granted to it.
- (6) In view of the above, the Applicant had been requesting for extension of time of the implementation schedule and the payment plan period in the meetings of the monitoring committee. Further, the Managing Director of the Applicant has been meeting the Financial Creditor and accordingly, vide email dated 18.09.2020, the Resolution Applicant sought a week's time to submit a payment schedule.
- (7) Further, the Resolution Applicant sent a letter dated 10.10.2020 to the Financial Creditor, inter alia, giving a detailed payment schedule and requested him to direct the RP to carry out all the formalities for handing over the management of the Corporate Debtor. The Resolution Applicant sent an email on 28.10.2020 to the Financial Creditor requesting for a letter confirming that terms and conditions discussed and agreed upon in the Monitoring Committee meeting so that it can go ahead and approach this Tribunal for the extension of revised timelines.
- (8) In terms of the above, the Financial Creditor sent an email on 29.10.2020 wherein it confirmed that the Resolution Applicant has to make the full and final payment under the Resolution

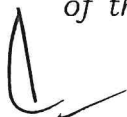


Plan within 120 days from the date of approval by the Bank or NCLT, whichever is later and the Resolution Applicant was requested to arrange to file an appropriate Application for extension of time.

- (9) In terms of the above, the Resolution Applicant made a payment of Rs.50,00,000/- in the lien account on the condition that the said amount should be appropriated on approval of extension by the appropriate authority in the Bank as well as this Tribunal and in case the request for extension is not approved either by the Bank or by this Tribunal, then the amount should be refunded back.
- (10) As per the discussions held in the meetings of the Monitoring Committee, the Resolution Applicant sought a no objection for extension of time from the Financial Creditor and vide its email dated 07.12.2020 informed him that:

“As per the approved Resolution Plan we have already paid the upfront amount of Rs.1.92/- Crores and the balance amount of Rs.12.78/- was to be paid.

As per discussions held in 5th Monitoring Committee meeting held on 22nd October, 2020 and your mail dated 17.11.2020, we have deposited Rs.50,00,000/- in the “no lien account”. This amount should be adjusted with Balance payment under Resolution Plan. Therefore, the net amount payable under Resolution Plan to the secured creditors is only 12.28 Crores. As per email dated 17.11.2020 the Bank has advised use to file an appropriate application before NCLT for extension of time. So we request you to provide No objection Certificate (NOC) for making full and final payment of Rs.12.28/- Crores (after adjustment of Rs.50 Lakhs) under Resolution Plan within 120 days from the date of order of Adjudicating Authority approving the extension of the resolution plan payment period. You may note that the



existing repayment schedule as per Resolution Plan will be substituted with the new schedule as per NCLT Order.”

- (11) In response to the above, the Financial Creditor sent an email dated 29.12.2020 to the Applicant giving its in-principle approval to the request made for extension in time for balance payment of Rs.12.78 Crores by 120 days from the date of approval by this Tribunal in the following manner:

“With reference to the trailing mail, we advise that the competent authority of the Bank has in principle agreed to your request for extension in time for balance payment of Rs.12.78 Crores by 120 days from the date of approval by NCLT, provided you pay the interest for delay period at Bank’s MCLR of 7% on the balance amount starting from 30.03.2020 till the date the complete payment is received”.

- (12) The Applicant herein responded to the aforesaid mail of SBI vide its email dated 02.01.2021 reiterating its commitment to pay the amount as per the approved plan in the following manner:

“With reference to your email dated 29.12.2020, I wish to mention again that we are moving ahead in spite of all hard circumstances due to COVID-19. After COVID valuation of all assets especially power plants has come down drastically. We again remind that RP has not discharged his duties till today. Being a true business man and looking forward strong relationship with SBI purpose to pay 15 lakhs plus i.e.Rs.12.93 Crore out of which we have already paid Rs.50 lac in no lien account.”

- (13) Further to the above, the Financial Creditor, State Bank of India finally gave its approval/consent for extension of time vide its email dated 16.02.2021 and directed the Applicant herein to file an Application before this Tribunal. As directed by the Financial Creditor, SBI in its email dated 16.02.2021 and as per the liberty



granted by this Adjudicating Authority in para 6 of the order dated 26.09.2019, the Applicant herein is filing the instant Application seeking extension of time period of the payment of the balance amount as per the approved resolution plan from this Tribunal.

(14) It is stated that apart from the reason of the COVID-19 Pandemic and the lock down which affected the financials of the Applicant, the inaction on the part of the Resolution Professional in discharging his duties and in obtaining the necessary approvals/compliances apart from his failure to handover the management control all the assets, documents/records in physical and/or digital form to the Resolution Applicant as mandated in terms of the order dated 26.09.2019, which has adversely affected the implementation of the Resolution Plan.

3. The Resolution Professional (RP) has filed Statement of Objections dated 11.06.2021, by *inter alia* contending as follows:

- (1) The RP does not have any objection and is in favour of granting time for making payment of Balance amount of Rs.12.78 Crores and implementing Resolution Plan within 120 days from passing of an Order of approval.
- (2) It is stated that the inaction on the part of the RP in discharging his duties and in obtaining necessary compliances/approvals apart from his failure to hand over the Management Control all the assets, Documents/Records in Physical Form or Digital Form to the Resolution Applicant as mandated in terms of the order dated 26.09.2019 has adversely affected implementation of the Resolution Plan.
- (3) As per Order dated 26.09.2020, the Resolution Applicant shall obtain necessary approvals as required under any law for the time being in force, within a period of one year from the date of



approval of Resolution Plan or within such period as provided by such law, whichever is earlier.

- (4) The Form DIR-12 was not filed by the Resolution Applicant earlier till March 2020. The IBBI clarification during March 2020, was silent with regard to filing of e-form DIR-12 by the RP. However, by that time the approved Resolution Plan had expired. Hence, the issue of filing the DIR-12 was discussed at various levels and finally in the 5th meeting of Committee of Monitoring Agency held on 22.10.2020, in which on the suggestion of Mr. Sanjay Kumar Sardha, Chartered Accountant, who was present on behalf of Resolution Applicant, it was resolved that Resolution Applicant may file a suitable Application before NCLT, Bengaluru, seeking permission for extension of time of 120 days from the date of such order for making payment. Pursuant to the same, this Application was filed by the Resolution Applicant seeking extension of time thereby for implementing the Resolution Plan and for making payment of Balance Amount payable under the approved Resolution. The Resolution Applicant has not paid any fees except for the initial two months amounting to Rs.1.00 lakhs.

4. Heard Shri Kumar Mihir, learned Counsel for the Applicant and Shri B. Parameshwara Udpa, learned Resolution Professional, through Video Conference. We have carefully perused the pleadings of the parties and extant provisions of the Code and rules made thereunder.
5. The Resolution Applicant is seeking for extension of 120 days for making balance payment of Rs.12.78 Crores as per the approved Resolution Plan from the Adjudicating Authority. Further, the matter has been negotiated by both the parties and approval has already been granted by the CoC i.e., sole financial creditor, and the

successful Resolution Applicant agreed to pay Rs.15,00,000/- (Rupees Fifteen Lakhs only) extra over and above to the agreed amount. In view of the same, an extension of 03 (Three) months of time is granted for making the balance payment.

6. In the result, I.A.No.132 of 2021 in C.P. (IB) No.69/BB/2018 is hereby disposed of by granting 03 (Three) months of time for making the balance payment, as stated supra. No order as to costs.



**BHASKARA PANTULA MOHAN
ACTING PRESIDENT**



**HEMANT KUMAR SARANGI
MEMBER, TECHNICAL**

Shruthi