

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri Vijai Pratap Singh
Hon'ble Member (J)

Shri Jinan K.R.
Hon'ble Member (J)

Company Application No.364/KB/2017

In the matter of :

Application under section 9 of the Insolvency and
Bankruptcy Code, 2016

-And-

In the matter of:

Surendra Kumar Joshi, 74, Burtolla Street, 2nd Chowk,
1st floor, Kolkata – 700 007

....**Operational Creditor**

-And-

In the matter of:

Rei Agro Limited, 'Everest House', 46C, Chowringhee Road,
15th floor, Room no.15B, Kolkata – 700 071

.. .**Corporate Debtor**

Counsels on Record:

- | | |
|----------------------------------|-------------------------------|
| 1. Mr. Dripto Mazumdar, Advocate |] For Corporate Debtor |
| 1. Mr. Anil Goel, PCA |] For Resolution Professional |
| 2. Mr. Kiran Sharma, PCS |] |
| 1. Ms. Amrita Pandey |] For Operational Creditor |

Date of Pronouncing the order :24th August 2017

ORDER

This Company Application 364/KB/2017 has been filed by the Resolution Professional, Shri Anil Goel in respect of I.B. Case no.C.P.(IB) No. 73/KB/17, Surendra

Kumar Joshi -vs- REI Agro Ltd. for extension of the period of Corporate Insolvency Resolution Process (in short, CIRP) by a period of 90 days beyond 26th August, 2017 i.e. 180 days from the CIRP date, in accordance with the provision as laid down in sub-section (2) of section 12 of the Insolvency & Bankruptcy Code, 2016.

The Resolution Professional has filed this application for extension of time on the basis that the Committee of Creditors in its meeting dated 26th July, 2017 passed a Resolution unanimously (which is more than the required majority of 75%) of the voting shares of the Financial Creditors forming part of the Committee of Creditors (in short, CoC) to extend the period of Corporate Insolvency Resolution Process beyond 180 days which ends on 26th August, 2017. Copy of the e-voting result is enclosed as Annexure 'E', which shows that 75.18% voting share of CoC supported the Resolution and 10.88% voting share of CoC opposed and 13.94% voting share of CoC abstained from voting.

Resolution Professional has further stated in the application that he has been appointed as Resolution Professional by an order of the Adjudicating Authority dated 18.05.2017 and in compliance with the order, he took charge from I.R.P. on 22.05.2017. He has further stated that after taking over the charge, he completed all unfinished agenda of CIRP and convened a meeting of CoC on 9th June 2017. After that, 3rd meeting of CoC took place on 26.07.2017 and during this meeting, Resolution was passed for extension of the period of CIRP beyond 180 days which ends on 26th August 2017. The reasons given in the application are as mentioned below:

1. That Resolution Professional (RP) took charge from Interim Resolution Professional (IRP) on 22.05.2017;
2. That the Valuers who were appointed by the IRP could not deliver their reports within the stipulated and agreed time because of wide spread locations of land and building, plant and machinery and wind turbine generators. The registered valuers submitted their report only in the last week of July and the liquidation value of the corporate debtor was arrived at.

3. The UCO Bank has received a provisional attachment order dated 10th July 2017 from Directorate of Enforcement, Delhi, Ministry of Finance, Government of India, New Delhi whereby all the assets of the corporate debtor have been attached by them under Foreign Exchange Management Act and Prevention of Money Laundering Act. Therefore, it is the obligation of the Resolution Professional to take up the matter with Directorate of Enforcement to safeguard and protect the assets of the corporate debtor to enhance the value available to the financial creditors.

4. He has taken up the matter with the CBI who is investigating on the affairs of the corporate debtor for sharing of information to find out (a) under-valued transactions; (b) preferred transactions; and (c) transaction with the objective of defrauding the creditors.

5. That as per the provisions of section 12(2) of the I.B.C., Resolution Professional is under a legal obligation to examine the Resolution Plan received and thereafter submitted to the CoC for its approval, *inter alia*, that it does not contravene any of the provisions of law for the time being in force.

The correct liquidation value cannot be arrived at unless the information from CBI is obtained and that the order issued by the Directorate of Enforcement, as mentioned above, is received.

Resolution Professional has stated that due to above-mentioned reasons, Resolution Plan conforming to the provisions of I.B.C. cannot be completed.

In the circumstances, he has applied for an extension of the period under subsection (2) of section 12 of I.B. Code, 2016. Section 12(1) of I.B.C. provides that Corporate Insolvency Resolution Process shall be completed within 180 days from the date of admission of the application to initiate such process.

Sub-section (2) of section 12 authorizes Adjudicating Authority to extend the period beyond 180 days if instructed to do so by the Resolution passed at a meeting of CoC by a vote of 75% of the voting share.

Here, in this case, voting share in favour of the Resolution to extend the period beyond 180 days is 75.18% of the CoC. Therefore, the legal requirement of sub-section (2) of section 12 is fulfilled.

Sub-section (2) of section 12 further provides that "if the Adjudicating Authority is satisfied that the subject matter of the case is such that the Corporate Insolvency Resolution Process cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days.

Sub-section (2) clearly gives the jurisdiction to the Adjudicating Authority to extend a further period of 90 days but it will depend on the satisfaction of the Adjudicating Authority but it can only be passed in case the Adjudicating Authority is satisfied that the Resolution Process cannot be completed within 180 days.

The statutory provision clearly provides that Adjudicating Authority is not bound by the decision of the CoC to extend the period of 90 days in every case without being satisfied that Resolution process can be completed in the next 90 days limit.

Before examining the case, it is pertinent to mention the brief history of the case. This Corporate Insolvency Resolution Process had been initiated by the Operational Creditor, Shri Surendra Kumar Joshi on account of salary dues of Rs.10,20,437/-. Corporate Debtor gave a certificate acknowledging the salary, gratuity and bonus dues of the applicant, which is Annexure-I. In reply to the demand notice, the corporate debtor made a reply that he will make payment of Rs.10,20,437/- at the earliest. In the reply, it was further written that "we would like to place on record that we are also in consultation with our legal advisors seeking their guidance how to revive the company under the guidance of Adjudicating Authority under the Insolvency & Bankruptcy Code, 2016 and with the help and support of Financial Creditors in the interest of all concerned".

The above averment in reply to the demand notice clearly indicates that corporate debtor itself was trying to initiate CIRP and this application has been moved by one of the Directors of the Corporate Debtor company and it is also to be pointed out that at the time of admission, Ld. Counsel for the Corporate Debtor made his appearance and he informed that the financial condition of the company is not good. When the financial condition of the Company will improve, then they will make the payment and rely on the documents and all other facts, the petition was admitted under section 9 of the Insolvency & Bankruptcy Act for initiation of Corporate Insolvency Resolution Process on 27.02.2017 by the Adjudicating Authority.

As the requirements of section 9 of I.B.C was complete, petition for initiation of Corporate Insolvency Resolution Process was admitted by Order dated 27.02.2017 of this Tribunal and immediately Interim Resolution Professional was appointed. On the basis of the recommendation of the CoC, Shri Anil Goel was appointed as Interim Resolution Professional and later on, on the basis of the recommendation of CoC, Shri Anil Goel was appointed as Resolution Professional. On the basis of the recommendation of the CoC, report was sent to Insolvency & Bankruptcy Board of India for confirming the appointment of Shri Anil Goel as Resolution Professional and after confirmation of his name from the Board, he was appointed as Resolution Professional and till the appointment of Shri Anil Goel, Mr. Anil Agarwal was looking after the work of Insolvency Resolution Process. So, it cannot be said that proceeding was delayed on account of appointment of Shri Anil Goel as the Resolution Professional on 22.05.2017. Before Shri Anil Agarwal, the Insolvency Resolution Process was going on and several steps were taken by earlier Interim Resolution Professional. It is pertinent to mention that Resolution Process has submitted his report dated 1st July, 2017 wherein it is stated that list of all the creditors including the total amount claimed by Creditors are mentioned as 8,630.07 crores + uncharged interest on NCD by Dena Bank and Interim Resolution Professional has admitted a claim of Rs.8,593.96 crores. In this case, it appears from different progress reports that till date no result has been submitted before the Resolution Professional. On the perusal of the Minutes of the last meeting of the CoC, it appears that the Corporate Debtor company REI Agro Ltd. owns 51 WTGs (Wind Turbine Generators). Out of 51

WTGs, 33 WTGs are non-operational and only 18 WTGs are operating as on date. The WTGs are non-operational due to non-payment of operational and maintenance charges. It was further reported by Resolution Professional that Committee of Creditors (CoC) approved that to facilitate restart of generation of electricity and earning of Revenue amount of outstanding dues may be paid to O&M Agencies and the O&M Agencies shall be paid out of the bank balance available with the current account maintained with Jammu & Kashmir Bank. None of the Progress Report shows that except 18 WTGs, none of the Companies of Corporate Debtor are a going concern.

On perusal of all the Progress Reports, It appears from the record that there are least chances of finalization and approval of a Resolution Plan by CoC. It is also pertinent to mention that Resolution Professional has stated in the report that Enforcement Directorate, Ministry of Finance, Government of India has attached the assets of Corporate Debtor under Foreign Exchange Management Act and Prevention of Money Laundering Act and Resolution Professional took up the matter with Directorate of Enforcement to safeguard and protect the assets of Corporate Debtor. It also appears that Resolution Professional has also intimated to CBI regarding the commencement of Corporate Insolvency Resolution Process. On perusal of the entire record, it appears that the application for initiation of Corporate Insolvency Resolution Process was moved by one of the Directors of the Corporate Debtor company and Corporate Debtor has submitted a reply that on account of financial constraint, he could not pay the amount and he has also admitted the fact and he is taking the advice for moving the Insolvency Resolution proceedings.

In this case, 180 days is going to expire on 26th August, 2017 and till date not a single Resolution Plan has been submitted by anybody and Resolution Professional has admitted a claim of Rs.8,593.96 crores of creditors. The CBI and Enforcement Directorate have also taken the possession of assets of Corporate Debtor. The CBI is also investigating the matter. Therefore, there is no justified reason for extending the period of Resolution Process under section 12(2) of I.B.C. From the records, it appears that even after the extending the time, ultimate result will end in liquidation. So, we find no

justification in allowing the Resolution Process as the time limit for Resolution Process is going to expire on 26th August, 2017. Tomorrow is the Court Vacation. No further time is required to be given.

In this case, during the stipulated time of 180 days, after initiation of Corporate Insolvency Resolution Process, no Resolution Plan has been received under sub-section (6) of Section 30 of I.B.C. Therefore, we pass an order under section 33 of the I.B.C. for initiation of liquidation process against the Corporate Debtor and hereby order that process of liquidation shall be done in accordance with the procedure prescribed under section 33 of I.B.C. C.A. no.364/KB/2017 is rejected and is under consideration before the CoC. We hereby pass the following order:

- 1) Corporate Debtor, REI Agro Ltd. is to be liquidated in the manner given in Chapter III of Liquidation Process under I.B. Code, 2016. #
- 2) Order of Moratorium under sections 13 and 14 of I.B.C. stands terminated and Shri Anil Goel, who was appointed as the Resolution Professional in the Insolvency & Bankruptcy proceeding, is appointed as the Liquidator, who shall perform the liquidation process of Corporate Debtor company, in accordance with the procedure prescribed in Chapter III of liquidation process under I.B.Code. Shri Anil Goel, the Liquidator proposed by us will file a declaration disclosing the existence of pecuniary or personal relationship with the concerned Corporate Debtor or any of its stakeholder to the IBBI and the Adjudicating Authority and Resolution Professional shall continue as a Liquidator of Corporate Debtor.
- 3) Liquidator shall make public announcement stating that the Corporate Debtor is in liquidation/commencement under section 33 of the Insolvency & Bankruptcy Code, 2016.
- 4) Public announcement in leading Newspaper once in Economic Times in English and Anand Bazar Patrika in Bengali. The Liquidator, Shri Anil Goel shall

also serve the copy of the Order on the Registrar of Companies and Regional Director.

Subject to sub-section(5) of section 33 of IBC, when liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor provides that a suit or other legal proceeding may be instituted by the Liquidator, on behalf of the Corporate Debtor and with the prior approval of Adjudicating Authority.

The above provision of sub-section (6) of section 33 shall not apply to legal proceedings in relation to such transaction as may be notified by the Central Government in consultation with any Financial Sectoral Regulator.

The order of Liquidation under sub-section (7) of section 33 shall be deemed to be a notice of discharge to the Officers, employees and workmen of the Corporate Debtor except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

Liquidator shall get the remuneration as per provisions of section 34 of I.B.C.

Liquidator shall submit the Progress Reports after two months. List the matter on 27.10.2017 for submission of Progress Report by the Liquidator.

Let the copy of the order be sent to the Corporate Debtor, Liquidator and Registrar of Companies.

Urgent copy of the order may be issued upon compliance of all necessary formalities.

Sd/-

(Jinan K. R.)
Member(J)

Sd/-

(Vijai Pratap Singh)
Member (J)

Signed on this, the 24th day of August, 2017