

BENCH-I

NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P (IB) No.182/K/2017

Present: Hon'ble Member (J) Shri Vijai Pratap Singh  
Hon'ble Member (J) Shri Jinan K.R

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 20<sup>th</sup> December 2017, 10.30 A.M

Name of the Company	Gujarat NRE Coke Ltd.		
Under Section	10 IBC		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1 Sumit Binani, RP Company Sumit Binani

2. KANISHK KHETAN, ADV R P 20/12/17  
Kanishk Khetan

3. MS Riwa @ Ganesh. 20/12/17  
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P.T.O.

**112 CP 182/2017 - Gujarat NRE Coke Ltd.**

**ORDER**

Ld. Resolution Professional (RP) as well as Ld. Counsel for the corporate debtor is present.

Ld. RP has filed the Progress Report dated 20/12/2017, which may be taken on record. Ld. RP submitted that the extended period of submitting the Resolution Plan is going to expire on 01/01/2018. Ld. RP submits that in view of the commencement of the Ordinance to amend the Insolvency and Bankruptcy Code, 2016 notified on 23/11/2017 the Resolution Plan already under consideration could not be considered because of the application of section 29A and that issued fresh publication called for expression of interest regarding submissions of new plan and he received 4(four) plan and it is under consideration of the Committee of Creditors (CoC) and pressed further time for submissions of Resolution Plan and to further extend time period for submission of Resolution Plan. It is clarified that the maximum time limit of 270 days prescribed under the Insolvency and Bankruptcy Code, 2016 has been granted. This Adjudicating Authority is not authorised to extend the period of submissions of Resolution Plan beyond 270 days prescribed under the Code. Hence the prayer for further extension is not considered.

At this juncture Ld. Counsel for the corporate applicant pressed for hearing of C.A. (IB) No. 556/KB/2017 filed by him seeking relief that Committee of Creditors (CoC) be directed to consider the Resolution Plan submitted by the petitioner on behalf of the Corporate Debtor before promulgation of the

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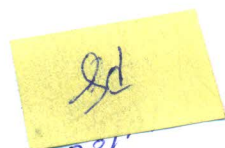
Insolvency and Bankruptcy Amendment (Ordinance) 2017 dated 23/11/2017 without being influenced by the provisions of the Ordinance since the same being effective prospectively. Alternatively, petitioner pressed for withdrawal of the main C.P. Ld. Counsel for the Resolution Applicant cited an order passed by the Hon'ble Punjab & Haryana High Court in **CWP-27730-2017 (O&M) Suman Jolly v. Union of India and ors.** On the strength of the above order of the Hon'ble Punjab and Haryana High Court Ld. Counsel for the Resolution Applicant submitted that the Ordinance referred above has no retrospective effect and therefore the Resolution Plan submitted by the defaulting promoter has to be considered by the CoC and for that consideration the RP has to consider the Resolution Plan already submitted before him before the date of commencement of the above Ordinance.

Upon hearing the arguments of the Ld. Counsel for the Resolution Applicant and referring to the above cited decision of the Hon'ble Punjab & Haryana High Court it appears to us that this Adjudicating Authority cannot give a directions as prayed for by the Resolution Applicant in view of Section 31 of I & B Code, 2016. As per Section 31 of the I & B Code, 2016 a Resolution Applicant may submit a resolution plan to the RP prepared on the basis of the information memorandum. It is the CoC has to approve or reject a Resolution Plan on voting of not less than 75% of voting share of the financial creditors u/s. 30(4) of the I & B Code, 2016. Therefore, it appears to us that this Adjudicating Authority could not give a direction to the Resolution Professional directing him to reconsider the Resolution Plan submitted holding that the above referred ordinance has no effect on the application submitted by the Resolution Applicant. Accordingly, the said prayer is rejected.

Ld. Counsel for the Resolution Applicant also prays for granting relief (b) in the above referred application. Relief (b) is for permission to withdraw the C.P. which has been allowed by the Adjudicating Authority in which a Resolution Professional has been appointed and resolution process is going on and period of submissions of resolution plan expires on 01/01/2018. Therefore, the relief sought for by the Resolution Applicant for dismissal of the application as withdrawn also cannot be granted by this Adjudicating Authority. Accordingly, both the reliefs sought for are hereby rejected.

Further, it is made clear that the Resolution Applicant can make a request to the Resolution Professional for consideration of his plan which was submitted to the Resolution Professional and the CoC can consider or reconsider the Resolution Plan submitted by the petitioner in accordance with law and as per the amended provisions of I & B Code.

List it on 01/01/2018.



(Jinah K.R.)  
Member (J)



(V.P.Singh)  
Member (J)