

DIVISION BENCH

ITEM NO.3

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ**

IA NO.432/2023 IN CP (IB) No.7/ALD/2021

CORAM:

- 1. SHRI PRAVEEN GUPTA,
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,
HON'BLE MEMBER (TECHNICAL)**

Date of Order: 14th September, 2023

Attendance-Cum-Order Sheet of the Hearing.

NAME OF THE COMPANY	M/S ANJALI CAPFIN PVT LTD V/S M/S PRIMUSS PIPES & TUBES LTD
UNDER SECTION	7 IBC (IN CIRP)

COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:

Sh. Abhishek Anand with : *For the Applicant/ RP Mr. Sanyam Goel*
Sh. Karan Kohli, Advs. : *present in person in IA No.432/2023*
Sh. Ankur Goel, Adv. : *For the dissenting financial creditor*

ORDER

IA No.432/2023

Ld. Counsel, Sh. Abhishek Anand representing the Applicant/ RP with Mr. Sanyam Goel, RP in person are present through VC and Ld. Counsel, Sh. Ankur Goel representing the dissenting financial creditor is also present through VC.

- 1.** This application has been filed for seeking exclusion of the period commencing from 25.01.2023 till 25.08.2023 from the maximum permissible CIRP timeline of 330 days, in view of the fact that the change of RP has been under litigation for sometime in terms of an IA No.32/2023 moved by one the members of the Committee of Creditors (CoC) i.e. Kotak Mahindra Bank. The said IA No.32/2023 was eventually dismissed as withdrawn by the said Bank on 25.08.2023.
- 2.** As a result thereof, the Ld. Counsel representing the RP states that the period commencing from 25.01.2023 till 25.08.2023 needs to be excluded. He also further states that there is a Resolution Plan, which has already been received by the CoC and the same would be considered in the meeting of the CoC, and therefore, in order to enable the CoC to consider the said Resolution Plan, it is imperative that the present application for exclusion of the aforesaid period from the CIRP timeline be accepted.

3. It is stated by the Ld. Counsel representing the RP that the said decision for seeking exclusion has already been taken up in the CoC meeting held on 23.08.2023 vide agenda item no.6, which is at page no.83, as reproduced hereunder :-

ITEM NO.6

TO DISCUSS AND TAKE APPROVAL FOR EXCLUSION OF PERIOD OF CORPORATE INSOLVENCY RESOLUTION PROCESS FOR TIME TAKEN IN LEGAL PROCEEDINGS UNDER SECTION 12(2) OF INSOLVENCY AND BANKRUPTCY CODE, 2016 FOR COMPLETING THE PROCESS

*The Chairman informed the COC that in accordance with the provisions of Section 12 of IBC, the Corporate Insolvency Resolution Process ("CIRP") shall be completed within 180 days from date of admission of application by Adjudicating Authority. In the present case the **estimated date for completion of 180 days in terms of Section 12 of IBC was 10.12.2022.***

*The Chairman further informed that the COC had passed the resolution under section 12 of the Insolvency and Bankruptcy Code, 2016 in its 3rd COC meeting held on 27.10.2022 regarding filing of application before Hon'ble Adjudicating Authority for extension of time period of Corporate Insolvency Resolution Process for further 45 days. Pursuant to the said resolution, the application bearing I.A. 446 of 2022 in CP (IB) No. 07/ALD/2021 had been filed by the Resolution professional before the Hon'ble Adjudicating Authority, Allahabad Bench and the Hon'ble Adjudicating Authority vide its order dated 09.12.2022 granted the period of 45 days beyond the estimated completion date i.e. 10.12.2022. **After considering the said extension, the date for completion of CIRP of the Corporate Debtor was 24.01.2023.***

Now, considering the fact that the application dated 15.01.2023 bearing I.A. 32 of 2023 in CP (IB) No. 07/ALD/2021 regarding replacement of existing RP is pending before the Hon'ble NCLT and COC having passed the resolution for withdrawal of the same in view of consideration of the resolution plan received from one of the earlier PRA's named Pioneer Engineering Industries, it would be prudent that an application should be moved before the Hon'ble NCLT for seeking exclusion of 45 days' time period spent in the pendency of the replacement application, or any other reason as the RP deem fit in consultation with its counsel in order to prevent the Corporate Debtor from being pushed into liquidation.

-Sd-

-Sd-

The Chairman enquired from Mr. Ankur the Authorised Representative of Anjali Capfin about his views on the above said discussion, Mr. Ankur replied that in his view, no effective purpose would be achieved by taking exclusion of time period of only 45 days as the CIRP period has already got over in the January 2023 itself.

After the detailed discussion, it was decided by the representatives of Kotak Mahindra Bank and the RP that the application would be tiled before Hon'ble NCLT (Adjudicating Authority) for seeking exclusion from 25.01.2023 to next date of hearing i.e. 25.08.2023 the time period taken in the legal proceedings regarding the RP replacement Application.

The Chairman then proceeded to consider the votes of the CoC members. Mr. Ankur, the Authorised Representative of Anjali Capfin Private Limited, dissented on this resolution.

The query raised by Mr Parag regarding the non-submission of /delay in of the Performance Security by the PRA, the Chairman replied that the RFRP requires payment of Performance Security within the Seven days of approval of the Resolution Plan by the COC. The purpose of this BG is to satisfy the COC that the PRA is financially capable for implementing the approved Resolution Plan. However the Counsel of RA will be again instructed to submit the BG as soon as possible as discussed in the 7th COC meeting.

As per the discussion, following resolution was passed with 79.10% voting share

“RESOLVED THAT pursuant to Section 12 of the Insolvency and Bankruptcy code, 2016 the approval of Committee of Creditors be and is hereby granted for filing an application with Hon'ble Adjudicating Authority for seeking exclusion from 25.01.2023 to next date of hearing i.e. 25.08.2023 being the time period taken in the legal proceedings before the Hon'ble Adjudicating Authority.

RESOLVED FURTHER THAT Resolution Professional, be and is hereby authorised to do all such acts deeds and things to give effect to this resolution.”

4. The said agenda has been put to voting and stood approved by the CoC with a majority of 79.10% of the total voting with only one of the Financial Creditor namely M/s Anjali Capfin Pvt. Ltd., who also happens to be the main petitioner for initiating the proceedings U/s 7 of the Code has given dissent vote as not being in favour of seeking exclusion of the aforesaid time period. However, Kotak Mahinda Bank having a majority of 79.10% vote share has given its consent and third member i.e. the Bank of Baroda having 0.72% vote share abstained from voting.

5. In view of this situation, the agenda for seeking exclusion of the time period stands approved by a majority of 79.10%.
6. The Ld. Counsel representing M/s Anjali Capfin Pvt. Ltd. also made his submissions with respect to the decision taken before the CoC, not agreeing with the agenda item no.6, which was considered by the CoC on the aforesaid date i.e. 23.08.2023.
7. We have heard the Ld. Counsels representing the parties. It is clear that there was an application moved by the Kotak Mahindra Bank *vide* IA No.32/2023 for the purpose of change of IRP because of which the further proceedings under CIRP could not take place and after withdrawal of the said IA, the present application for seeking exclusion of aforesaid time period has been filed. It is also reflected in the agenda item no.6 at page 83 that one of the earlier Prospective Resolution Applicant (PRA) namely M/s Pioneer Engineering Industries has already filed its Resolution Plan, which can only be considered by the CoC after the exclusion of the aforesaid time on being granted from the CIRP timeline.
8. In view of the averments made in the application as well as the submissions made by the Ld. Counsel representing the RP, we are inclined to allow the present application and grant exclusion for the period commencing from 25.01.2023 till 25.08.2023 from the CIRP timeline of 330 days.
9. It is expected that the RP would further expedite its measures to ensure the completion of the CIRP in accordance with the provision of the Code.
10. IA No.432/2023 stands allowed in view of the aforesaid terms and stands disposed off accordingly.

-Sd-
(Ashish Verma)
Member (Technical)

14th September, 2023
Kavya Prakash Srivastava
(Stenographer)

-Sd-
(Praveen Gupta)
Member (Judicial)