

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

MA/630/2018 in CP/632/IB/2017

**Section 60(5)(C) of Insolvency and
Bankruptcy Code, 2016**

In the matter of

M/s.Edelweiss Asset Reconstruction
Co. Ltd. Financial Creditor
Vs.

M/s.AML Steel & Power Ltd..... Corporate Debtor

Mr.Santanu T.Ray Resolution Professional/
Applicant

Order delivered on: 11.12.2018

CORAM

B.S.V.PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

*For the Applicant/RP : Mr.P.H.Arvinth Pandian, Sr. Advocate for
Mr.Anant Merathia, Advocate.*

Per: B.S.V. Prakash Kumar, Member (J)

ORDER

(Order pronounced on 11.12.2018)

It is an MA/630/2018 seeking exclusion of time period from the CIRP period because the Resolution Professional could not carry out his duties during the CIRP period for the reasons below mentioned:

1. Since it is a company located in Naxalite prone area in Jharkhand State, the Applicant/Resolution Professional could not secure the custody of the assets property of the Corporate Debtor. When the Resolution

Professional asked the Promoters of the Corporate Debtor to handover the physical possession of the factory, they keep saying that they could not come to the factory premises owing to the labour problems and other issues. When the Resolution Professional realised that he could not secure the possession of the factory premises through the Promoters of the Corporate Debtor, he lodged a complaint on 21.04.2018 in the Police Station of the Seraikela. As there was no progress on the report given to the Police, the Resolution Professional filed MA u/s 19 of the Code seeking cooperation from the Promoters of the Corporate Debtor and also assistance from the Local Authorities to take over the possession of the factory premises, on which, this Bench passed several orders 22.06.2018, 04.07.2018, 17.08.2018 and 29.08.2018. Though CIRP period commenced on 21.03.2018, the RP till today could not secure the physical possession of the factory premises whereby though expression of interests given by eight Prospective Resolution Applicants, the RP is unable to show the factory premises to these Prospective Resolution Applicants to go ahead for determination of the Resolution Plans placed by various Prospective Applicants. The RP submits that as on the date of filing this application, 229 days have gone, there is no progress to either assess the financial position of the company or to take over the physical possession of the factory premises.

2. The problem in this case is, the Registered Office of the Company is situated in Tamilnadu whereas the Factory Premises is situated in Jharkhand. Because of this reason, when the Resolution Professional insists upon the Promoters to assist him in securing the factory premises, they say they will not come. As to the production of financial statements of the company, as and when direction was given by this Bench, these Promoters provide information on piece-meal basis saying that they do not have the material which the Resolution Professional sought for production.

3. Finally, the Promoter-Directors provided tally backup as late as on 30.11.2018. Though the Resolution Professional and the Members of the CoC put all their efforts to select a Resolution Plan and approve the same, till date, they could not accomplish the job for the Resolution Professional is short of financial information in respect to the Company and not secured the physical possession of the factory premises.

4. The Resolution Professional counsel submits that CIRP period 270 days though come to close by 07.12.2018, they could not accomplish the work of selecting a Resolution Applicant for lack of financial information and cooperation from the Promoter-Directors.

5. The Resolution Professional counsel further submits that the only way out left to the CoC and Resolution Professional is to ensure that some resolution plan is approved so that there could not be any difficulty to the CoC to liquidate the assets of the company because when the Resolution Professional is not even in a position to visit the premises of the company without the support of the Police, it is seldom possible to sell the assets of the company in the event of liquidation, therefore, since the Resolution Applicants have come forward to take over the company through resolution, if the period, the Resolution Professional as well as the CoC could not utilize for processing the EOIs pending with them, is excluded from the CIRP period, the RP counsel says, the RP would be in a position to make physical visit and make efforts to approve Resolution Plan. To fortify the application moved by the Resolution Professional, CoC passed resolution seeking exclusion of at least 90 days from the CIRP period.

6. On hearing the submissions of the Resolution Professional counsel as well as the counsel appearing on behalf of one of the financial creditors, it appears to us that the Resolution Professional as well as the CoC genuinely made their efforts to ensure the Resolution Plan be approved within the time frame, in spite of their efforts, they have failed to succeed in

processing the Resolution Plan for the Resolution professional is not in a position to have free access with the premises of the factory.

7. In this extraordinary situation, unless at least some period of unutilised CIRP period is excluded permitting the Resolution Professional and the CoC to process the Resolution Plans and visit the factory premises so as to provide access to the Resolution Applicants to visit the factory, the very purpose of the admission of this CP will be lost.

8. In view of the same and in the light of the Order dated 08.05.2018 passed by Honourable NCLAT in the matter of ***Quinn Logistics India Private Limited Vs. Mack Soft Tech Private Limited and two others*** dated 8th May 2018, this Bench hereby excludes 90 days from the CIRP period with effect from 07.12.2018.

9. Accordingly, this application is hereby **disposed of**.



(S VIJAYARAGHAVAN)
Member(Technical)



(B.S.V.PRAKASH KUMAR)
Member(Judicial)