

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

**I.A. (IB) No. /KB/2020
CA(CAA) No. 20/KB/2019
In
C.P. (I.B.) NO. 182/KB/2017**

In the matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016;

AND

In the matter of:

M/s. Gujarat NRE Coke Limited

... Corporate Debtor

AND

In the matter of:

Dilip Kumar Singh & Others

... Applicants

VERSUS

STATE BANK OF INDIA & OTHRS

.... Respondent

Gujarat NRE Coke Limited

... Proforma Respondent

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Counsel Present:

Mr. Sandeep Bajaj, Advocate]

Mr. Saurav Jain, Advocate] For Applicants

Mr. Ajay Gaggar, Advocate] For State Bank, SBI

Mr. Rajesh Chaubey, Advocate] For SBI

Mr. Sumit Binani, Liquidator] For Performa Respondent

Ms. Ujjaini Chatterjee, advocate] For Liquidator

Date of hearing: 09.06.2020

Order delivered on: 09.06.2020

ORDER

Per Jinan K.R. Member (Judicial):

1. This application was filed by one **Dilip Kumar Singh & Others** representatives of the employees of the CD Company, Gujarat NRE Coke Ltd. (Corporate Debtor) which is under Liquidation since, i.e 11.01.2018 praying for issuing the following relief:

1. A direction to the respondents to reconsider the Scheme of Compromise and Arrangement under Section 230 of the Companies Act,2013, proposed by the shareholders along with the TEV Study;
2. A direction in the interim to the liquidator not to discharge or dismiss any employee and maintain their employment;
3. Such other orders as this Hon'ble Tribunal may deem fit and proper.

2. Ld. Counsel Mr. Sandeep Bajaj, submits that the Company being in liquidation has not been able to carry on its business affairs in the usual manner but has been run by the employees under the control and direction of the liquidator in a highly constrained manner. Since the imposition of lockdown w.e.f 25.03.2020, the Operations of Corporate Debtor have been heavily disturbed. This has put a severe strain on the economy and assets of the Company have been further devalued. It is in these circumstances that the present application is being filed praying for appropriate directions from this Hon'ble Court to the Creditors to re-consider the scheme filed under section 230 of the Companies Act, 2013, afresh considering the present circumstances where due to the ongoing CoronaVirus crisis, the situation may lead to loss of employment and affect assets of Corporate Debtor. Hence the application was moved with a prayer for an early hearing through video conference (VC).

3. Being satisfied with the urgency setup on the side of the applicants, this application was listed for hearing on today after service of notice to the liquidator and the financial creditor, the SBI.

4. In response to the receipt of the notice, the Ld. Liquidator Mr. Sumit Binani, has submitted a brief written defence, narrating his inability to continue the liquidation of the CD company for want of fund and further would submits that there is no stay of liquidation process but the sale of assets of the CD can only be done with the approval of the Hon'ble SC. On the side of the financial creditor, Ld counsel Mr. Ajay Gaggar was heard.

5. The Ld. Counsel for the applicant repeatedly requested to provide one more opportunity to them to have one round of presentation of the scheme in an effort to

convince the creditors. According to him when the meeting was called everybody was voted in favour of the scheme but the secured creditors were only against the Scheme. He further said that because of the COVID-19 situation any possibility to have a change in the Scheme is to be explored before liquidating the assets of the CD. If it is not revived, about one thousand and odd employees will not survive. He argued.

6. Ld. Liquidator submits that the Corporate Debtor Company was making losses even before the COVID-19 situation, which is more aggravated during lockdown and the losses of the Company are further increasing and the business has become very uncertain. He needs more than 1.50 crore rupees for paying wages to the employees and for the operation of the Company and therefore, there is remote possibility of reconsideration of the scheme by the creditors. He said.

7. Ld. Counsel for the financial creditor submits that the order of liquidation was passed in 2018. Now more than 2 years passed but there is no scope at all for revival of the Company. He refers to page 125 of the minutes of the meeting held on 18th February, 2020 wherein the creditors also were present and raised questions why the scheme could not be accepted after a detailed deliberation amongst the presence of the lenders. According to him, the Ld.Counsel for the applicant failed in convincing the Bench in what manner they can infuse funds and how restructuring of the debt is possible without infusion of funds and submits that the creditors are helpless because there have been practical difficulties.

8. The above said submissions on the side of the Ld. Liquidator and the Ld. Counsel for the creditors not at all countered by the Ld.Counsel for the applicant. As rightly pointed out by the Ld.counsel for the creditors a scheme would have been passed and

accepted within 90 days of the order of liquidation as per Regulation 2-B of the IBBI (Liquidation Process) Regulations, 2016. After a lapse of 2 years even in the midst of the Novel Corona Pandemic, it appears to me that allowing this application will not any way help the applicants to present a techno economically viable plan as mandated by the creditors. Since the power of the tribunal is limited and this Tribunal has no power to interfere with the commercial wisdom of the creditors to approve or not to approve the scheme, I am unable to accept the submission on the side of the applicant extending my sympathy upon them. The law is settled as to the power of the tribunal in regards issuing direction to the creditors to reconsider a scheme like the scheme in hand. Law is settled that the Company Court's jurisdiction is peripheral and supervisory and not appellate. The shareholders have already put the revised Scheme before the Creditors and they have refused to reconsider the same. The creditors have already objected to the addition of the TEV Study too. So only due to the change of circumstances due to COVID-19, can it bring a change in the Scheme that shall affect the creditors. It appears to me I cannot.

9. In view of the foregoing discussion, I am of the view that this application is not worth consideration. Accordingly liable to be dismissed.

In the result this application is dismissed. No order as to cost.

Registry is directed to serve copies to the parties forthwith by way of e-mail.

(Jinan K.R)
Member (Judicial)

Signed on this, the 9th day of June, 2020.