

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH III
NEW DELHI**

**CA.256/C-III/ND/2019
in
CP.IB-401/ND/2017**

**SECTION: UNDER Rule 11 of the National Company Law
Tribunal Rules, 2016.**

In the matter of:

**M/s Deepak Khanna,
R/o G1 Ratan Majestic,
7/151, Swaroop Nagar,
Kanpur-208002,
Uttar Pradesh.**

.... Operational Creditor

**Earth Infrastructure Ltd.
B-100, 2nd Floor,
Naraina Phase-I,
New Delhi-110028.**

..... Corporate Debtor

Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**

**DEEPA KRISHAN
Hon'ble Member (TECHNICAL)**

Counsel for the Petitioners : -

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**Counsel for Respondent : Mr.Ashish Makhija, Ms.Ishita Srivasava,
Mr. Anurag Bhatt, Advocates**

Order delivered On: 15/05/2019

ORDER

This is an application moved by the Resolution Professional appointed by the Committee of Creditors and subsequently confirmed by this Tribunal seeking for exclusion of time period of 114 days from the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD) based on the reasons as averred in the application. It is evident from the application that the CIRP of the CD was initiated on 6.6.2018 and at the time of admission this Tribunal had appointed one Mr. Surender Kumar as the Interim Resolution Professional (IRP). Subsequently, based on the application moved by some of the homebuyers of the CD in the capacity of Financial Creditors, a stay has been granted of the CIRP process vide order dated 9.8.2018 and it is averred that the same was vacated with directions dated 4.10.2018 and vide the said order itself namely 4.10.2018, a period of 57 days in

relation to the CIRP due to the stay granted earlier vide order dated 9.8.2018 was excluded. Subsequent to the stay order, it is represented that in view of the Committee of Creditors (CoC) being constituted only of home buyers of the CD and based on the resolution passed by the CoC on 5.12.2018, the applicant was appointed as the Resolution Professional in lieu of the IRP who continued till such time taking into consideration the provisions of Insolvency and Bankruptcy Code, 2016 (IBC,2016) and that ultimately in CA 415/C-III/ND/2018, this Tribunal heard and disposed of the said application on 18.3.2019 and approved the appointment of the Resolution Professional as voted by the CoC, namely, the applicant Mr. Akash Shinghal. Since the CIRP of the CD is expiring on 29.4.2019, this application is filed on 22.4.2019 seeking for the exclusion of 114 days period stated in paragraph 19 of the said application, taking into consideration such exclusion is permissible as per the decision of Hon'ble NCLAT held in Quinn Logistics India Private Limited vs. Mack Soft Tech. Private Limited in Company Appeal (AT)(Insolvency) No.185 of 2018 dated 8.5.2018.




2. We have carefully considered the plea of the Applicant herein as well as the submissions made at the time of hearing of the Ld. Counsel for the Applicant. Ld. Counsel for the Applicant stresses on the aspect that there has been a change in the Resolution Professional as compared to the one appointed by this Tribunal as IRP and since the Corporate Debtor is having numerous home buyers, taking into consideration their interest, the CIRP should be extended as prayed for and as the Hon'ble Supreme Court has categorically held in the matter of M/s Shilpi Cable Technologies v. Macquarie Bank Ltd. that the resolution should be given sufficient chance and liquidation should be the last resort. Taking the above dictum into consideration as well as the decisions of the Hon'ble NCLAT, as stated above in the case of Quinn Logistics India Private Limited vs. Mack Soft Tech. Private Limited, the time period of 114 days as prayed for is excluded from the CIRP and since the CIRP is expiring on 29.4.2019, stands extended by a further period of 114 days. In addition, since this order is pronounced on 11.5.2019 with a view to obviate the necessity of filing another application on the part of

the Applicant through Resolution Professional and seeking to exclude the said time period, an additional 13 days also stand excluded and thus in aggregate the time period of 114 days as well as additional 13 days, as explained above, aggregating in all to 127 days stands excluded from the CIRP. Let every endeavour be made by the Resolution Professional as well as by Financial Creditors being the home buyers of the CD to complete the CIRP within the extended period of 127 days without fail. With the above directions, this application stands disposed of.


(DEEPA KRISHAN)
MEMBER (TECHNICAL)

U.D.Mehta
15/05/2019


(R. VARADHARAJAN)
MEMBER (JUDICIAL) 15/5/2019