

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 41 of 2018

IN THE MATTER OF:

Amit Basia & Anr.

...Appellants

Vs

Anant Overseas Ltd. & Anr.

....Respondents

Present:

**For Appellants: Mr. Narender Hooda, Senior Counsel assisted by
Mr. Vikas Saharan, Advocate.**

For Respondents:

O R D E R

28.02.2018. This appeal has been preferred by Appellants Shareholders/Directors against order dated 25th January, 2018 passed by the Adjudicating Authority (National Company Law Appellate Tribunal) Special Bench, New Delhi, whereby and whereunder the application for clarification preferred by the Resolution Professional has been dismissed and Resolution Professional has been directed to complete the Corporate Insolvency Resolution Process within extended 90 days period from the 181st day of the resolution process.

2. Admittedly, the resolution process was not completed in 180 days and as it was not feasible for varied reasons, the Committee of Creditors took the decision and requested the Resolution Professional to move an application before the Adjudicating Authority for extension of period for 90 days. On such application, the Adjudicating Authority by order dated 16th January, 2018 extended the period for another 90 days. The Resolution Professional, thereafter, filed an application for clarification of the order aforesaid to clarify as to from which day the period of 90 days is to be counted, i.e. from 16th January, 2018 or from the 181st day. Therein the impugned order was passed.

3. Learned counsel appearing on behalf of the Appellants submits that the time taken by the Adjudicating Authority in deciding the application should not be counted for the purpose to counting the extended period as the Resolution Professional could not proceed after 180 days in absence of any order passed by the Adjudicating Authority. Similar plea has been taken up by the counsel appearing on behalf of the Respondent – Resolution Professional.

4. Similar issue fell for consideration before this Appellate Tribunal in **‘Quantum Limited (Corporate Debtor)’ vs ‘Indus Finance Corporation Limited in CA(AT) (Insolvency) No. 35 of 2018** wherein the Appellate Tribunal by order dated 20th February, 2018 taking into consideration the relevant provisions of ‘I&B Code’ observed as follows:

4. From sub-section (2) of Section 12, it is clear that resolution professional can file an application to the Adjudicating Authority for extension of the period of the corporate insolvency resolution process, only if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. The provision does not stipulate that such application is to be filed before the Adjudicating Authority within 180 days. If within 180 days including the last day i.e. 180th day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares, instructing the resolution professional to file an application for extension of period in such case, in the interest of justice and to ensure that the resolution process is completed following all the procedures time should be allowed by the Adjudicating Authority who is

empowered to extend such period up to 90 days beyond 180th day.

5. *In the present case, the Adjudicating Authority has not hold that the subject matter of the case do not justify to extend the period. It has not been rejected on the ground that the committee of creditors or resolution professional has not justified their performance during the 180 days. In such circumstances, it was duty on the part of the Adjudicating Authority to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.*

6. *For the aforesaid reasons, we set aside the impugned order dated 18th December, 2017 and extend the period of resolution process for another 90 days to be counted from today. The period between 181st day and passing of this order shall not be counted for any purpose and is to be excluded for all purpose. Now the Adjudicating Authority will proceed in accordance with law.”*

5. The case of the appellants being covered by aforesaid decision we set aside the impugned order of clarification dated 25th January, 2018 and declare that the 90 days of extended period be counted w.e.f. 16th January, 2018 i.e. the date on which the Adjudicating Authority passed order for extension of 90 days period. The period between 181st day and the date of passing of the order by the Adjudicating Authority i.e. 16th January, 2018 shall not be counted for any other

purpose and is to be excluded for counting the extended period. The appeal is allowed with aforesaid observations. No Costs.

(Justice S. J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

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