

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 183 of 2018

IN THE MATTER OF:

Rajendra K. Bhuta (R.P.)

...Appellant

Vs

Guruashish Construction Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. S. N. Jha, Sr. Advocate with Mr. Ashish Verma, Advocate.

For Respondent:

ORDER

09.05.2018: This appeal has been preferred by Resolution Professional against order dated 18th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in I.A. 24/2018 in C.P. No.1061/2017. Taking into consideration the facts and circumstances of the case, the Adjudicating Authority by the impugned order allowed only 38 days of time consumed in litigation for exclusion of the period from the counting the total period of Corporate Insolvency Resolution Process.

2. According to Appellant (Resolution Professional), the Committee of Creditors in their meeting decided and to request the Adjudicating Authority to exclude at least 55 days for the purpose of counting total period of Corporate Insolvency Resolution Process. Such time was taken because of the interim order of stay passed by the Adjudicating Authority. The Adjudicating Authority though notice the aforesaid fact at Para 6 of the impugned order but

allowed only 38 days' time without giving any reason as to why rest of the time has not been allowed when 270 days was to expire on 19.04.2018.

3. Similar issue fell for consideration before this Appellate Tribunal in **“Quinn Logistics India Pvt. Ltd. V/s. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 185 of 2018”**. This Appellate Tribunal by judgment dated 08.05.2018 observed and held as follows:

“10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:

- (i) If the corporate insolvency resolution process is stayed by ‘a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court.*
- (ii) If no ‘Resolution Professional’ is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
- (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the ‘Resolution Professional’ takes charge for completing the corporate insolvency resolution process.*
- (iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court and finally pass order enabling the ‘Resolution Professional’ to complete the corporate insolvency resolution process.*

- (v) *If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.*
- (vi) *Any other circumstances which justifies exclusion of certain period.*

However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code.”

4. In the present case, as the Corporate Insolvency Resolution Process remained stayed for 55 days due to interim order passed by the Adjudicating Authority on 22.01.2018, which stood vacated on 19.03.2018, in view of order passed in the appeal, we are of the view that the Committee of Creditors/ Resolution Professional rightly requested the Adjudicating Authority to exclude 55 days from the total for the purpose of counting the period of 270 days, as the Committee of Creditors were going through the resolution plans submitted by one or other applicant.

5. In view of aforesaid fact, we direct the Adjudicating Authority to exclude 55 days for the purpose of counting the period of Corporate Insolvency Resolution Process. Therefore, we allow the Resolution Professional/ Committee of Creditors further 55 days of time with immediate effect i.e. 09.05.2018 to complete the Corporate Insolvency Resolution Process. This 55 days period will include the order as is required to be passed under Section 31 of the I&B Code, 2016.

6. The impugned order dated 18.04.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in I.A. 24/2018 in C.P. No.1061/2017 stands modified to the above extent. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc