

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 633 of 2019

(Arising out of Order dated 27th May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 1870, 1874 & 1875/2019 and 1873 of 2018 in C.P. (IB)-1767/(MB)/2017)

IN THE MATTER OF:

**Ramchandra D. Choudhary
Resolution Professional of
Maharashtra Shetkari Sugar Limited**

...Appellant

Vs.

**Committee of Creditors of
Maharashtra Shetkari Sugar Limited**

...Respondent

Present: For Appellant: - Mr. Shivanshu Kumar, Ms. Bhawna Jhorar and Mr. Vikky Dang, Advocates.

For Respondent:- None

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The 'Resolution Professional' of 'Maharashtra Shetkari Sugar Limited'- ('Corporate Debtor') filed application seeking exclusion of 145 days, i.e. the period between 30th August, 2018 to 23rd January, 2019, covering the period between the date of order of admission and the actual date on which the 'Resolution Professional' took charge for completing the 'Corporate Insolvency Resolution Process' to count the total period of 270 days.

2. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by order dated 27th May, 2019 rejected the prayer on the ground that after change of the 'Interim Resolution Professional' till the new 'Resolution Professional' was appointed, 'Interim Resolution Professional' was looking after the work of the 'Resolution Professional', therefore, there was no justification for the exclusion of the period as 'Interim Resolution Professional' was discharging his duties as 'Resolution Professional' for completion of the 'Corporate Insolvency Resolution Process'.

3. According to the Appellant, in the 2nd Meeting of the 'Committee of Creditors' held on 25th October, 2018 it was decided to replace Mr. R.K. Bhuta the then 'Interim Resolution Professional' with Mr. Ramchandra D. Choudhary as 'Resolution Professional', but due to lack of co-operation from the suspended management of the Company, the 'Resolution Professional' could not take over the charge of the management of the 'Corporate Debtor'.

4. For the said reason, the 'Resolution Professional' filed I.A. No. 1349 of 2018 before the Adjudicating Authority on 9th November, 2018 seeking directions against the suspended Directors of the 'Corporate Debtor' for extending their assistance in managing the affairs of the 'Corporate Debtor' and to provide necessary information. However, no such documents were handed over nor the management of the 'Corporate Debtor' and subsequently, pursuant to the decision of the 'Committee of

Creditors' dated 19th December, 2018, the suspended Board of Director Mr. Abhijit Deshmukh attended the meeting and reluctantly agreed to co-operate with the 'Interim Resolution Professional' in terms with the directions of the Adjudicating Authority and Mr. Ramchandra D. Choudhary was allowed to continue as 'Resolution Professional'.

5. On 16th January, 2019, the 'Interim Resolution Professional' placed his resignation before the 'Committee of Creditors' and explained them the circumstances about this ongoing assignment. After due consideration of the facts, the resignation of Mr. R.K. Bhuta was accepted and Mr. Ramchandra D. Choudhary was allowed to continue as 'Resolution Professional'.

6. On 5th Meeting of the 'Committee of Creditors' held on 6th February, 2019, it was observed that due to very less period of notice 'Expression of Interest' and completion of all formalities under the 'I&B Code' and as the 'Resolution Professional' was handed over the charge of the management much later, the 'Committee of Creditors' asked for exclusion of the period of 145 days. However, the same has been rejected.

7. Learned counsel for the Appellant- 'Resolution Professional' submitted that the Adjudicating Authority noticed the decision of this Appellate Tribunal in ***"Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. & Ors.— Company Appeal (AT) (Insolvency) No. 185 of 2018"***, at page 44, but failed to appreciate that this Appellate Tribunal

kept it open and made it clear that any other circumstances which justify the exclusion of a certain period can be taken into account. In the present case, it is stated that the erstwhile 'Resolution Professional' did not function for 145 days due to non-cooperation by the suspended Board of Directors. It is submitted that the period of 145 days is to be excluded as decided by the 'Committee of Creditors' so that they may consider the two 'Resolution Plans' pending consideration and can save the company from liquidation.

8. Notice was issued on Respondent- 'Committee of Creditors' as also the Promoters of the 'Corporate Debtor'. But in spite of service of notice, nobody appeared.

9. In the present case, the Adjudicating Authority noticed that the 'Interim Resolution Professional' could not function because of non-cooperation of the Promoters of the 'Corporate Debtor'. The records were not supplied to him nor the management was handed over. It was handed over much later i.e after 145 days and there being short time, 'Expression of Interest' etc. were called for much later.

10. Though the aforesaid fact has been noticed, the Adjudicating Authority on mere ground that the 'Interim Resolution Professional' continued in place of 'Resolution Professional', rejected the claim for exclusion of the period which was not justified. The Adjudicating

Authority has failed to notice that the Promoters did not supply records nor the management was handed over to 'Resolution Professional'.

11. Learned counsel for the 'Resolution Professional' submitted that there are two 'Resolution Plans' which are pending consideration before the 'Committee of Creditors'. If 270 days is counted and the period as sought for is not excluded, they have to file application under Section 33 for liquidation.

12. Reliance has been placed on decision of this Appellate Tribunal in ***"Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. & Ors.— Company Appeal (AT) (Insolvency) No. 185 of 2018"***, wherein this Appellate Tribunal observed:

"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."

13. In the present case, we find that the Promoters had neither handed over the records nor the management of the 'Corporate Debtor' to the 'Interim Resolution Professional' who continued for 145 days in spite of his replacement by the 'Resolution Professional', the 'Interim Resolution Professional' subsequently resigned because of non-cooperation from the Promoters.

14. The aforesaid facts have not been denied by the Promoters. In the facts and circumstances of the case, while we set aside the impugned order dated 27th May, 2019 passed by the Adjudicating Authority and exclude 90 days for the purpose of counting the period of 'Corporate Insolvency Resolution Process' of 270 days in place of 145 days to enable the 'Resolution Professional'/ 'Committee of Creditors' to complete the 'Corporate Insolvency Resolution Process' at an early date preferably within 45 days.

The appeal is allowed with aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI
24th July, 2019

AR