

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 1062 of 2019

IN THE MATTER OF:

R.P. of SEL Manufacturing Company Ltd.

...Appellant

Versus

**Committee of Creditors of SEL
Manufacturing Ltd. & Ors.**

...Respondents

Present:

For Appellant : **Mr. Abhinav Vashisth, Senior Advocate with
Ms. Anannya ghosh and Mr. Dushyant Manocha,
Advocates**

For 1st Respondent: **Mr. Arun Kathpalia, Senior Advocate with
Mr. Santanu Chaturvedi and Mr. Nikhil Mathur,
Advocates**

For 2nd Respondent : **Ms. Purti marwaha and Ms. Henna George,
Advocates**

O R D E R

13.11.2019 The ‘Corporate Insolvency Resolution Process’ was initiated against ‘SEL Manufacturing Company Limited’ (Corporate Debtor) on 11th April, 2018 pursuant to an application under Section 7 of the ‘Insolvency and Bankruptcy Code, 2016 (for short, ‘the I&B Code’) filed by the ‘State Bank of India’. During the pendency of the case, the ‘Promoters’ moved before the High Court of Punjab and Haryana. For certain reasons the matter could not proceed or has been stayed for one or other order passed by the Hon’ble Punjab and Haryana High Court and the Hon’ble Supreme Court. For the said reason, at the instance of ‘Committee of Creditors’, the ‘Resolution Professional’ filed an application before the Adjudicating Authority (National Company Law Tribunal),

Chandigarh Bench, Chandigarh for exclusion of more than 100 days. However, the Adjudicating Authority by impugned order dated 10th October, 2019 having rejected the prayer, the present appeal has been preferred.

The learned counsel appearing on behalf of the 'Resolution Professional' submits that a case for exclusion of period is made out in terms of the decision of this Appellate Tribunal in '*Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. & Ors.*' decided on 8th May, 2018 and similar period of exclusion has been passed by the Hon'ble Supreme Court but the Adjudicating Authority failed to notice the same.

The Respondent (Committee of Creditors) have appeared and supported the plea taken by the Learned counsel for the 'Resolution Professional'.

The learned Counsel appearing on behalf of the 'Neeraj Saluja' (Promoter) also appeared and has not disputed the relevant facts, as notice below.

From the record, we find that after admission of the application under Section 7, 'Neeraj Saluja' (Promoter) moved before this Appellate Tribunal in '*Company Appeal (AT) (Insolvency) No. 226 of 2018*'. In the said appeal on 21st May, 2018 notice was issued and allowed the 'Interim Resolution Professional' to ensure that a company remains a going concern. No interim order of stay of 'corporate insolvency proceedings' was passed.

Prior to filing of the appeal 'Neeraj Saluja' (Promoter) moved before the Hon'ble High Court of Punjab and Haryana wherein the interim order was passed on 1st May, 2018 in CWP No. 9131 of 2018 (O&M) prohibiting the 'Interim Resolution Professional' to take over the management. Subsequently, the Hon'ble High Court of Punjab and Haryana allowed the 'Neeraj Saluja' (Promoter) to avail the alternative remedy and, therefore, the appeal preferred before this

Appellate Tribunal. In the meantime, the interim order was extended by the Hon'ble High Court of Punjab and Haryana for another one week.

After the order of this Appellate Tribunal allowing the 'Interim Resolution Professional' to function 'Neeraj Saluja' (Promoter) moved before the Hon'ble High Court of Punjab and Haryana in CWP 15685 – 2018. In the said case, the Hon'ble High Court passed the interim order on 22nd June, 2018, relevant of which reads as follows:

“The present writ petition raises important question of law and vires of Banking Regulations Act and RBI instructions and circulars therein and keeping in view interest of workers and the banks, it is directed that corporate insolvency resolution process (CIRP) against respondent companies is kept in abeyance, the earlier board of directors of the respondent companies shall operate their bank accounts and bank operations as before initiation of CIRP to protect the interest of the bank consortium. It is directed that the Board of Directors will route all future revenues of the said respondent companies only through Trust and Retention Accounts. The salaries and vendors will be paid promptly through TRA account without delay. It is further directed that the petitioner will file undertaking on affidavit that the companies will not dispose off any immovable

property without permission of the court within three working days.

Notice of motion returnable by 07.09.2018.”

Subsequently, the said writ petition was transferred to Hon’ble Supreme Court of India and was tagged with another writ petition i.e. W.P. (C) No. 802 of 2018 which was pending before the Hon’ble Supreme Court. The case was renumbered as ‘Transfer Petition (c) No. 1116 of 2018 wherein the Hon’ble Supreme Court passed an interim order on 13th July, 2018, which reads as under :

“Upon hearing the counsel the court made the following

O R D E R

Issue notice.

Interim protection granted by the High Court vide its order dated 22.06.2018 to continue, in the meantime.

Tag with W.P. (C) No. 802 of 2018.”

The interim order was allowed to be continued by the Hon’ble Supreme Court by order dated 29th December, 2018. Finally, the Transfer Case (Civil) No. 16 of 2019 was withdrawn by ‘Dhiraj Saluja’ another ‘Promoter’ on 6th September, 2019 and the said case was dismissed as withdrawn. In the result the interim order should be vacated.

Though the aforesaid facts were noticed by the Adjudicating Authority and not disputed by the learned counsel appearing on behalf of the ‘Promoter’, the

impugned order rejecting the period of exclusion which may result into 'Liquidation'.

Taking into consideration the fact that the matter was pending before the Hon'ble High Court of Punjab and Haryana and before the Hon'ble Supreme Court for about more than one year and because of interim order of stay, the matter could not proceed, we hold that it is a fit case for exclusion of certain period.

For the reason aforesaid instead of granting the total period of exclusion we allow 90 days period of exclusion for completion of the resolution process. 90 days period will be counted from the date of issuance of the certified copy of this order. Out of 90 days, 60 days' time is allowed to the 'Resolution Professional' and 'Committee of Creditors, who may call for the fresh plan or revised plan from eligible 'Resolution Applicant' and will consider the same and pass appropriate order and will place the matter before the Adjudicating Authority. The Adjudicating Authority is allowed approximately 10 days' time to pass final order. Total process is to be completed within 70 days. Rest 20 days will be for determination, if any, issue raised by any one or other party.

The Appeal is allowed with aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)

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