

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) Insolvency No. 699-700 of 2023**

**In the matter of:**

**Bhrugesh Amin,**

Resolution Professional of  
Smaaash Entertainment Private Limited  
BDO Restructuring Advisory LLP,  
Level 9, the Ruby, Northwest Wing,  
Senapati Bapat Marg, Dadar West,  
Mumbai – 400028

**.... Appellant**

**IN THE MATTER OF:**

**Edelweiss Asset Reconstruction Company**

**...Financial Creditor**

Having its office at: Edelweiss House, Window LN,  
MMRDA Area, Kalina, Bandra East,  
Mumbai - 400098

**Versus**

**Smaaash Entertainment Private Limited**

**... Corporate Debtor**

404, Udyog Mandir No. 2, Mogul Lane,  
Mahim (West) Mumbai 400016

**Present:**

**For Appellant** : Mr. Krishnendu Datta, Sr. Advocate with Ms. Avni Sharma, Ms. Aishna Jain, Ms. Varsha Himatsingka, Advocates for R-1

**For Respondents** : Mr. Abhijeet Sinha and Mr. Abhirupdas Gupta, Mr. Aditya Shukla, Mr. Ishaan Duggal, Ms. Mukta Halbe, Advocates

**With**

**Company Appeal (AT) Insolvency No. 870 of 2023**

**IN THE MATTER OF:**

**Kalpana Morakhia,**

**...Appellant**

Suspended Director of Smaaash Entertainment Private  
Limited

6A2, Prithvi Apartments, Altamount Road, Mumbai,  
Maharashtra 400026

**Versus**

**Bhrugesh Amin,**  
Resolution Professional of  
Smaaash Entertainment Private Limited

**...Respondents**

BDO Restructuring Advisory LLP,  
Level 9, the Ruby, Northwest Wing,  
Senapati Bapat Marg, Dadar West,  
Mumbai – 400028  
Email; [bhrugeshamin@bdo.in](mailto:bhrugeshamin@bdo.in)

**Present:**

**For Appellant** : Mr. Abhijeet Sinha and Mr. Abhirupdas Gupta, Mr. Aditya Shukla, Mr. Ishaan Duggal, Ms. Mukta Halbe, Advocates

**For Respondents** : Mr. Krishnendu Datta, Sr. Advocate with Ms. Avni Sharma, Ms. Aishna Jain, Ms. Varsha Himatsingka, Advocates for R-1  
Mr. Kaushik M., Advocate for Edelweiss ARC

**J U D G M E N T**

**ASHOK BHUSHAN, J:**

1. These two Appeals relating to extension of period of Corporate Insolvency Resolution Process (**CIRP** in Short) of the Corporate Debtor- Smaaash Entertainment Private Limited have been heard together and are being decided by this common Judgment.

2. Company Appeal (AT) Insolvency No. 699-700 of 2023 has been filed by the Bhrugesh Amin- Resolution Professional challenging the Order dated 10<sup>th</sup> April, 2023 by which I.A. No. 1075 of 2023 filed by the Resolution Professional has been partly allowed excluding the period of 30 days from

13.02.2023 to 13.03.2023 and extending the period of 30 days from 02<sup>nd</sup> April, 2023 to 02<sup>nd</sup> May, 2023.

**3.** Company Appeal (AT) Insolvency No. 870 of 2023 has been filed by Kalpana Morakhia-Suspended Director of the Corporate Debtor challenging the Order dated 13<sup>th</sup> June, 2023 by which order I.A. No. 1679 of 2023 filed by the Resolution Professional praying for exclusion of 262 days in the CIRP period has been allowed.

**4.** In, Company Appeal (AT) Ins. No. 699-700 of 2023, an Intervention Application has also been filed by the Fun Gateway Arena Private Limited being I.A. No. 2783 & 2784 of 2023.

**5.** Brief facts of the case giving rise to these Appeals under consideration are as follows:

- a. On an Application filed by the Financial Creditor-Edelweiss Asset Reconstruction Company Limited under Section 7 of I&B Code, 2016, CIRP against the Corporate Debtor-Smaaash Entertainment Private Limited commenced by Order dated 06<sup>th</sup> May, 2022. The Committee of Creditors confirmed the appointment of Bhrugesh Amin as Resolution Professional. Form-G was issued by Resolution Professional on 19<sup>th</sup> July, 2022.
- b. On 25<sup>th</sup> July, 2022, the Resolution Professional filed an Application being I.A. No. 2115 of 2022 seeking cancellation and annulment of 2022 Assignment Agreement made by the Corporate Debtor in favour of the Fun Gateway Arena Private Limited.

- c. The Adjudicating Authority vide its Order dated 1<sup>st</sup> November, 2022 allowed application for extension of time filed by the Resolution Professional of 90 days and 60 days from 02<sup>nd</sup> November, 2022 and 31<sup>st</sup> January, 2023.
- d. A Civil Appeal No. 781 of 2023 was filed by the Kalpana Morakhia-Suspended Director of the Corporate Debtor in which an Interim Order was passed on 13<sup>th</sup> February, 2023 by Supreme Court which Civil Appeal came to be dismissed on 13<sup>th</sup> March, 2023. The CoC in its meeting dated 14<sup>th</sup> March, 2023 resolved that Resolution Professional to file an Application seeking exclusion of the time on account of pendency of Brand Application and further exclusion of 30 days during which the CIRP could not proceed. In pursuance of the Resolution of the CoC, an I.A. No. 1075 of 2023 was filed by the RP praying for exclusion of 232 days from 25<sup>th</sup> July, 2022 to 14<sup>th</sup> March, 2023 and further in alternative exclusion of 30 days from 13<sup>th</sup> February, 2023 to 13<sup>th</sup> March, 2023. I.A. No. 1075 of 2023 came for consideration before the Adjudicating Authority and Adjudicating Authority vide Order dated 10<sup>th</sup> April, 2023 partly allowed the Application granting exclusion of only 30 days during which proceedings were stayed by the Hon'ble Supreme Court. Aggrieved by the order dated 10<sup>th</sup> April, 2023, Resolution Professional has filed Company Appeal (AT) Ins. No. 699-700 of 2023.
- e. As per the extension granted by the Adjudicating Authority on 10<sup>th</sup> April, 2023, CIRP Period was coming to an end on 2<sup>nd</sup> May, 2023. An

I.A. No. 1679 of 2023 was filed by the Resolution Professional on 27<sup>th</sup> April, 2023 seeking exclusion of 262 days from the CIRP period. Vide Order dated 13<sup>th</sup> June, 2023, the Adjudicating Authority allowed I.A. No. 1679 of 2023 granting exclusion of 262 days for the CIRP of the corporate debtor. Kalpana Morakhia-Suspended Director of the Corporate Debtor aggrieved by the order dated 13<sup>th</sup> June, 2023, has filed Company Appeal (AT) Ins. No. 870 of 2023.

**6.** We have heard Learned Sr. Counsel-Mr. Krishnendu Datta appearing for the Resolution Professional, Mr. Abhijeet Sinha, Learned Counsel on behalf of Kalpana Morakhia-Suspended Director of the Corporate Debtor as well as Learned Counsel appearing for the Financial Creditor.

**7.** Learned Sr. Counsel-Mr. Krishnendu Datta appearing for the Resolution Professional submits that the Adjudicating Authority committed error in not granting the exclusion of period of 232 days as was prayed in I.A. No. 1075 of 2023. The Adjudicating Authority only granted 30 days period which was prayer 'b' which was period during which Hon'ble Supreme Court has stayed the CIRP Process. The Adjudicating Authority did not consider the prayer of exclusion of 232 days which was period during which brand application was pending before the Adjudicating Authority. The Resolution Professional has challenged the said order in C.A. (AT) Ins. No. 699-700 of 2023. It is submitted that the Corporate Debtor with ulterior motive few days prior to initiation of CIRP on 19<sup>th</sup> April, 2022 executed two agreements in favour of Fun Gateway Arena Private Limited for amount of Rs. 1.5 Crore consequently the Resolution Professional filed an Application

for annulment of the assignment which application continued to be pending before the Adjudicating Authority in spite of several hearings the suspended directors on one or other pretext delayed disposal of said application. It is submitted that on account of assignment of Brand of the corporate debtor in the resolution of the corporate debtor substantial value is not being offered by the Resolution Applicants. It is submitted that since the Adjudicating Authority by the Impugned order, only 30 days period was excluded on 10<sup>th</sup> April, 2023, RP filed another application I.A. No. 1679 of 2023 praying for exclusion of 262 days which has rightly been allowed by the Adjudicating Authority vide Order dated 13<sup>th</sup> June, 2023. Kalpana Morakhia has no locus to challenge the Order dated 13<sup>th</sup> June, 2023. The running of CIRP is under the CoC and CoC having resolved to seek extension, Suspended Director have no jurisdiction to challenge such extension. Company Appeal (AT) Ins. No. 870 of 2023 deserves to be dismissed on this ground alone. It is further submitted that motive of the Suspended Director is to push the Corporate Debtor into Liquidation whereas objective of the CIRP is to revive the Corporate Debtor, which is a possibility since several Resolution Applicants have expressed their interests in response to Form – G. It is further submitted that Application for avoidance has also been heard now by the Adjudicating Authority and reserved for the Judgment on 13<sup>th</sup> July, 2023. The period extended by the Adjudicating Authority is up to December, 2023 during which time the Resolution Process shall be successfully completed.

**8.** Mr. Abhijeet Sinha, Learned Counsel appearing for the Suspended Director of the Corporate Debtor submits that the Adjudicating Authority

having rejected to grant exclusion of 232 days i.e. period during which Brand Applications remained pending before the Adjudicating Authority on the same ground I.A. No. 1679 of 2023 could not have been filed. The Order dated 10<sup>th</sup> April, 2023 shall operate as *res judicata* for consideration and deciding Application I.A. No. 1679 of 2023 and Adjudicating Authority committed error in allowing the I.A. No. 1679 of 2023 by its order dated 13<sup>th</sup> June, 2023 which Application was clearly barred by *res judicata*. A party cannot be permitted to re-agitate an issue which has already been decided by this Court in garb of another Application. It is submitted that extension of time beyond 330 days is not permissible. Learned Counsel for the Respondent has also placed reliance on Judgment of Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors., (2020) 8 SCC 531** to contend that it is only an exceptional circumstance that period beyond 330 days can be extended. There were no exceptional circumstances in the present case so as to grant extension of 262 days and extension of period shall result in increasing CIRP Cost.

**9.** We have considered the submissions of Learned Counsel for the parties and have perused the record.

**10.** We need to first consider the submission of Learned Counsel for the Suspended Director that I.A. No. 1679 of 2023 was not maintainable in view of the Order dated 10<sup>th</sup> April, 2023 granting exclusion of only 30 days and refusing to exclude the period of 232 days.

**11.** In I.A. No. 1075 of 2023, the Resolution Professional has made the following prayers:

*“a. Permit an exclusion of 232 days i.e. from July 25, 2022 to March 14, 2023, being the pendency of I.A. No. 2115/2022 before this tribunal and consequently extend the last date of CIRP period from April 02, 2023 to November 20, 2023;*

*b. In the alternative to prayer clause (a), permit an exclusion of 30 days i.e. from February 13, 2023 to March 13, 2023 i.e. period of operation of the order dated February 13, 2023 in Civil Appeal No. 781 of 2023 and consequently extend the last date of CIRP period from April 2, 2023 to May 2, 2023.*

*c. Grant liberty to the Applicant to approach this Hon’ble Tribunal on a later date, if the need so arises, for seeking exclusion of time spent in adjudication of the proceedings before this Hon’ble Tribunal or any further appeal arising from the same;*

*and,*

*d. pass such order or orders as this Hon’ble Tribunal deems fit in the circumstances of the case in the interest of justice.”*

**12.** In the Order dated 10<sup>th</sup> April, 2023 passed on I.A. No. 1075 of 2023, the observations of the Adjudicating Authority are contained in only one paragraph which is the following effect:

*“After hearing the submissions of counsel appearing for the Resolution Professional/Applicant, this bench feels that this is a fit case for allowing the above application. Accordingly, the above application is partly allowed in terms of prayer clause ‘b’ excluding the period of 30 days*



*from 13.02.2023 to 13.03.2023 and extending the period  
from 02.04.2023 to 02.05.2023.”*

**13.** When we look into the above observation, it is clear that the Adjudicating Authority observed that it is a fit case for allowing the application however while passing the operative order, the Adjudicating Authority observed that Application is partly allowed in term of prayer ‘b’ excluding period of 30 days, there is no consideration of the prayer ‘a’ which was for the exclusion of 232 days i.e. period during which Brand Applications are pending consideration before the Adjudicating Authority. Company Appeal (AT) Ins. No. 699-700 of 2023 have been filed by the Resolution Professional challenging the said order dated 10<sup>th</sup> April, 2023. Learned Counsel for the Resolution Professional is correct in its submission that there is no consideration in order dated 10<sup>th</sup> April, 2023 regarding exclusion of 232 days hence the subsequent application filed by the RP being I.A. No. 1679 of 2023 cannot be said to be barred by any principle of *res judicata* when the Adjudicating Authority did not enter into issue or decide the issue of exclusion of 232 days, question of *res-judicata* shall not be applicable.

**14.** Furthermore, as noted above, the observation of the Adjudicating Authority is in favour of Resolution Professional that it is a fit case for allowing the above application. There is no reason as to why Resolution Professional was not entitled for exclusion of 232 days period hence the Order cannot be read to mean that Adjudicating Authority considered and rejected the prayer ‘a’ of the Appellant for exclusion of 232 days.

**15.** We thus are of the view that while passing the order dated 10<sup>th</sup> April, 2023, the Adjudicating Authority erred in not considering the case of the Appellant for exclusion of 232 days and to the above extent, the Order dated 10<sup>th</sup> April, 2023 cannot be approved. We thus are of the view that in so far as partly allowing the application for exclusion of 30 days vide order dated 10<sup>th</sup> April, 2023 has to be upheld however it is held that the Adjudicating Authority erred in not considering the exclusion of period of 232 days in the impugned order which was specifically prayed for as prayer “a”. Thus the order dated 10<sup>th</sup> April, 2023 cannot be read to mean that the Adjudicating Authority has considered and rejected the exclusion of 232 days. The Order date 10<sup>th</sup> April, 2023 shall thus not preclude filing of any application by RP for exclusion on the basis of pendency of Brand Applications. Company Appeal (AT) Ins. No. 699-700 of 2023 is thus deserved to be partly allowed to the above extent.

**16.** Now we come to the Company Appeal (AT) Ins. No. 870 of 2023 which has been filed by the Suspended Director of the Corporate Debtor. The Adjudicating Authority by the Impugned Order has granted exclusion of 262 days which is the period claimed by the RP during which I.A. No. 2115 of 2022 filed by the RP remained pending before the Adjudicating Authority.

**17.** In Paragraph 5,6,7 and 8 of the Order, the Adjudicating Authority has noted the submissions of Resolution Professional which are to the following effect:

*“5. Further the Applicant noted that, as a dilatory tactic to delay the hearing of I.A. No. 2115 of 2022, the erstwhile promoters of the Corporate Debtor have regularly*

*filed frivolous applications seeking a stay on the CIRP or the hearing of the said application. Furthermore, it appears that the fresh applications are filed just a few days before I.A. No. 2115/2022 is listed before this Hon'ble Tribunal for hearing, in an attempt to deflect an effective hearing.*

*6. It is evident that the erstwhile promoters of the Corporate Debtor have regularly sought to derail the effective hearing and adjudication of the I.A. No. 2115/2022.*

*7. The Applicant further submits that, the I.A. 2115/2022 was listed on April 20, 2023 wherein the Respondents once again sought an adjournment to complete pleadings. Considering the past conduct of the erstwhile management of the Corporate Debtor, the Appellant is under the apprehension that the Corporate Debtor may further continue to delay the effective adjudication of the Brand Application.*

*8. Furthermore, the CIRP of the Corporate Debtor is slated to expire on May 2, 2023 and given the fact that the CIRP of the Corporate Debtor cannot reach a definitive conclusion until the I.A. No. 2115 of 2022 is decided, the Applicant will be severely prejudiced if the present exclusion is not allowed. In such circumstances, the Applicant is filed the present application.”*

**18.** Adjudicating Authority came to the conclusion that Brand Name of the Corporate Debtor is substantial asset which has bearing on the completion of the CIRP Process. The Adjudicating Authority thus satisfied that present is a case where exclusion of 262 days should be allowed. In paragraph 11 of the Judgment, following has been observed:

*“After hearing the submissions of the learned counsel appearing for the Resolution Professional, this Tribunal is*

*in complete agreement with the submission that the Brand of the Corporate Debtor is the only substantial asset which has a bearing for completion of the CIRP Process and if I.A. 2115/2022 which was filed for challenging the assignment of the Brand by the Ex-Promoters and Directors is allowed, there is every possibility of getting more resolution plans and the CIRP can be successfully completed. Therefore, having convinced with the submissions of the counsel appearing for the Resolution Professional and also keeping in mind the law laid down by the Hon'ble Supreme Court cited supra, this Tribunal is inclined to allow the above application."*

**19.** Learned Counsel for the Resolution Professional has submitted during the course of the submission that Brand Application has now been heard and reserved on 13<sup>th</sup> July, 2023. From the brief facts which have been brought on record it is clear that Form-G was issued thrice and in response to 2<sup>nd</sup> and 3<sup>rd</sup> Form-G, Several Resolution Applicants have expressed their interests. The submission of Learned Counsel for the Resolution Professional is that due to uncertainty about decision of the Brand Application in the plans substantial value have not been submitted. The Adjudicating Authority has further noticed submission that it is the suspended directors who are delaying the disposal of the Brand Application. In facts of the present case, exclusion of 262 days in completion of CIRP cannot be faulted.

**20.** Learned Counsel for the Suspended Director has relied on judgment of Hon'ble Supreme Court in **"CoC of Essar Steel India Limited"** wherein paragraph 127 following has been held:

“127. Both these judgments in *Atma Ram Mittal and Sarah Mathew* have been followed in *Neeraj Kumar Sainy v. State of Uttar Pradesh* (2017) 14 SCC 136 at paragraphs 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant’s case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date - without any exception thereto - may well be an excessive interference with a litigant’s fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant’s fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from *Madras Petrochem* (supra). Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating

*Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.”*

**21.** There can be no dispute to the proposition that CIRP has to be concluded within 330 days. But above judgment of the Hon’ble Supreme Court clearly lays down that in exceptional circumstances the period can be extended. The present is a case where for resolution of the corporate debtor, Form-G has been issued thrice and in response to 2<sup>nd</sup> and 3<sup>rd</sup> time, resolution plans have been received. Sequence of events also indicates that

ex-directors of the corporate debtor has filed application for staying the CIRP and has also filed transfer application and filed a Civil Appeal in the Supreme Court. The intent of the Suspended Director is to send the Corporate Debtor into Liquidation as is clear from the grounds of the Company Appeal (AT) Ins. No. 870 of 2023. The grounds have been taken by the Appellant i.e. Suspended Director under the heading at page 53, “Re: Continuation of the CIRP would cause further deterioration to the value of the assets of the Corporate Debtor and Liquidation being the only viable way forward.”

**22.** Thus the intent of Suspended Director is clear that Corporate Debtor be sent to the Liquidation which is a reason that suspended director are challenging the exclusion of 262 days. The object of CIRP process is to revive the Corporate Debtor and with that intent in mind if the Adjudicating Authority has granted exclusion of 262 days for completing the CIRP, we see no reason to interfere with the said order.

**23.** We may further notice that against the Order dated 13<sup>th</sup> June, 2023 granting exclusion of 262 days, C.A.(AT) Ins. No. 838 of 2023 was filed by Fun Gateway Arena Pvt. Ltd. which is an entity to whom the Corporate Debtor has assigned the Brand which is under consideration in the avoidance application. It was held on the said appeal that Appellant cannot raise any grievance regarding exclusion of 262 days. Paragraph 3 of the Judgment dated 07<sup>th</sup> July, 2023 by this Tribunal is as follows:

*“3. We are of the view that in so far as the exclusion allowed by the Adjudicating Authority, the Appellant*

*cannot raise any grievance and in so far as it excludes the 262 days, does not warrant any interference.”*

**24.** In result of the foregoing discussions, we decide the above appeals in following manner:

- i. Company Appeal (AT) Ins. No. 699-700 of 2023 is disposed of upholding the order dated 10<sup>th</sup> April, 2023 in so far grant of exclusion of 30 days is concerned. It is held that Adjudicating Authority did not consider and decide the prayer ‘a’ of Resolution Professional for exclusion of 232 days.
- ii. Company Appeal (AT) Ins. No. 870 of 2023 is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Mr. Barun Mitra]  
Member (Technical)**

**New Delhi  
18<sup>th</sup> August, 2023**

*Basant B*

*Company Appeal (AT) Ins. No. 699-700, 870 of 2023*