

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1173 of 2024

&

I.A. No. 4190, 4191 of 2024

[Arising out of order dated 06.06.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Ahmedabad, Division Bench, Court – 1),
in IA/769 (AHM)/2024 in C.P. (IB) & Pre-Packaged/1 (AHM) 2023]

IN THE MATTER OF:

Mr. Vikash Gautamchand Jain

Resolution Professional of
M/s. Kethos Tiles Private Limited

Having Address at: 204, Wall Street-I,
Near Gujarat College, Opp. Orient Club,
Ellisbridge, Ahmedabad,
Gujarat-380006

...Appellant

Present:

For Appellant : Mr. Sunil Fernandes, Sr. Advocate with Ms. Honey Satpal, Mr. Nipun Singhvi, Ms. Rajshree Chaudhary, Ms. Diksha Dadu, Mr. Vishal J. Dave, Ms. Nandini Choudha and Mr. Yash Dhyani, Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 1323 of 2024

[Arising out of order dated 06.06.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Ahmedabad, Division Bench, Court – 1),
in IA/769 (AHM)/2024 in C.P. (IB) & Pre-Packaged/1 (AHM) 2023]

IN THE MATTER OF:

Kritish Patel

Promoter of Kethos Tiles Private Limited

Having its Address at:
Survey No.111, 112, 119 (P)
At Gulab Ni Muvadi
Ahmedabad-Modasa Highway,
Nr. Salatpur Chokadi,
Talod Sabar, Kantha-383215

...Appellant

Versus

Mr. Vikash Gautamchand Jain

Resolution Professional of
M/S. Kethos Tiles Private Limited

Having Address at: 204, Wall Street-I,
Near Gujarat College,
Opp. Orient Club,
Ellisbridge, Ahmedabad,
Gujarat-380006

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Shamik Sanjanwala, Mr. Raheel Patel, Mr. Prabhakar Yadav and Mr. Abhishek J., Advocates.

For Respondents : Mr. Sunil Fernandes, Sr. Advocate with Ms. Honey Satpal, Mr. Nipun Singhvi, Ms. Rajshree Chaudhary, Ms. Diksha Dadu, Mr. Vishal J. Dave, Ms. Nandini Choudha and Mr. Yash Dhyani, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeals have been filed against the same Order dated 06.06.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad, Division Bench, Court – I) by which Order, I.A. No. 769/(AHM)/2024 filed by the Resolution Professional ('RP') praying for extension of period of Pre-Package Insolvency Resolution Process ('PPIRP') for 60 days has been rejected.

2. *Comp. App. (AT) Ins. No. 1173/2024* has been filed by the RP of Kethos Tiles Pvt. Ltd. and *Comp. App. (AT) Ins. No. 1323/2024* has been filed by the Promotor of Kethos Tiles Pvt. Limited.

3. Brief facts necessary for deciding these Appeals are:

- i. M/s. Kethos Tiles Pvt. Ltd., a Micro Small & Medium Enterprises ('MSME') had filed an Application under Section 54C of Insolvency and Bankruptcy Code, 2016, (for short 'The IBC') to initiate PPIRP of the Corporate Debtor.
- ii. The Adjudicating Authority vide Order dated 04.01.2024, initiated PPIRP of the Corporate Debtor. Vikas Gautam Chand Jain was appointed the Resolution Professional to conduct PPIRP.
- iii. In pursuance of the Order passed by the Adjudicating Authority, the RP initiated PPIRP by making public announcement dated 06.01.2024, Committee of Creditors ('CoC') was constituted. Publication was issued for initiation of Resolution Plan. Several other steps were taken in the PPIRP.
- iv. 3rd Meeting of the CoC was held on 30.04.2024. Members of the CoC stated that revised base Resolution Plan submitted by the Corporate Debtor is under consideration. CoC noted that 120 days period of PPIRP is coming to an end on 03.05.2024. The CoC by resolution passed with 91.75% vote, authorised RP to file an Application for extension of 60 days the PPIRP.
- v. The RP filed an Application for extension of time of PPIRP period by 60 days.
- vi. Adjudicating Authority on 03.06.2024, asked the Learned Counsel for the RP to provide the provision of law under which extension of PPIRP is possible.

- vii. It was submitted by the RP that there are no express provision in the Code, but there are certain precedent from the coordinate Benches of the Adjudicating Authority where extension of time was allowed.
- viii. Adjudicating Authority heard the Learned Counsel for the RP and took the view that as per Section 54D(3) of IBC if no Resolution Plan is approved by the CoC, RP to file Application for termination of PPIRP. Adjudicating Authority took the view that Section 12 of IBC is not applicable in the PPIRP proceedings. Adjudicating Authority took the view that no Resolution Plan has been approved within 120 days, the RP was required to file an Application for termination of proceedings which has not been done by the RP. Adjudicating Authority by the Impugned Order has terminated the PPIRP by rejecting the I.A. 769/(AHM)/2024.

4. Aggrieved by the said, both RP and Suspended Director of the Corporate Debtor has filed these two Appeals.

5. We have heard Mr. Sunil Fernandes Learned Sr. Counsel appearing for the RP and Mr. Abhijeet Sinha Learned Sr. Counsel appearing for the Promotor of the Corporate Debtor.

6. Submission advanced by the Learned Counsel for the Appellant in both the Appeals being common, we notice the submissions as submissions of Counsel for the Appellant.

7. Counsel for the Appellant submits that Adjudicating Authority failed to consider that Application for extension was filed by the RP pursuant to

resolution passed by the CoC. It is submitted that provisions of Section 54D providing for completion of PPIRP cannot be read as mandatory, automatically terminating the PPIRP. It is submitted that the Scheme of the Code itself indicate that Court has to pass Order for termination of proceeding on an Application filed by the RP. When the Court has been given power to pass an Order for terminating the process, there is no concept of automatic termination of PPIRP and Court cannot be held to lack jurisdiction to extend the period of PPIRP for reasonable period on valid grounds. It is submitted that IBC contains various provisions which uses the expression “shall” but the Hon’ble Supreme Court and this Tribunal while interpreting the said provisions have held the provisions as directory. Learned Counsel for the Appellant has referred to provisions of Section 7(5) proviso, Section 9(5) proviso and Section 10(4) proviso, which uses expression “shall”. It is submitted that Hon’ble Supreme Court held the said provisions directory. Learned Counsel for the Appellant referred to various other provisions of IBC and the Regulations which although used the expression “shall” but have been held to be directory. It is submitted that the same interpretation has to be put to Section 54D also and the Court is not denuded from its jurisdiction to extend the period of completion of PPIRP for reasonable period. It is submitted that statute does not provide for an automatic termination on expiry of 120 days.

8. As noted above, submissions of Counsel for the RP as Counsel for the Promotor have been one of the same, they are being considered together.

9. In the IBC, Chapter III–A “PPIRP was inserted by UP Act 26/2021 with effect from 04.04.2021”. It is relevant to notice the statement of objects and reasons of the Bill which became Act 26/2021. Statement of objects and reasons are as follows:

“An Act further to amend the Insolvency and Bankruptcy Code, 2016.

Be it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:-

Statement of Objects and Reasons. – *The Insolvency and Bankruptcy Code, 2016, was enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, individuals and to achieve the desired objectives under it. The Code was amended in the past to deal with the emerging market realities and to achieve certainty to the various processes under the law.*

2. COVID-19 pandemic has impacted businesses, financial markets and economies all over the world, including India. The Government has been taking several measures to mitigate the distress caused by the pandemic, inter alia, increasing the minimum amount of default to one crore rupees for initiation of corporate insolvency resolution process and suspension of filing of corporate insolvency resolution applications in respect of the defaults arising during the period of one year between 25th March, 2020 and 24th March, 2021. The Micro, Small and Medium Enterprises sector is critical to the economy considering their significant contribution to our gross domestic product and generation of employment to a sizeable population. It has, therefore, been considered necessary to urgently address the specific requirements of the sector by providing an efficient and alternative framework under the Code for quicker, cost-effective insolvency resolution process that is least disruptive the business, ensuring, among other objectives, job preservation.

3. In the aforesaid circumstances, it has become necessary to amend the Code to provide for pre-packaged insolvency resolution process. However, as

the Parliament was not in session and immediate action was required to be taken, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, was promulgated by the President on the 4th day of April, 2021.

4. The Insolvency and Bankruptcy Code (Amendment) Bill, 2021, that seeks to replace the Ordinance, inter alia, provides for –

(a) specifying a minimum threshold of not more than one crore rupees for initiating pre-packaged insolvency resolution process;

(b) disposal of simultaneous applications for initiation of corporate insolvency resolution process and pre-packaged insolvency resolution process, pending against the same corporate debtor;

(c) inserting a new Chapter III-A containing sections 54-A to 54-P to facilitate pre-packaged insolvency resolution process for corporate persons that are Micro, Small and Medium Enterprises;

(d) penalty for fraudulent or malicious initiation of pre-packaged insolvency resolution process or with intent to defraud persons;

(e) penalty for fraudulent management of corporate debtor during pre-packaged insolvency resolution process;

(f) punishment for offences related to pre-packaged insolvency resolution process; and

(g) certain amendments to the relevant provisions, which are consequential in nature.

5. The Bill seeks to achieve the above objectives.”

10. From the statement of objects and reasons of the enactment, it is clear that said Amendment has been brought to provide for efficient and alternate framework for MSME sector, which is clear from Para 4 (c) of the statement of objects and reasons.

11. Now we come to Section 54D which has come up for consideration in this case. Section 54A deals with Corporate Debtors eligible for PPIRP. Section 54B deals with duties of Insolvency Professional before initiation of PPIRP. Section 54C provides for initiation of PPIRP. Section 54D deals with time limit for completion of PPIRP, which provides as follows:

“54D. Time-limit for completion of pre-packaged insolvency resolution process.–

(1) The prepackaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or sub-section (12), as the case may be, of section 54K, within a period of ninety days from the prepackaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.”

12. Section 54E to 54L deals with various steps which are to be taken in PPIRP leading to approval of Resolution Plan by the Adjudicating Authority. Section 54N deals with termination of PPIRP which also needs to be noticed, which is as follows:

“54N. Termination of prepackaged insolvency resolution process.–

(1) Where the resolution professional files an application with the Adjudicating Authority,-

(a) under the proviso to sub-section (12) of section 54K; or

(b) under sub-section (3) of section 54D, the Adjudicating Authority shall, within thirty days of the date of such application, by an order,-

(i) terminate the pre-packaged insolvency resolution process; and

(ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

(2) Where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under sub-section (4) or sub-section (12), as the case may be of section 54K, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by a vote of not less than sixty-six per cent. of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1).

(3) Where the Adjudicating Authority passes an order under sub-section (1), the corporate debtor shall bear the pre-packaged insolvency resolution process costs, if any.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the pre-packaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order-

(a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.”

13. The provisions of Section 54D(1) provide PPIRP **shall be completed** within a period of 120 days from the PPIRP commencement date. Sub-Section (3) of Section 54D further provides when no Resolution Plan is approved by the CoC within time period referred to in sub-Section (ii) RP **shall, on the day after the expiry of such period,** file an Application with the Adjudicating Authority for termination of PPIRP.

14. The question to be answered in this Appeal is as to whether maximum time period of 120 days provided for completion of process is mandatory and on completion of the time period, the PPIRP has to be terminated and after 90 days in event, the Resolution Plan was not approved, RP has to file an Application for termination of the proceeding.

15. Section 54D and Section 54N which we have noted above clearly indicates that termination of PPIRP happens after an Order is passed by the Adjudicating Authority. The statute makes one thing clear that there is no concept of automatic termination of PPIRP after expiry of 120 days. No exception, can be taken for providing 120 days of completion of PPIRP. Since all IBC process have timelines, which have its own importance. Completion of process in a timeline has its own object and purpose. It is well settled that by passing time the value of Corporate Debtor diminishes and for maximisation of Assets of the Corporate Debtor timely Resolution is desired by the IBC. The said principle is also reflected in the Scheme of Section 54D but the question to be answered is as to whether in appropriate case, Adjudicating Authority can exercise jurisdiction for extension of time or the Application for extension of time has to be rejected as in the present case.

16. It is relevant to notice that in the present case, base Resolution Plan was submitted by the Corporate Debtor which was up for consideration and the revised base Resolution Plan was also submitted before the Adjudicating Authority. Adjudicating Authority itself noted in Paragraph 4 of the Order various works which have been carried out in the PPIRP. In Paragraph 5, it was noted by the Adjudicating Authority that CoC in its 3rd Meeting held on 30.04.2024 resolved with 91.75% both to file an Application for extension of time for 60 days. In Paragraphs 5 & 6 of the Impugned Order following has been noticed:

“5. It is stated that the RP called 3rd meeting of CoC on 30.04.2024. The members of CoC stated that revised base resolution plan submitted by the Corporate Debtor is under consideration. In the said meeting, the CoC noted that the period of PPIRP comes to an end on expiry of 120 days from the date of admission of PPIRP. The CoC further noted that period of PPIRP was expired on 03.05.2024 and the CoC requested the RP to file an application seeking extension of PPRIP period of 60 days. The resolution for seeking extension of PPIRP period was passed with 91.75% voting on 02.05.2024 by E-voting. A copy of 3rd CoC meeting and copy of e-voting is annexed as Annexure- C and Annexure D respectively.

6. In view of the above, the Applicant has filed this application seeking extension of time of PPIRP period by 60 days after the date of completion of PPIRP (120 days) i.e., on 03.05.2024.”

17. It is thus clear that Application which was filed by the RP before the Adjudicating Authority was on the strength of resolution passed by the CoC in its 3rd CoC Meeting held on 30.04.2024. The CoC, in its 3rd CoC Meeting has noticed that revised base Resolution Plan submitted by the Corporate Debtor is under consideration of the CoC.

18. Now we need to look into the various Judgments of the Hon'ble Supreme Court and this Tribunal where different provisions in the IBC and the CIRP Regulations, 2016, came for consideration. We may first notice the Judgment of the Hon'ble Supreme Court in the matter of '**Surendra Trading Company' Vs. 'Juggilal Kamlapat Jute Mills Company Ltd. & Ors.'**' reported in **(2017) 16 SCC 143**. The Hon'ble Supreme Court in the above case had occasion to consider the provisions of Section 7(5) proviso, Section 9(5) proviso and Section 10(4) proviso. The question for consideration was that Section 7(5) proviso obliged the Adjudicating Authority to give a notice to the Applicant to rectify the defects within 7 days of receipt of the Notice. Question arose as to whether the period of 7 days which have been provided for in the proviso is mandatory or delay is condonable, in case sufficient cause is shown. The similar provisions were there in Sections 9(5) & 10(4) proviso. This Tribunal interpreting the said provisions held that the period of 7 days provides for curing the defect is mandatory. The Hon'ble Supreme Court on the Appeal set aside the Judgment of this Tribunal and held that period of 7 days provided for removal of the defects is not mandatory. It is relevant to notice that the provisions of the IBC which provided the Adjudicating Authority to pass an Order within 14 days either rejecting or admitting the Application as provided under Sections 7(5) & 9(5) of the Code was held directory by this Tribunal itself which decision was held to be applicable by interpreting the proviso to sub-Section (5) of Section 7 & Section 9 or sub-Section (4) of Section 10. In Paragraphs 24 and 25, the Hon'ble Supreme Court laid down as follows:

“24. Further, we are of the view that the judgments cited by Nclat and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting the proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.

25. Thus, we hold that the aforesaid provision of removing the defects within seven days is directory and not mandatory in nature. However, we would like to enter a caveat.”

19. We may also notice the Judgment of the Hon’ble Supreme Court in the matter of **‘Committee of Creditors of Essar Steel India Ltd.’ Vs. ‘Satish Kumar Gupta & Ors.’** in **(2020) 8 SCC 531**, in which case Hon’ble Supreme Court had occasion to consider the provisions of Section 12 of the IBC. Section 12 of the IBC came to be amended by adding second proviso by Act 26/2019, which provided that Corporate Insolvency Resolution Process (‘CIRP’) shall mandatorily be completed within a period of 330 days from the insolvency commencement date. The second proviso of Section 12 provides as follows:

“....Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor....”

20. The Hon’ble Supreme Court had occasion to consider the said second proviso in **‘Committee of Creditors of Essar Steel India Ltd.’ (Supra)**. The

second proviso which provided for mandatory completion of CIRP within 330 days came for consideration before the Hon'ble Supreme Court in the above case and Hon'ble Supreme Court has struck down the word "mandatorily". It was held by the Hon'ble Supreme Court that in appropriate case even after 330 days, Adjudicating Authority or Appellate Tribunal can extend the period. It is useful to extract following observations in Paragraph 127 of the Judgment:

"127.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. The above Judgment of the Hon’ble Supreme Court clearly indicates that where legislature provided for mandatorily completion of CIRP within 330 days the word “mandatory” was struck down and it was held that in appropriate cases, Adjudicating Authority shall have jurisdiction to extend the time beyond 330 days.

22. Adjudicating Authority while noticing the provisions of Section 54B which provides that Application of various provisions of Chapter II & III of the Code to PPIRP held that Section 12 is not applicable to PPIRP. Even if Section 12 is not made applicable to PPIRP, the interpretation put by the Hon’ble Supreme Court on the second proviso of Section 12 is very well applicable by interpreting the provisions of Section 54B.

23. Learned Counsel for the Appellant has relied on various Judgments of this Tribunal, where this Tribunal interpreting the different provisions of CIRP Regulations held that timeline provided therein is not mandatory.

24. We may refer to the Judgment of this Tribunal in the matter of **‘Aditya Kumar Tibrewal’ Vs. ‘Om Prakash Pandey & Ors.’** in **2022 SSC OnLine NCLAT 142**, where this Tribunal had occasion to consider Regulation 35-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (hereinafter referred to as ‘CIRP Regulations, 2016’). Regulation 35-A which was inserted in Regulation by amendments made on 03.07.2018 which provides for timelines for filing the

Application by the RP for transaction covered under Sections 43, 45, 50 or 66. Regulation 35-A(2) & (3) are as follows:

“35A. Preferential and other transactions. - (2)
Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date,

(3) Where the resolution professional makes a determination under sub-regulation 2, he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.”

25. We find that this Tribunal in the above matter has deliberated at length on whether the time-period prescribed in Regulation 35-A is mandatory or directory. This Tribunal has held therein that the rules of statutory interpretation for finding out true nature of statutory provisions, whether the mandatory or directory, are well settled, and in doing so, relied on the observations of the Hon’ble Supreme Court in the matter of **‘State of Uttar Pradesh’ Vs. ‘Manbodhan Lal Shrivastava’** reported in **AIR 1957 SC 912** laid down following:

“...Hence, the use of the word ‘shall’ in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding, or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word “may” has been used, the statute is only permissive or directory in the sense that noncompliance with those provision will not render the proceeding invalid. In that connection, the following quotation from Crawford on ‘Statutory Construction’.art.261 at p. 516, is pertinent:

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provisions but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.....”

Going further, this Tribunal in the same judgment also relied on the observations of the Hon’ble Apex Court in (2016) 11 SCC 31 in “Lalaram Vs. Jaipur Development Authority” as below:

“106. As noticed hereinabove, it is affirmatively acknowledged as well that where provisions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of these have the potential of resulting in serious general inconvenience or injustice to persons who have no control over those entrusted with duty and at the same time would not promote the main object of the legislature, such prescriptions are generally understood as mere instructions of the guidance of those on which the duty is imposed and are regarded as directory. It has been the practice to hold such provisions to be directory only, neglect of those, though punishable, should not, however, affect the validity of the acts done. At the same time where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it would neither be unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right of authority.”

The Tribunal has therefore held that timeline prescribed in Regulation 35- A of CIRP is directory and not mandatory and has held as follows: -

“11. viii One of the objective of the Code is to maximize the assets of the Corporate Debtor. In event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of the Resolution Process, reach of the Court and shall

cause great inconvenience and injustice to Corporate Debtor. Hence, we are of the view that timeline prescribed in Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations. There may be genuine and valid reasons for Resolution Professional not to file application for avoiding the transactions within time prescribed which are question relating to each case and has to be examined on case to case basis and if there are reasons due to which Resolution Professional could not file the Application within time the same has to be examined on merit.”

26. Learned Counsel for the Appellant has relied on various other Judgments interpreting the provisions of Regulations held as directory whereas the Regulation uses the expression “shall”. The Hon’ble Supreme Court has laid down that the use of expression “shall” or “may” is not conclusive and by use of expression “shall” it cannot be concluded that provision is mandatory.

27. We may refer to the Judgment of the Hon’ble Supreme Court in the matter of **‘Bachanan Devi & Anr.’ Vs. ‘Nagar Nigam, Gorakhpur & Anr.’** in **(2008) 12 SCC 372**. In Paragraphs 21 & 22, following was laid down:

“21. *The ultimate rule in construing auxiliary verbs like “may” and “shall” is to discover the legislative intent; and the use of the words “may” and “shall” is not decisive of its discretion or mandates. The use of the words “may” and “shall” may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed.*

22. “9. ... Obviously where the legislature uses two words ‘may’ and ‘shall’ in two different parts of the same provision *prima facie* it would appear that the legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive.” [Ed. : Quoting from *Ganesh Prasad Sah Kesari v. Lakshmi Narayan Gupta*, (1985) 3 SCC 53, p. 59, para 9.]

The power of court to find out whether the provision is directory or mandatory remains unimpaired.”

28. Similar effect is the Judgment of the Hon’ble Supreme Court in the matter of **‘P.T. Ranjan’ Vs. ‘T.P.M. Sahir & Ors.’** in **(2003) 8 SCC 498**, the principle of interpretation with regard to expression “shall” or “may” was explained in Paragraph 47, 48 & 49, which are as follows:

“47. The construction of a statute will depend on the purport and object for which the same had been used. In the instant case the 1960 Rules do not fix any time for publication of the electoral rolls. On the other hand Section 23(3) of the 1950 Act categorically mandates that direction can be issued for revision in the electoral roll by way of amendment in inclusion and deletion from the electoral roll till the date specified for filing nomination. The electoral roll as revised by reason of such directions can therefore be amended only thereafter. On the basis of direction issued by the competent authority in relation to an application filed for inclusion of a voter's name, a nomination can be filed. The person concerned, therefore, would not be inconvenienced or in any way be prejudiced only because the revised electoral roll in Form 16 is published a few hours later. The result of filing of such nomination would become known to the parties concerned also after 3.00 p.m.

48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See *Shiveshwar Prasad Sinha v. District Magistrate of Monghyr* [AIR 1966 Pat

144 : ILR 45 Pat 436 (FB)] , Nomita Chowdhury v. State of W.B. [(1999) 2 Cal LJ 21] and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana [(1997) 1 CHN 189] .)

49. *Furthermore, a provision in a statute which is procedural in nature although employs the word “shall” may not be held to be mandatory if thereby no prejudice is caused. (See Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970] , State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , Venkataswamappa v. Special Dy. Commr. (Revenue) [(1997) 9 SCC 128] and Rai Vimal Krishna v. State of Bihar [(2003) 6 SCC 401] .)”*

29. When we look into the provisions of Section 54D, it is clear that the provision does not contemplate any automatic termination of the PPIRP, the provision contemplates for filing of an Application by RP seeking termination of the process. The discretion of the Court is very well contemplated in the Scheme of the Statutory Scheme and Adjudicating Authority is free to exercise its statutory discretion while ordering termination of the proceeding. Thus, even if period of 120 days has been passed and the question of termination of proceeding comes for consideration before the Adjudicating Authority. Adjudicating Authority on sufficient reason can refuse termination and the proceeding and extend the period, which shall be within its jurisdiction. The Adjudicating Authority has taken the view in the Impugned Order that when the Resolution Plan is not approved within 90 days, RP was obliged to pray for termination of the proceeding and after expiry of 120 days, proceedings have to be terminated.

30. Learned Counsel for the Appellant have also referred to various Judgments of the Adjudicating Authority where extension with regard to time was granted to complete the process. Grant of extension is matter of facts of

each case. In the Statutory Scheme, in Chapter III–A, it is clear that the PPIRP has been provided for the benefit of MSME. The provisions is a beneficial provisions to resolve MSME which are in distress. Timeline period of 120 days for completion of the process is Statutory Scheme, but Statutory Scheme cannot be interpreted to interpret in a manner to mean that after 120 days, there is no jurisdiction left in the Adjudicating Authority to extend the time when a sufficient cause is shown.

31. In view of the forgoing discussions and conclusions, we are of the view that the Adjudicating Authority committed an error in rejecting the Application filed by the Appellant for extension of PPIRP for 60 days.

32. In result, we allow the Appeal, set aside the Order dated 06.06.2024 passed by the Adjudicating Authority, allow the Application I.A. 769/(AHM)/2024 and extend the PPIRP period for 60 days from today. The Appeal is disposed of.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

20th August, 2024

himanshu