

Quinn Logistics India Pvt. Ltd vs Mack Soft Tech Pvt. Ltd on 8 May, 2018

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 185 of 2018
[arising out of Order dated 27.04.2018 by NCLT, Hyderabad Bench,
Hyderabad in C.A. No. 93 of 2018 in CP(IB) No. 97/7/HDB/2017]

IN THE MATTER OF:

Quinn Logistics India Pvt. Ltd.
2nd Floor, SVSKL Mansion,
H. No. 3-6-369/A/18,
Street No. 1, Himayat Nagar,
Hyderabad - 500 029.

...Appellant

Versus

1. Mack Soft Tech Pvt. Ltd.,
Q City, 6th Floor, Block-A,
Sy No. 109,110 & 111/2
Nanakramguda Village,
Serilingampally Madal,
Hyderabad,
Telangana - 500 032.
2. Mohd. Sabir Parvez,
R/o N-76A, Abdu Fazal Enclave,
Okhla, New Delhi - 110 025.
3. Mr. M.L. Jain,
(Resolution Professional),
F-2/28, Sector 15, Rohini,
New Delhi - 110 076.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Senior Advocate assisted by
Mr. Rudreshwar Singh, Mr. Swapnil Gupta, Mr. Ujjal
Banerjee and Ms. Ankita Sinha, Advocates

For 1st Respondent : Mr. Abhijeet Sinha, Mr. Niraj Kumar and
Mr. Shashank Agarwal, Advocates

For 2nd Respondent: Ms. Ranjana Ray and Mr. Pervinder, Advocates

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

The appellant - "Financial Creditor" has preferred this appeal for modification of order dated 27th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in C.P. (IB) No. 97/7/HDB/2017 relevant portion of which reads as follows :

"In CP (IB) 97/7/HDB/2017 as stated supra, several applications are pending for adjudication by this Authority. There is no scope of adjudicating all the above applications before the expiry of 270 days. Therefore, taking into consideration the decisions stated supra relied upon by the Learned Senior Counsel for the Financial creditors and the fact that CIRP could not be taken up nearly about 160 days because of various interim orders passed by this Authority and in view of the pendency of above said applications for adjudicating, there is an urgent need to pass interim order to extend the CIRP period atleast till the next date of hearing. All the Counsels appearing for all the parties represented that it would be convenient for them to advance their arguments for final hearing of pending applications only on 15.05.2018 but Company Appeal (AT) (Insolvency) No. 185 of 2018 not before that date. Hence, the CIRP period is extended till 15.05.2018. The Learned Senior Counsel appearing for the Financial Creditors made a statement that in case the CIRP is extended for a considerable period, they have no objection to accept the Expression of Interest (EOI) submitted by the Resolution Applicants even after the expiry of the date fixed for receiving EOI.

This Interim Order is passed in CA 93/2018 extending the CIRP period till 15.05.2018, subject to the orders of the Hon'ble NCLAT in the Appeal pending before it. Registry is directed to list all the pending Applications including CA93/2018 for final hearing on 15.05.2018."

2. Further prayer has been made to direct the Adjudicating Authority to exclude the period from 15th September, 2017 to 28th February, 2018 for counting the total period of 180 days + 90 days (total 270 days) as 'corporate insolvency resolution process' could not proceed during the aforesaid period on account of interim directions passed by the Adjudicating Authority.

3. Learned counsel appearing on behalf of the appellant submitted that for about 166 days, the 'corporate insolvency resolution process' remained stayed due to interim order passed by the Adjudicating Authority. In view of interim order no meeting of 'Committee of Creditors' could take place during the pendency of C.A. No. 197 of 2017 which was filed by one of the Director of the 'Corporate Debtor' challenging the constitution of 'Committee of Creditors'. The Company Appeal (AT) (Insolvency) No. 185 of 2018 order of stay was vacated only on 28th February, 2018 whereinafter further 'corporate insolvency resolution process' could proceed.

4. The appellant has brought on record the time chart to suggest the delay, as took place as follows:

S.NO.	DATE	STAGE	DAYS
A.	Between 11.08.2017 - 21.08.2017	Initiation of CIRP, Order copy made available.	10 days

B.	Between 23.08.2017 - 15.09.2017	IRP took charge, CoC 22 days constituted
C.	Between 15.09.2017 - 28.02.2018	Interim Stay of the 166 days proceedings of the First CoC; followed by change of Resolution Professional and further stay on CoC meetings
D.	Between 29.02.2017 - 27.04.2018	Vacation of Stay, 57 days Invitation of EoIs. EoI period needs to be extended as some applicants have come forward beyond time and only one EoI received in time.
E.	27.04.2018	Ld. Adjudicating - Authority fails to exclude time spent in litigation

Company Appeal (AT) (Insolvency) No. 185 of 2018 from CIRP period as a result there is further uncertainty in CIRP.

5. Learned counsel appearing on behalf of the 'Resolution Professional' also requested to exclude the period of 166 days for the purpose of counting the total period of resolution process.

6. Similar question fell for consideration before this Appellate Tribunal in "Quantum Limited (Corporate Debtor) vs. Indus Finance Corporation Limited - Company Appeal (AT) (Insolvency) No. 35 of 2018" wherein this Appellate Tribunal observed as follows:

"3. Section 12 prescribes the 'time limit for completion of insolvency resolution process', which reads as follows:

12. Time-limit for completion of insolvency resolution process -

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process. (2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares.

Company Appeal (AT) (Insolvency) No. 185 of 2018 (3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once."

4. From sub-section (2) of Section 12, it is clear that resolution professional can file an application to the Adjudicating Authority for extension of the period of the corporate insolvency resolution process, only if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. The provision does not stipulate that such application is to be filed before the Adjudicating Authority within 180 days. If within 180 days including the last day i.e. 180th day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares, instructing the resolution professional to file an application for extension of period in such case, in the interest of justice and to ensure that Company Appeal (AT) (Insolvency) No. 185 of 2018 the resolution process is completed following all the procedures time should be allowed by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180th day.

5. In the present case, the Adjudicating Authority has not hold that the subject matter of the case do not justify to extend the period. It has not been rejected on the ground that the committee of creditors or resolution professional has not justified their performance during the 180 days. In such circumstances, it was duty on the part of the Adjudicating Authority to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.

6. For the aforesaid reasons, we set aside the impugned order dated 18th December, 2017 and extend the period of resolution process for another 90 days to be counted from today. The period between 181st day and passing of this order shall not be counted for any purpose and is to be excluded for all purpose. Now the Adjudicating Authority will proceed in accordance with law."

7. In "Amar Remedies Ltd. (Through the Resolution Professional) vs. IDBI Bank Ltd. & Ors. - Company appeal (AT) (Insolvency) No. 59 of 2018" taking into Company Appeal (AT) (Insolvency) No. 185 of 2018 consideration the justification of extension of the period, this Appellate Tribunal by judgment dated 5th March, 2018 extended the period for resolution process for another 90 days from the date of the order passed by the Appellate Tribunal.

There are other cases wherein similar orders were passed, namely "M/s. Shilpi Cable Technologies vs. Macquarie Bank Ltd. - I.A. No. 30 of 2018 in Company Appeal (AT) (Insolvency) No. 101 of 2017". Therein taking into consideration the fact that the Hon'ble Supreme Court has set aside the order passed by this Appellate Tribunal and restored the corporate insolvency resolution process as was initiated by the Adjudicating Authority, passed the following order:-

4. We have heard learned counsel appearing on behalf of the 'Insolvency Resolution Professional' and learned counsel appearing on behalf of the Respondent-

Macquarie Bank Limited ('Operational Creditor') and perused the decision of the Hon'ble Supreme Court in "Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd." Taking into consideration the fact that because of the order passed by this Appellate Tribunal on 1st August, 2017, the 'Resolution Professional' could not function. Now, pursuant to the Hon'ble Supreme Court order as the 'Resolution Professional' has resumed the office on 3rd January, 2018 and allowed to function pursuant to this Appellate Tribunal's interim order dated 15th January, 2018, we hold that the period from Company Appeal (AT) (Insolvency) No. 185 of 2018 1st August, 2017 to 14th January, 2018 will not be counted for the purpose of counting total period of 180 days for completing the 'Resolution Process'. In case the 'Resolution Process' is not completed within 180 days, even after excluding the period aforesaid, it will be open to the 'Committee of Creditors'/'Resolution Professional' to request the Adjudicating Authority for more time."

8. One or other Adjudicating Authority including Adjudicating Authority (Hyderabad Bench), Hyderabad, (Kolkata Bench), Kolkata and (Ahmedabad Bench), Ahmedabad have also passed the order excluding such period taking into consideration the facts and circumstances of each case.

9. From the decisions aforesaid, it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances.

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:-

Company Appeal (AT) (Insolvency) No. 185 of 2018

(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.

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11. In the present case, as the corporate insolvency resolution process remained stayed for 166 days due to the interim order passed by the Adjudicating Authority on 15th September, 2017 which was vacated on 28th February, 2018, we hold that the 'Committee of Creditors' / 'Resolution Professional' rightly requested the Adjudicating Authority to exclude the period of 166 days for the purpose of counting the total period of 270 days. Taking into consideration the stand taken by the parties and the stage of corporate insolvency resolution process, we direct the Adjudicating Authority to exclude 166 days for the purpose of counting the period of corporate insolvency resolution process and thereby allow the Resolution professional / Committee of Creditors further 166 days with immediate effect (i.e. 8th May, 2018) to complete the corporate insolvency resolution process.

12. The impugned order dated 27th April, 2018 passed by the Adjudicating Authority, Hyderabad Bench in CA No. 93 of 2018 in CP (IB) No. 97/7/HDB/2017 stands modified to the extent above. The appeal stands disposed of with the aforesaid observations.

[Justice S.J. Mukhopadhyaya] Chairperson [Justice Bansilal Bhat] Member (Judicial) New Delhi
8th May, 2018 /ns/ Company Appeal (AT) (Insolvency) No. 185 of 2018