

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 482 of 2020

IN THE MATTER OF:

**Ritu Rastogi, Resolution Professional,
Benlon India Ltd.**

...Appellant

Versus

Riyal Packers

...Respondent

Present:

For Appellant :

**Mr. Krishnendu Datta, Ms. Meera Murali and Mr.
Ankur Mittal, Advocates
Advocates**

For Respondent:

Mr. Naveen Kumar, Advocate

ORDER
(Through Virtual Mode)

16.06.2020 After hearing Mr. Krishnendu Datta, learned counsel representing the Appellant and Mr. Naveen Kumar, learned counsel representing the Respondent, we find that the 'Committee of Creditors' has approved the 'resolution plan' of Mr. Surender Kumar Chawla on 5th February, 2020 while the application for approval of the 'resolution plan' before the Adjudicating Authority was filed by the 'Resolution Professional' on 17th February, 2020. It is manifestly clear that there has been a delay of 10 days in filing the application under Section 31 of the 'Insolvency and Bankruptcy Code, 2016 (**'I&B Code'**, for short) on the part of the 'Resolution Professional' for seeking approval of the 'resolution plan' of Mr. Surender Kumar Chawla.

Mr. Krishnendu Datta, learned counsel appearing on behalf of the Appellant submits that the approval of the 'resolution plan' on the part of the

‘Committee of Creditors’ is well within the extended timeline but since the ‘Resolution Professional’ was merely left with one day for filing the application under Section 31 of the ‘I&B Code’ before the Adjudicating Authority, he could not lay the approved resolution plan under Section 31 of the ‘I&B Code’ before the Adjudicating Authority as he had to first comply with the legal formalities like seeking performance guarantee and other statutory compliances. It is submitted that the hardship encountered by the ‘Resolution Professional’ is not on account of any lapse on his part but due to certain statutory compliances to be made, which are mandatory or without adhering to which the ‘resolution plan’ could not be placed before the Adjudicating Authority. He further submits that the instant case is a fit one for exercise of power under Rule 11 of the ‘NCLAT Rules’ in terms of the law enunciated by the Hon’ble Apex Court in ‘**Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67/2019)**’. Paragraph 79 thereof relied upon in support of the submission, reads as follows:

“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.”

It is further submitted that this Appellate Tribunal has in identical circumstances invoked Rule 11 of the NCLAT Rules to mitigate the hardship encountered by the ‘Resolution Professional’. Reliance is placed upon the judgment of this Appellate Tribunal in ‘*Company Appeal (AT) (Insolvency) No. 1425 of 2019*’ decided on 17th January, 2020.

Having heard learned counsel for the parties and given our anxious consideration to the matter in hand, we are of the considered opinion that the instant case is fit one for exercising power under Rule 11 of the NCLAT Rules. Admittedly, the ‘resolution plan’ of Mr. Surender Kumar Chawla has been approved by the ‘Committee of Creditors’ within the extended timelines duly allowed by this Appellate Tribunal and the process of the approval of the ‘resolution plan’ of Mr. Surender Kumar Chawla by the ‘Committee of Creditors’

was completed within the extended period as allowed by this Appellate Tribunal. However, since only one day was left for the 'Resolution Professional' to file an application under Section 31 of the 'I&B Code' for placing the approved 'resolution plan' before the Adjudicating Authority for approval which despite diligence and best efforts on his part was improbable as he was left only with one day to complete all legal formalities including seeking performance guarantee in terms of the approved 'resolution plan', further extension of time by 10 days enabling the 'Resolution Professional' to seek approval of the 'resolution plan' from the Adjudicating Authority is warranted. This is a fit case for exercising the jurisdiction by this Appellate Tribunal being an exceptional case to depart from the general rule of 330 days being outer limit prescribed under the law for completion of the 'corporate insolvency resolution process' inclusive of period of judicial intervention. We are also of the considered opinion that failure to exercise discretion in a matter of this nature would have serious implications imperilling the legitimate interests of all stakeholders and inevitable conclusion would be to push the 'Corporate Debtor' into liquidation which has to be avoided at all costs.

For the foregoing reasons, we find that the impugned order cannot be supported. Refusal to exercise discretion by the Adjudicating Authority, in our considered opinion, has resulted in miscarriage of justice and frustrating the object of the 'I&B Code'. We accordingly allow the appeal, set aside the impugned order and extend the period of 'corporate insolvency resolution process' by 10 days till 17th February, 2020 i.e. the date of filing the application under Section 31 of the 'I&B Code' by the 'Resolution Professional'. The Adjudicating Authority is accordingly directed to consider the application of the

'Resolution Professional' under Section 31 of the 'I&B Code' for approval of the 'resolution plan' of Mr. Surender Kumar Chawla already approved by the 'Committee of Creditors' by according consideration to the same in accordance with law.

The appeal is accordingly disposed of.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Jarat Kumar Jain]
Member (Judicial)**

**[Shreesha Merla]
Member (Technical)**

/ns/RR/