

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 430 of 2019

IN THE MATTER OF:

Sikkim Ferro Alloys Ltd.

...Appellant

Vs

**Akshata Mercantile Pvt. Ltd. through
Its Resolution Professional**

....Respondent

Present:

For Appellant: Mr. Rajeev Ranjan, Sr. Advocate with Mr. Sandeep Bisht and Mr. Rahul Kumar, Advocates.

For Respondent: Mr. P. V. Dinesh and Mr. Ashwini Kumar Singh, Adv`cates for RP.

With

Company Appeal (AT) (Insolvency) No. 431 of 2019

IN THE MATTER OF:

Mangesh Heeraji Gorivale

...Appellant

Vs

**Akshata Mercantile Pvt. Ltd. through
Its Resolution Professional**

....Respondent

Present:

For Appellant: Mr. Rajeev Ranjan, Sr. Advocate with Mr. Ranjan Kr. Pandey and Mr. Anuj Tiwari, Advocates.

For Respondent: Mr. P. V. Dinesh and Mr. Ashwini Kumar Singh, Advocates for RP.

ORDER

10.05.2019: These appeals have been preferred one by the Operational Creditor – ‘Sikkim Ferro Alloys Ltd.’ and other by Director of the Corporate Debtor – ‘Mangesh Heeraji Gorivale’ against common order dated 27th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal),

Mumbai Bench whereby on the application filed by the Resolution Professional only three days' time has been excluded for counting the period of 270 days.

2. Learned senior counsel for the Appellants submits that the Committee of Creditors by its meeting dated 21st August, 2018 resolved to replace the Interim Resolution Professional while discussing the question of preparation of Information Memorandum. The application under Section 22 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') was filed before the Adjudicating Authority on 29th August, 2018 but not decision was taken at once. It was allowed on 26th October, 2018 and the certified copy was served on Resolution Professional on 26th November, 2018 who joined on the same date. It is submitted that because of the aforesaid delay, though the period of Corporate Insolvency Resolution Process was extended on 17th January, 2019 for further 90 days i.e. upto 18th April, 2019, the Information Memorandum prepared by the subsequent Resolution Professional was approved by the Committee of Creditors on 22nd February, 2019. The Resolution Professional invited Expression of Interest for Resolution Plan on 23rd February, 2019 and in absence of time only one Resolution Plan was received, which was not approved by the Committee of Creditors. It is informed that another Expression of Interest was received but because of shortage of time, could not be considered for want of time as period was not extended. It was in this background, the Resolution Professional moved application under Section 60(5) for exclusion of certain

period for counting the statutory period for computation of Corporate Insolvency Resolution Process period, wherein only three days has been excluded.

3. Learned counsel for the Appellant submits that if the total period is properly counted, 89 days is the period during which no steps could be taken because of pending decision of removal of Interim Resolution Professional and joining of Resolution Professional. These approximately 89 days are to be excluded.

4. Mr. Ashwini Kumar Singh, learned counsel appearing on behalf of the Resolution Professional supported the argument of the learned counsel for the Appellant and submits that if more time is given, resolution plans can be called for and matter will be place before the Committee of Creditors.

5. Having heard learned counsel for the parties and with a view to ensure that the resolution process is made successful and not to allow the Corporate Debtor to be liquidated, we are of the view that the delay which took place during the pendency of the application for replacement of the Interim Resolution Professional before the Adjudicating Authority should be excluded for the purpose of counting 270 days of Corporate Insolvency Resolution Process period. As the application for replacement of Resolution Professional was filed on 29th August, 2018 and in the meantime Information Memorandum could not be

prepared and the subsequent Resolution Professional joined on 26th November, 2018 on receipt of the certified copy of the Order, we allow the prayer and exclude 89 days for the purpose of counting the period of 270 days for Corporate Insolvency Resolution Process. In the result, the impugned order dated 27th March, 2019 stands modified to the extent above. The Resolution Professional and the Committee of Creditors are allowed 89 days to conclude the Corporate Insolvency Resolution Process, to be counted from the date of receipt of free certified copy of the present order by learned counsel for the Resolution Professional. It is for the Committee of Creditors to decide whether further Information Memorandum should be issued calling for more Resolution plans or to ask the Resolution Applicant who has already submitted the Expression of Interest to submit the Resolution Plan. The matter is left open for Committee of Creditors for its decision and to proceed in accordance with law. Both the appeals stands disposed of with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member (Technical)

am/gc

Company Appeal (AT) (Insolvency) No. 430 of 2019 and 431 of 2019