

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 271 of 2019

IN THE MATTER OF:

Daiyan Ahmed Azmi

...Appellant

Vs.

Rekha Kantilal Shah, Liquidator & Ors.

...Respondents

Present: For Appellant: - Mr. Davesh Bhatia, Advocate.

For Respondents: - Ms. Rekha Shah, Liquidator and Mr. Premtosh Mishra, Advocate.

O R D E R

21.05.2019— This appeal has been preferred by Daiyan Ahmed Azmi, promoter of 'Leo Duct Engineers & Consultants Ltd.'- ('Corporate Debtor') against the order dated 8th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby an application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by the 'Resolution Professional' for exclusion of certain periods has not been allowed and in effect passed the order of liquidation against the 'Corporate Debtor'.

2. Learned counsel appearing on behalf of the Appellant submitted that the period from 14th November, 2018 to 11th January, 2019 should have been excluded for the purpose of counting 270 days. If the said period would have been excluded, the 'Committee of Creditors' could have

considered the application under Section 12A of the 'I&B Code' filed by the Appellant.

3. It is informed that 90% of the shareholders of the 'Financial Creditor' have already intimated the Adjudicating Authority that they are considering the matter and in spite of the same, the Adjudicating Authority has rejected the prayer for extension, which resulted in order for liquidation.

4. Learned counsel appearing on behalf of 'Liquidator'/ subsequent 'Resolution Professional' accepted that the application for exclusion was filed by the 'Resolution Professional' and prayer of such exclusion was made as licence of the erstwhile 'Resolution Professional' was cancelled. However, in spite of the same, the Adjudicating Authority asked the erstwhile 'Resolution Professional' to continue for a period of three weeks and to ensure that the 'Corporate Debtor' remains a going concern.

5. However, other steps were not taken by the erstwhile 'Resolution Professional' and the present 'Liquidator' joined as the 'Resolution Professional' on 3rd January, 2019 but having received the order on 11th January, 2019 and started functioning.

6. According to her, even if 21 days is excluded, there should have been an exclusion of about 82 days and in such case, the application under Section 12A of the 'I&B Code' could have been produced before the 'Committee of Creditors'.

7. Taking into consideration the stand taken by the parties including the 'Resolution Professional', we are of the view that the Adjudicating Authority should have allowed the intervening period i.e. the period when erstwhile 'Resolution Professional' Mr. Martin S.K. Golla stopped functioning i.e. from 8th December, 2019 to 11th January, 2019 till the subsequent 'Resolution Professional' (present Liquidator) took charge to place the application under Section 12A before the 'Committee of Creditors'.

8. For the reasons aforesaid, we set aside the impugned order dated 8th March, 2019 including the order of liquidation and exclude 35 days from the date of receipt of this order by the 'Resolution Professional' for the purpose of counting the period of 270 days so as to ensure 'Successful Resolution Process' in terms of Section 12A.

9. Ms. Rekha Sha, the 'Resolution Professional' who is present in the Court is directed to conduct immediately the meeting of the 'Committee of Creditors' and place the application under Section 12A before it and if it is accepted with 90% of the voting share of the 'Financial Creditor', the Adjudicating Authority will allow the applicant to withdraw the application under Section 10. All processes should be completed within 30 days and matter should be placed before the Adjudicating Authority. If the 'Committee of Creditors' do not accept the application in terms of Section 12A with 90% voting shares, then only the Adjudicating Authority will pass order for liquidation and direct the Liquidator to act in terms of

decision of this Appellate Tribunal in “**Y. Shivram Prasad Vs. S. Dhanapal & Ors.– Company Appeal (AT) (Insolvency) No. 224 of 2018**”.

10. The appeal is accordingly allowed with aforesaid observations and directions.

Registry to serve free copy of this order on the ‘Resolution Professional’ immediately.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/g