

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 180 of 2019

IN THE MATTER OF:

**Mr. Vikram Bajaj, Resolution Professional
Anil Special Steel Industries Ltd.**

...Appellant

Vs.

**Committee of Creditors
Anil Special Steels Industries Ltd.**

...Respondent

Present: For Appellant: - Mr. Krishnendu Datta, Mr. Abhishek Anand, Ms. Niharica Khanna and Mr. Tushar Tyagi, Advocates for R.P.

For Respondent: - Mr. Arun Kathpalia, Senior Advocate with Mr. Shivam Goel and Mr. Amarjeet Kochar, Advocates.

O R D E R

11.03.2019— This appeal has been preferred by Appellant- Mr. Vikram Bajaj, the 'Interim Resolution Professional' of 'Anil Special Steel Industries Limited'- ('Corporate Debtor') against the order dated 1st February, 2019, whereby and whereunder, the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench, refused to exclude certain period for the purpose of counting the period of 'Insolvency Resolution Process'.

2. Earlier, on 25th February, 2019, when the matter was taken up, this Appellate Tribunal made the following observations while issuing the notice:

"25.02.2019 According to the learned counsel for the appellant the Interlocutory Application No. 32 of 2018 was filed on 10th September, 2018 by the

*Resolution Professional for certain clarification on which notice was issued by the Adjudicating Authority. However, no order was passed in the Interlocutory Application aforesaid and the matter remained pending and 8th March, 2019 is the next date fixed for hearing the said Interlocutory Application. In the meantime, a 'resolution plan' having found viable, feasible and having financial matrix, the 'Committee of Creditors' approved the same on 5th December, 2018 and place the matter before the Adjudicating Authority for its approval under Section 31 of the Insolvency and Bankruptcy Code, 2016 (for short, the '**I&B Code**'). As the Interlocutory Application was pending for clarification on which the Adjudicating Authority had not decided the issue which resulted in delaying the approval of the 'resolution plan', it was requested to exclude the said period as 'corporate insolvency resolution process' otherwise completed by 1st December, 2018 on completion of 270 days. By the impugned order dated 1st February, 2019, the Adjudicating Authority has rejected the prayer for exclusion the period which may result to pass the order*

of Liquidation and the order has not been passed on I.A. No. 32 of 2018 and the next date has been fixed as 8th March, 2019.

In the circumstances, let notice be issued on the respondent as to why the period of pendency of the Interlocutory Application from 10th September, 2018 to 1st December, 2018 be not excluded for the purpose of counting the period of 270 days.

Mr. Shivam Goel, Advocate accepts notice on behalf of 'Prudent ARC Ltd.' for the 'Financial Creditor' having 74% voting share and a member of the 'Committee of Creditors'. No further notice need be issued. Respondent may file a short reply within seven days.

Post the case 'for orders' on 11th March, 2019.

In the meantime, the Adjudicating Authority may pass appropriate order in the Interlocutory Application but will not pass any order of liquidation."

3. Learned counsel appearing on behalf of the largest 'Financial Creditor' having 74% voting shares and a member of the 'Committee of Creditors'

submits that the aforesaid period requires to be excluded as the Interlocutory Application for clarification remained pending since 10th September, 2018 before the Adjudicating Authority. Due to non-passing of such order, in spite of hearing the parties, the 'Resolution Process' should not suffer, otherwise it will lead to liquidation.

4. Reliance has been placed on the decision of this Appellate Tribunal in ***“Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. & Ors.— (2018) 208 Comp Cas 432”***, wherein this Appellate Tribunal noticed the grounds including unforeseen circumstances which can be excluded from counting of the total period of 270 days.

5. Reliance has also been placed on the decision of the Hon'ble Supreme Court in ***“ArcelorMittal India Private Limited Vs. Satish Kumar Gupta and Ors.— Civil Appeal Nos. 9402-9405”*** wherein the Hon'ble Supreme Court excluded the period of pendency of the appeal.

6. In the present case, as we find that the interlocutory application for clarification was heard and the matter remain pending before the Adjudicating Authority for decision, we hold that the aforesaid period of the pendency should be excluded for the purpose of counting of the total period of 270 days.

7. The Adjudicating Authority having failed to appreciate the aforesaid fact, we set aside that part of the impugned order dated 1st February, 2019

whereby the Adjudicating Authority refused to exclude the period. We accordingly direct that the period from 10th September, 2018 to 1st December, 2018 i.e. pendency of petition for decision should be excluded for the purpose of counting the period of 270 days. Similarly, pendency of the period of the Interlocutory Application No. 32 of 2018 which is pending since 10th September, 2018, should also be excluded for the purpose of counting of 270 days. If the 'Committee of Creditors' has approved the plan within 270 days after excluding the aforesaid period(s), the Adjudicating Authority will pass order under Section 31 in accordance with law.

The appeal is allowed with aforesaid observations and directions. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g