

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 724 of 2018

IN THE MATTER OF:

Shailen Shah, Resolution Professional **...Appellant**

Versus

DBM Geotechnics & Construction Ltd. **...Respondent**

Present:

For Appellant : **Mr. Sanjiv Sen, Senior Advocate assisted by
Mr. Niraj Kumar, Mr. Shashank Agarwal,
Mr. Satendra K. Rai, Advocates**

For Respondents : **Ms. Vanita Bhargava, Mr. Ajay Bhargava, Mr. Aseem
Chaturvedi and Ms. Wamika Trehan, Advocates for
DBM
Mr. S. Santhanam Swaminadhan and Ms. Nishtha
Khurana, Advocate for suspended Board of Directors

Mr. I.P.S. Oberoi, Advocate for Bank of India**

O R D E R

20.12.2018 The 'Resolution Professional' of 'Dighi Port Limited' filed a Miscellaneous Application before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench seeking excluding the period from the date of pronouncement of the order and communication of the order to the 'Interim Resolution Professional' (IRP) i.e. from 25th March, 2018 to 6th April, 2018 for calculating the total period of 270 days of 'corporate insolvency resolution process'. The Adjudicating Authority noticed that the petition under Section 9 preferred by the 'DBM Geotechnics & Constructions Ltd.' (Operational Creditor) was admitted on 25th March, 2018 and certified copy of the order was issued on

6th April, 2018. In view of the decision of this Appellate Tribunal in '**Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd.**' in '*Company Appeal (AT) (Insolvency) No. 185 of 2018*' allowed partly by excluding 12 days period from 25th March, 2018 to 6th April, 2018.

2. The learned counsel appearing on behalf of the appellant challenged the impugned order dated 26th October, 2018 insofar it relates to exclusion of further period from 15th June, 2018 to 16th August, 2018. It is submitted that one Ms. Purnima Dhiraj Shetty was appointed as 'Interim Resolution Professional' who was replaced by the 'Committee of Creditors' whereinafter the appellant, Mr. Shailen Shah was appointed as 'Resolution Professional' by decision on 15th June, 2018. The said order was approved by the Adjudicating Authority after about two months and communicated to the appellant on 16th August, 2018 on which date the appellant took charge as a 'Resolution Professional'.

3. Mr. I.P.S. Oberoi, learned counsel appearing on behalf of the Bank of India (lead Bank of 'CoC') submitted that approximately three 'resolution plans' are pending for consideration and the aforesaid period is also excluded the 'Committee of Creditors' can consider these plans.

4. The aforesaid stand has also been supported by Mr. S. Swaminadhan, learned counsel appearing on behalf of the suspended Board of Directors. However, Mr. Aseem Chaturvedi, learned counsel appearing on behalf of the 'DBM Geotechnics & Construction Ltd.' ('Operational Creditor') opposed the prayer though we pointed out that if exclusion is not allowed, the 'Corporate Debtor' may be liquidated.

5. We have heard the learned counsel for the parties and perused the record.

6. It is not in dispute that the 'Committee of Creditors' decided to appoint Mr. Shailen Shah, as a Resolution Professional in place of Ms. Purnima Dhiraj Shetty. The said decision was approved by the Adjudicating Authority on 6th August, 2018 and communicated to the appellant on 16th August, 2018 and he joined on the same date.

7. In '**Quinn Logistics India Pvt. Ltd.**' (*supra*) this Appellate Tribunal taking into consideration for the unforeseen circumstances observed that certain intervening period can be excluded for counting the total period of 270 days and observed as follows :

"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:-

(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."

8. As it appears that the earlier 'Resolution Professional' had not taken any effective steps due to which the 'Committee of Creditors' recommended to appoint the appellant on 15th June, 2018, and the appellant was intimated by the Adjudicating Authority on 16th August, 2018 and the matter is remained pending before the Adjudicating Authority for more than a month after which the order was passed on 6th August, 2018, we are of the view that the period between

filing application for approval of the name of the appellant and date of communication of the order i.e.16th August, 2018 should be excluded for the purpose of counting the period of 270 days. This period for exclusion will be in addition to the exclusion of period as already made by the Adjudicating Authority by impugned order dated 26th October, 2018. We accordingly direct to exclude the aforesaid period for counting 270 days. The Resolution Professional will now take immediate steps to take up the matter with 'Committee of Creditors' and in turn the 'Committee of Creditors' will pass appropriate order under Section 30 in accordance with law and place its decision before the Adjudicating Authority for its decision. The Adjudicating Authority will decide the same on an early date.

9. The appeal is allowed with the aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[JusticeBansi Lal Bhat]
Member(Judicial)

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