

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 59 of 2018

IN THE MATTER OF:

Amar Remedies Ltd.
(Through the Resolution Professional) ...Appellant

Versus

IDBI Bank Ltd. & Ors. ...Respondents

Present:

For Appellant : **Mr. Milan Singh Negi and Mr. Nishant Piyush,**
Advocates

For 5th Respondent: **Mr. Prakash Chandra Jain, Advocate**

For 11th & 12th
Respondent : **Ms. Ishita Chakrabarti, Advocate**

For 13th Respondent: **Mr. Jogendra Singh, Advocate**

O R D E R

05.03.2018 This appeal has been preferred by the Resolution Professional against order dated 9th January, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai whereby and whereunder the Adjudicating Authority dismissed the application preferred under sub-section (2) of Section 12 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "I&B Code") with the following observations:

*“Since speed and time lines are hallmark of this Code
and there being no provision either for condonation or*

revival under any of the Provisions of this Code, we are of the view that this Adjudicating Authority is devoid of jurisdiction to revive the CIRP period already completed by 13.12.2017, i.e. by the time this application has come before this Bench, therefore, we don't find any merit in this application, whereby this application is hereby dismissed."

2. On notice, the members of Committee of Creditors (CoC) have appeared and supported the case of the appellant – Resolution Professional and submitted that the Committee of Creditors, decided by resolution dated 6th December, 2017 and requested the Resolution Professional to file an application for extension of time under sub-section (2) of Section 12, which was filed on 15th December, 2017 i.e. 2 days after 180 days. In fact 180th day completed on 13th December, 2017. Reliance has been placed on decision of this Appellate Tribunal in ***“Quantum Limited (Corporate Debtor) vs. Indus Finance Corporation Limited – Company Appeal (AT)(Insolvency) No. 35 of 2018”*** wherein by judgment dated 20th February, 2018, this Appellate Tribunal observed and held as follows:

“3. Section 12 prescribes the ‘time limit for completion of insolvency resolution process’, which reads as follows:

12. Time-limit for completion of insolvency resolution process -

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of

one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”

4. From sub-section (2) of Section 12, it is clear that resolution professional can file an application to the Adjudicating Authority for extension of the period of the corporate insolvency resolution process, only if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. The provision does not stipulate that

such application is to be filed before the Adjudicating Authority within 180 days. If within 180 days including the last day i.e. 180th day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares, instructing the resolution professional to file an application for extension of period in such case, in the interest of justice and to ensure that the resolution process is completed following all the procedures time should be allowed by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180th day.”

3. In the present case, the Adjudicating Authority has not hold that the subject matter of the case do not justify to extend the period. It has not been rejected on the ground that the committee of creditors or resolution professional has not justified their performance during the 180 days. In such circumstances, the Adjudicating Authority was required to extend the period of Resolution process to enable the Committee of Creditor to find out whether a suitable resolution plan is to be approved or not instead of passing order for liquidation, which is the last recourse to be taken on failure of resolution process.

4. For the reasons aforesaid, we set aside the impugned order dated 9th January, 2018 and extend the period of resolution process for another 90 days to be counted from today. The period between 181st day and passing of this order shall not be counted for any purpose and is to be excluded for all purpose. Now

the Resolution Professional, Committee of Creditors and the Adjudicating Authority will proceed in accordance with law.

The appeal is allowed with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc