

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 603 of 2019

IN THE MATTER OF:

Vandana Garg

.....Appellant

Vs.

Reliance Capital Ltd. & Anr.

.....Respondents

Present :

For Appellant: Mr. Darpan Wadhwa, Senior Advocate, Ms. Isha J.Kumar, Ms. Shraddha Chaudhuri, Advocates

For Respondents: Mr. M.L. Lahoty, Mr. Anchit, Advocates

O R D E R

02.07.2019 - The Appellant ('Resolution Professional') of GVR Infra Projects Limited on the instructions, the 'Committee of Creditors' moved an application before the Adjudicating Authority, (National Company Law Tribunal) (in short 'NCLT'), Division Bench, Chennai for exclusion of 35 days of delay in appointing the 'Resolution Professional' in place of the 'Interim Resolution Professional' and the period during which different applications were pending. Prayer was rejected by impugned order dated 30th April, 2019 giving rise to the present case.

Learned counsel appearing on behalf of the Appellant submitted that no 'Resolution Professional' function for 35 days after removal of 'Interim Resolution Professional' which resulted delay in proceeding and calling for application from

...contd./

the 'Resolution Applicant'. It is further submitted that if the period is not excluded in the absence of any viable or feasible, the Adjudicating Authority may have to pass order of liquidation. Notice was issued on Respondent - 'Reliance Capital Ltd.' and another. In spite of service, nobody appeared.

The same issue fell before this Appellate Tribunal in "**Quinn Logistics India Pvt. Ltd., 2018, SCC Online, NCLAT – 243**". Taking into consideration the situation like aforesaid, this Appellate Tribunal observed and held as follows:

"9. From the decisions aforesaid, it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances.

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.”

In the present case, as the ‘Corporate Insolvency Resolution Process’ could not proceed in the absence of ‘Resolution Professional’ for 35 days the case of Appellant being covered by decision of this Appellate Tribunal in “**Quinn Logistics India Pvt. Ltd.**”, we allow the prayer as made in this appeal and exclude the period of 35 days for the purpose of counting 180 days or 270 days of ‘Resolution Process’. We also exclude the period of pendency of 18 days during which the application remained pending before the Adjudicating Authority. Thereby, we exclude the total period of 53 days for the purpose of counting 180 days or 270 days.

Part of the impugned order dated 30th April, 2019 passed by the Adjudicating Authority is set aside to the extent above. The rest part of the impugned order is affirmed. The appeal is disposed of with aforesaid observation and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

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