

(2025) 01 NCLAT CK 1668

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Appeal (AT) (Insolvency) No. 2301 of 2024 & I.A. No. 8629 of 2024

Ashutosh Agarwala

APPELLANT

Vs

NA

RESPONDENT

Date of Decision : 22-01-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 12

Citation : (2025) 01 NCLAT CK 1668

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (T); Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Vishal Binod, Pulkitesh Dutt Tiwari, Shruti Singhi

Final Decision : Allowed

Judgement

22.01.2025: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 22.08.2024 passed by the NCLT, Mumbai Bench, Court IV in IA No.4004(MB)2024. An application was filed by the Resolution Professional seeking extension of 90 days from 12.05.2024. The said application was filed after a resolution was passed by the CoC in 4th CoC meeting. The copy of the resolution was annexed along with the application, which resolution is as follows:

"Proposed Resolution:

"RESOLVED THAT pursuant to Section 12 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with rules and regulations made thereunder, the approval of the Members of the Committee of Creditors be and is hereby accorded for extension of period of the Corporate Insolvency Resolution Process (CIRP) by Ninety (90) days beyond the initial period of One hundred and eighty (180) days for the purpose of facilitating the completion of the Resolution Process and for realizing the maximum value for the

assets of the Company."

"FURTHER RESOLVED THAT the Resolution Professional be and is hereby authorized to take such steps as may be necessary in relation to the above, if required, and to settle all matters arising out of and Incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payments and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution.""

2. The Adjudicating Authority allowed the application granting extension of 90 days. The grievance of the Appellant in this appeal is that the Adjudicating Authority has granted extension from 12.05.2024 and such period during which application remained pending has not been taken note of. In view of the time taken in disposal of the application, effectively no time was available in the CIRP despite of granting 90 days' extension. Learned counsel for the Appellant has placed reliance on judgment of this Tribunal, Chennai Bench in Company Appeal (AT) (CH) (Ins.) No.450 of 2023, KiranMartin Gulla, decided on 21.02.2024 wherein Para 27 and 28 following was held:

"27. When an extension for 90 days to complete the CIRP is granted by an Adjudicating Authority then such period will be counted from the date on which the Adjudicating Authority/Tribunal passed the order for such extension.

28. On a careful meticulous consideration of contentions advanced on behalf of the Appellant/Petitioner, this Tribunal taking note of the fact that the sole COC Member has passed a Resolution to extend further period of 90 days from the last date of CIRP dated 10.05.2023, in view of the categorical and candid averment that for a better negotiation', 'evaluation' and 'discussion' on the Resolution Plan received from the Resolution Applicant and submission of the same to the Adjudicating Authority/Tribunal the Interim Resolution Professional has proposed to extend the CIRP period for a further period of 90 days from the date of approval of the instant IA (IBC)/1235/(CHE/2023 in CP (IB)/9/CHE/2022, and considering the totality of the entire conspectus of the facts and circumstances surrounding the instant case, this Tribunal comes to an inevitable' and 'irresistible' conclusion that the Adjudicating Authority/Tribunal had committed an error in not granting the exclusion for the period from 09.05.2023 to 27.07.2023 viz. the period spent in pursuing the IA (IB)1235/CHE/2023, the exclusion period would have enabled the Petitioner/Appellant to pursue the Expression of Interest received and made efforts to revive the Corporate Debtor through a Resolution Plan and in furtherance of 'substantial cause of justice' and to prevent an aberration of justice, the observation made by the Adjudicating Authority/Tribunal in the impugned order dated 27.07.2023 in IA (IBC)1235/CHE/2023 in CP (IB)9/CHE/2022 that the 'CIRP' is extended for a further period of 90 days with effect from 10.05.2023 is set aside because of the fact that the period of pendency of proceeding (IA No.(IBC)/1235/CHE/2023 in CP No. (IB)9/CHE/2022 (from 09.05.2023 to 27.07.2023) before the Adjudicating Authority/

Tribunal shall be excluded when calculating the CIRP period. Likewise, the period of pendency of instant Comp App (At)(CHE)(Ins) No.450/2023 is ordered to be excluded and the extension of CIRP period of 90 days is granted by this Tribunal from the date of the disposal of the instant Appeal, as per Section 12(2) of the I&B Code, 2016. Consequently, the instant Appeal succeeds.”

3. Learned counsel for the Appellant submits that the CIRP is at advance stage and two plans have been received and unless extension is granted from the date of passing of the order, the plans could not have been considered in the CIRP. He submits that against order dated 22.08.2024 this appeal has been filed on 11.09.2024.

4. We are of the view that judgment of this Tribunal in Kiran Martin Gulla on which reliance has been placed fully supports the submission of the Appellant. In the facts of the present case, we, thus, without interfering the order permitting for extension of 90 days, modify the order to the extent that the said 90 days' period shall be available from today i.e. from the date this order is passed. With these observations, this appeal is disposed of.