

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 902 of 2019

IN THE MATTER OF:

M/s. Alpha Corp Development Pvt. Ltd.

.....Appellant

Vs.

**M/s. Earth Infrastructure Ltd.
Through the Resolution Professional,
Shri Aakash Shinghal**

.....Respondent

Present :

For Appellant: Mr. Sandeep Bhuraria, Allan Messy, Advocates

**For Respondents: Mr. Anurag Bhatt, Mr. Lokesh, Mr. Akash Shinghal,
Advocates**

O R D E R

30.09.2019 - The 'Resolution Applicant' – 'M/s. Alpha Corp Development Pvt. Ltd. (Appellant) as one of the 'Resolution Applicants' filed application under sub-section (5) of Section 60 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) before the Adjudicating Authority ('National Company Law Tribunal') Court-III, New Delhi for extension of time in the 'Corporate Insolvency Resolution Process' against 'M/s. Earth Infrastructure Ltd.' ('Corporate Debtor') with following prayer:-

- a. *Declare that the Resolution, through Item No.6, as proposed in the Meeting of Committee of Creditors held on 07.8.2019 stood approved by 74.011% of voters (present and voting) in favour of the Resolution.*
- b. *Allow the instant Application and grant an exclusion of 54 days from 25.6.2019 to 17.8.2019 from the Corporate Insolvency Resolution process period.*
- c. *Allow the applicant to submit the Resolution Plan till 31.8.2019.*
- d. *Set aside the enormous decision of the Resolution Professional wherein he has taken the members of the Committee of Creditors who have not voted, as dissenting voters.*
- e. *Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.”*

The Adjudicating Authority while passing impugned order dated 28th August, 2019 refused to exclude the period of 54 days.

Learned counsel for the Appellant submits that the ‘Committee of Creditors’ has already taken into consideration the third proviso of Section 12 inserted vide Gazette Notification dated 6th August, 2019 which came into force on 16th August, 2019 for allowing 90 days.

Mr. Anurag Bhatt, learned counsel for the ‘Resolution Professional’ along with Mr. Akash Shingal appeared. They also want that the time should be allowed to take the plan of the Appellant and other Plan(s) by the Committee of Creditors, as approved by the ‘Committee of Creditors.’

Section 12 has been amended which described time limit for completion of 'Corporate Insolvency Resolution Process' which has been amended by addition of two more proviso to sub-section (3) of Section 12 which can be stated to be second and third proviso. This has come into force w.e.f. 16th August, 2019 vide SO No. 2953E. The amended provision now reads as follows:-

“Section 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 be do so by a resolution passed at a meeting of the committee of creditors by a vote of [sixty-six] percent 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:

[PROVIDED FURTHER that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

PROVIDED ALSO that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment Act, 2019)]”

In terms of third proviso of sub-section (3) of Section 12, as we find that the ‘Corporate Insolvency Resolution Process’ of the ‘Corporate Debtor’ is pending and has not been completed within the period referred to in the second proviso, we hold that the ‘Corporate Insolvency Resolution Process’ is to be completed within another period of 90 days from the date of commencement of Insolvency & Bankruptcy Code (Amendment Act, 2019) i.e. w.e.f. 16th August, 2019.

In view of the fact that the period has been extended for another 90 days in the present case in view of third proviso to sub-section (3) of Section 12, we set

aside the impugned order and allow the 'Resolution Applicant to move before the 'Committee of Creditors' and 'Resolution Professional and direct completing of the process within 90 days from the date of commencement of Insolvency & Bankruptcy Code (Amendment Act, 2019) i.e. w.e.f. 16th August, 2019.

A 'Resolution Plan' submitted by the 'Resolution Applicant' or any other person, the 'Committee of Creditors' while considering the same may pass appropriate orders in accordance with law preferably within 30 days and will place the matter before the Adjudicating Authority for appropriate orders u/s 31 of the 'I&B' Code.

The appeal is allowed with aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

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