

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 69 of 2021**

In the matter of:

Subrata M. Maity, RP of Eskay K' N' IT (India) Ltd.

....Appellant

Vs.

**COC of Eskay K' N' IT (India) Ltd. Through Bank of
India & Ors.**

....Respondents

Present:

**Appellant: Mr. Vikram Hegde, Mr. Shantanu Lakhota,
Advocates.**

Respondents:

ORDER

(Through Virtual Mode)

04.02.2021: Respondent being the Committee of Creditors (COC) constituted by the Appellant- Resolution Professional, service of notice is dispensed with.

2. The limited issue raised in this appeal is that while granting extension of time of Corporate Insolvency Resolution Process (CIRP) period, the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, Court-2, though excluded the period of 68 days computed w.e.f. 17th August, 2020 when 180 days period expired, it did not take into consideration the fact that the lockdown was imposed from 25th March, 2020 to 25th October, 2020 and thus, the entire period of lockdown was required to be excluded while computing the period of 180 days prescribed as CIRP period. 90 days' extension allowed by the Adjudicating Authority which taken together with the ordinary prescribed period of CIRP viz. 180 days would complete the extended period of 270 days with the entire period of lockdown being excluded. Thus, intervention is called for only to the extent of exclusion of lockdown

Contd/-.....

period while extension of 90 days does not warrant any interference. Computed thus, Appellant would be entitled to exclusion for the entire period of lockdown ranging from 25th March, 2020 till 25th October, 2020 i.e., 213 days. We are accordingly of the considered view that the period of 213 days, as calculated hereinabove, is required to be excluded from CIRP period.

3. For clarity, we would say that the period of 270 days i.e. CIRP period of 180 days plus 90 days granted as extension period in terms of the impugned order while being calculated shall begin with the commencement of the CIRP period up to 24th March, 2020 and then after taking into account the period of exclusion again be counted from 25th October, 2020. We order accordingly. To this extent, the appeal deserves to be allowed.

4. Learned counsel for the Appellant submits that the Adjudicating Authority has also made an observation in the impugned order in regard to the conduct of the Resolution Professional- Mr. Subrata M Maity. We find that while granting extension, learned Adjudicating Authority has observed that the delaying tactics on the part of the Resolution Professional caused serious impact on the CIRP which could have pushed the Corporate Debtor into liquidation. It is not clear from the order as to which acts of omission and commission on the part of the Resolution Professional did impel the Adjudicating Authority to observe that there was delaying tactics on part of Resolution Professional. Holding somebody guilty of delaying tactics/dilatory tactics would be referable to a series of acts of omission and commission. A single act of callousness or complacency may not justify an observation of there being delaying tactics unless it is demonstrated that there was some malafide or oblique motive behind such delay being caused.

5. In the backdrop of factual scenario emerging as a sequel to the imposition of lockdown after outbreak of COVID-19 Pandemic when all economic activities were disrupted, it is difficult to say that a solitary act would warrant the conclusion that there was delaying tactics on the part of the

Resolution Professional. Observations/ remarks against Resolution Professional in our considered opinion are unwarranted. We direct that the same be expunged from the record.

With aforestated observations, the appeal is disposed off.

A copy of this order be sent to the Adjudicating Authority.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

AR/g