

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH NEW DELHI

Company Appeal (AT) (Insolvency) No. 146 of 2021

In the matter of:

Kotak Mahindra Bank Ltd.

...Appellant

Versus

**A.P.Enterprises Pvt. Ltd.
Through Rajiv Khurana
Resolution Professional & Ors.**

...Respondents

Present:

Appellant: Mr. Udayaditya Banerjee and Mr.Samrat Sen Gupta, Advocates.

**Respondents: Mr. Arora Vishwas Kumar, Advocate for Respondent No.1.
Mr. R.C.Sharma and Mr. Aman Kashyap
Advocates for Respondent No.2 – 4.**

ORDER

(Through Virtual Mode)

03.03.2021- The present Appeal has been filed by the Appellant – Kotak Mahindra Bank Ltd, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’) against the Impugned order dated 12.01.2021 passed by the Adjudicating Authority (‘National Company Law Tribunal, Chandigarh Bench, Chandigarh’) in I.A No. 287/2020 and 483/2020 in Company Petition (IB) No. 119/Chd/CHD/2018 vide which it has allowed to the limited extent of excluding the period of lockdown i.e. from 25.03.2020 to 31.07.2020 from the schedule of making payments under the approved Resolution Plan.

2. The Learned counsel for the Appellant has submitted that the Resolution Plan of the Corporate Debtor - A.P Enterprises Private Limited was approved by the CoC in its meeting held on 19.07.2019 and the same was approved by Adjudicating Authority vide its order 18.03.2020 in C.A No. 610/2019 in Company Petition (IB) No. 119/Chd/CHD/2018 and the Adjudicating Authority has directed the Resolution Applicant to implement the said plan and adhere to the payment timelines mentioned therein i.e. 16 quarters or 48 months from the date of approval. The Resolution Applicant has paid Rs.3,00,17,650/- and the remaining Rs.2,00,00,000/- has not been paid by the Resolution Applicant out of the total upfront payment of Rs.5,00,17,650/- . The Resolution Applicant has taken over the Company after lifting of the lockdown in May, 2020 and generated sufficient business and hence they should pay as per the Resolution Plan which they have failed to do. The Appellant is the largest Secured Creditor having 84.35% voting share in CoC for the Corporate Debtor and hence they are concerned as to how the Adjudicating Authority can grant extension of time without taking the necessary consent of the CoC. The Adjudicating Authority has permitted the lockdown period to be excluded from the Schedule of making payment under the approved Resolution Plan vide the impugned order dated 12.01.2021.

3. Once the Resolution Applicant takes over Corporate Debtor, its supervision and control comes under the preview of the Monitoring Committee.

The CoC becomes irrelevant. The Monitoring Committee comprises generally of Resolution Professional, a representative of CoC and a representative of Resolution Applicant. However, Regulation 39(9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 allows a creditor who is aggrieved by non-implementation of a Resolution Plan approved under Section 31(1) to apply to the Adjudicating Authority for directions.

4. The Hon'ble Supreme Court of India in suo motu Writ Petition (Civil) Nos. 3/2020 order dated 23.03.2020 and this Appellate Tribunal in suo motu Company Appeal (AT) (Ins) No. 01/2020 order dated 30.03.2020 have provided appropriate direction for condonation or extension of period of limitation. The IBBI has also inserted Regulation 40C to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 for not considering the period of lockdown for the purpose of timeline of any activity under the Code, subject to the provisions of the Code.

5. Considering the submissions made, directions of Hon'ble Supreme Court as stated above and this Appellate Tribunal on Covid-19 Pandemic including 60% payment released by the Resolution Applicant even in Global Pandemic, we do not find any infirmity in the impugned order for excluding the period of lockdown from the schedule of making payment under the approved Resolution Plan. Hence, we do not find any merit in the appeal and the appeal deserves to

be dismissed and is accordingly dismissed. Pending Interlocutory Application, if any stands disposed of. No order as to costs.

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

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

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