

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins)No. 362 of 2019

IN THE MATTER OF:

Sanjay Gupta

...Appellant

Versus

**Committee of Creditors
Through Branch Manager, PNB, B.O. Station
Road, Chhattisgarh**

...Respondents

Present:

For Appellant: Mr. Kanishk Khetan, Advocate

O R D E R

29.04.2019 - 'Corporate Insolvency Resolution Process' was initiated against 'Vandana Vidyut Limited ('Corporate Debtor') on 26th April, 2018. The 'Interim Resolution Professional' (IRP) was appointed. Before that on 28.03.2018, 'Enforcement Directorate, sub-zone, Raipur, Chattisgarh provisionally attached the Thermal Power Plant located at Khatghora district, kobra, Chhattisgarh along the land and the machinery, worth Rs. 603,19,76,500/- as detailed below:-

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S.N.	Description of the Property	Value (in Rs.)
1.	Plant and Machinery of M/s Vandana Vidhyut Ltd. Valued at Rs. 1711,13,74,696/- situated at Katghora, District-Korba, Chattisgarh to the extent of Rs 335,46,23,910/-	Rs 335,46,23910/-
2.	Factory Building of M/s Vandana Vidhyut Ltd, Valued at Rs 266,59,72,781/- situated at Katghora, District- Korba, Chattisgarh	Rs 266,59,72,781/-
3.	Land Valued at Rs 1,13,79,809/- of M/s Vandand Vidhyut situated at Katghira District- Korba, Chhaisgarh.	Rs 1,13,79,809/-
4.	Total	Rs 603,19,76,500/-

2) The order was confirmed on 17th September, 2018 and possession notice was issued on 19th November, 2018. The said order of possession and confirmation were challenged by the Respondent Punjab National Bank (one of the 'Financial Creditor' and set aside by the Appellate Authority under PMLA on 2nd January, 2019. Due to such attachment of the property during the period of moratorium, the 'Resolution Professional' could not take over the charge of the aforesaid property

of 'Corporate Debtor' and the records; nor could make it a going concern. In the aforesaid background, that no person submitted any 'Resolution Plan'. On the behest of Committee of Creditors the Appellant – 'Resolution Professional' moved an application before the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai for exclusion of 119 days for counting the period of 270 days of 'Corporate Insolvency Resolution Process'. The Adjudicating Authority by impugned order dated 6th March, 2019 rejected the prayer giving rise to the present appeal.

3) In the impugned order the Adjudicating Authority noticed that the Appellate Authority in PMLA ordered to exclude the period of pendency and the period of attachment but over-looked such finding on the ground that in terms of Section 238 of Insolvency & Bankruptcy Code ('I&B Code'), 2016, the I&B Code has overriding effect and the Appellate Authority in PMLA has no jurisdiction.

4. Having heard learned counsel for the Resolution Professional and Mr. Yogesh Kandpal, Assistant General Manager of the Punjab National Bank, we are of the view that the Adjudicating Authority instead of criticising the observation of the

Appellate Authority in PMLA should have decided the matter of its own. The ‘*Corporate Insolvency Resolution Process*’ having suffered due to attachment of the Thermal Power Plant of the ‘Corporate Debtor’, which is the main business. We hold that the period of 119 days during which the order of attachment continued should have been excluded by the Adjudicating Authority.

5. In view of such finding, we pass the following period for the purpose of computing the period of 270 days of ‘*Corporate Insolvency Resolution Process*’.

(i) Exclude the period of 119 days during which period of attachment as above was in force during the period of moratorium;

(ii) The period of pendency of the application before the Adjudicating Authority i.e. 10th January, 2019 to 6th March, 2019 i.e. total 56 days during which time no order was passed; and

(iii) The period of pendency of the present appeal “5th April, 2019” till today i.e. total 25 days.

6. Thereby total period of 200 days (two hundred days) are extended from computing the period of '*Corporate Insolvency Resolution Process*'. The Resolution Professional, Committee of Creditors and the Adjudicating Authority will act accordingly and if necessary will call for fresh information memorandum and Resolution Plans for success of the Resolution Process.

The appeal is allowed with the aforesaid observation. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc/