

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1486 of 2019**

**IN THE MATTER OF:**

**Mr. B. Naga Bhushan,  
Resolution Professional**

**...Appellant**

**Versus**

**Abir Infrastructure Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant :                      Ms. Rakhi Ray, Advocate**

**ORDER**

**18.12.2019**            Mr. B. Naga Bhushan, 'Resolution Professional' on the direction of the 'Committee of Creditors' filed an application for exclusion of certain period during which the matter was pending before the Hon'ble High Court of Delhi in which winding up proceedings were subsequently transferred. The Adjudicating Authority (National Company Law Tribunal), Court No. IV, New Delhi by impugned order dated 23<sup>rd</sup> October, 2019 observed as follows and because of such observations, the Resolution Professional was allowed to withdraw the application subject to payment of cost of Rs. 10,000/- to 'Prime Minister Relief Fund' :

*"Learned counsel appearing argued that the exclusion may be granted. The prayers sought, in view of the present amendment, cannot be considered. This shows lack of application of mind on part of IRP before making such application. Learned counsel request for allowing*

*him to withdraw the application and liberty to take appropriate instructions. In our views, such improper application should not be filed. Application is allowed to be withdrawn, subject to payment of cost of Rs. 10,000/- to Prime Minister Relief Fund. IRP may file appropriate application as per law.”*

Learned counsel for the Appellant submitted that the recent amendment in Section 12 relates to completion of the period of resolution and it does not relate to ‘exclusion of the period’. The Adjudicating Authority has failed to consider the recent amendment of Section 12 of the ‘I&B Code’ or any other provision and the petition for exclusion of period will not affect the decision of this Appellate Tribunal which relates to exclusion of period and grant of additional period is distinct than grant of the additional period in the light of the decision of this Appellate Tribunal in **‘Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. & Ors.’** – in “Company Appeal (AT) (Insolvency) No. 185 of 2018” . It is further submitted that imposition of cost on the ‘Resolution Professional’ was uncalled for.

In the present case, no notice is required to be issued as it will not affect the right of any person. We are of the view that Section 12, which relates to grant of additional time or any other amendment do not relate to exclusion of the period for the purpose of 180 days or 270 days as decided by this Appellate Tribunal in *‘Quinn Logistics India Pvt. Ltd.’ (Supra)*. In fact the Adjudicating Authority has misconstrued the term and it has failed to notice that the application is for extension of time and not the application for exclusion. In view of the aforesaid error apparent qua the observation of the Adjudicating Authority,

we condone the delay of 12 days and set aside the impugned order dated 23<sup>rd</sup> October, 2019.

The appeal is allowed.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

/ns/gc