

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

**Company Appeal (AT) (Insolvency) No. 35 of 2018**

**IN THE MATTER OF:**

**Quantum Limited  
(Corporate Debtor)**

**...Appellant**

**Vs.**

**Indus Finance Corporation Limited**

**...Respondent**

**Present:**

**For Appellant: -**

**Ms. Varsha Banerjee, Mr. Ajay Kumar Jain, Mr.  
Milan Negi and Mr. Kunal Wadhvani, Advocates**

**For Respondent:-**

**Mr. Vineet Jagtap, Advocate  
Mr. Abhishek Anand and Mr. Anant A. Pavgi,  
Advocates for JM Financial Assets  
Reconstruction Co. Ltd.**

**ORDER**

**20.02.2018—** This appeal has been preferred by the ‘Corporate Debtor’ through Resolution Professional against order dated 18<sup>th</sup> December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai in C.P. No. 1043/(MAH)/2017. By the impugned order, the Adjudicating Authority has rejected the application for extension of time on the ground that there is no provision to file such application after expiry of 180 days of Corporate Insolvency Resolution Process (CIRP), relevant portion of which reads as follows :

*“On the application moved by the Resolution Professional, seeking extension of CIRP period for another 90 days as envisaged under Section 12(2) of the Insolvency and*

*Bankruptcy Code, 2016, when this Bench has looked into this application, it has been noticed that this application has been filed on 30.11.2017 on a resolution dated 24.11.2017 passed by COC seeking extension of time. By the time, this application was moved by the Resolution Professional, 180 days of CIRP was complete by 25.11.2017.*

*On visiting the provision of law, we have noticed that this application shall be filed by the Resolution professional for extension of CIRP period before completion of CIRP period, but this application has been filed after expiry of the original period of 180 days of CIRP. If at all this application is allowed, it will become nothing but revival of CIRP period that was complete by 25.11.2017.*

*Since there is no provision for revival of CIRP period to provide another 90 days' extension as mentioned under Section 12(2) of the IBC especially when earlier 180 days period is complete, by the time application has been filed before Adjudicating Authority, we strongly believe that it will become nothing but exercise of jurisdiction beyond the powers conferred upon this Bench under Section 12 of the Code.*

*Since it is a Tribunal created by this Code itself, this Adjudicating Authority has to be governed by the provisions of this Code. There can't be any doubt to say that extension can't be construed as revival, revival can be after expiry of period, whereas extension has to be given before expiry of original period.*

*Since speed and time lines are hallmark of this Code and there being no provision either for condonation or revival under any of the Provisions of this Code, we are of the view that this Adjudicating Authority is devoid of jurisdiction to*

*revive the CIRP period already completed by 25.11.2017, i.e. by the time this application has come before this Bench, therefore, we don't find any merit in this application, whereby this application is hereby dismissed."*

2. Ms. Varsha Banerjee, learned counsel for the Resolution Professional submits that sub-section (2) of Section 12 do not mandate that the application for extension of the time should be filed before completion of 180 days. It can be filed, if instructed to do so by a resolution passed in a meeting of the committee of creditors by a vote of seventy-five per cent of the voting share, within 180 days. Mr. Vineet Jagtap, advocate has appeared on behalf of 1<sup>st</sup> respondent and endorsed the submission made by the learned counsel for the appellant. Mr. Abhishek Anand, advocate appeared on behalf of the J.M. Financial Assets Reconstruction Co. Ltd. submits that there is no provision to file the application for extension of time within 180 days and submitted that for extension of time instruction was given by the Committee of Creditors to the Resolution Professional by a majority vote of seventy-five per cent within 180 days.

3. Section 12 prescribes the 'time limit for completion of insolvency resolution process', which reads as follows:

*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 do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent 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.”*

4. From sub-section (2) of Section 12, it is clear that resolution professional can file an application to the Adjudicating Authority for extension of the period of the corporate insolvency resolution process, only if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. The provision does not stipulate that such application is to be filed before the Adjudicating Authority within 180 days. If within 180 days including the last day i.e. 180<sup>th</sup> day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares, instructing the resolution professional to file an application for extension of period in such case, in the interest of justice and to ensure that the resolution

process is completed following all the procedures time should be allowed by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180<sup>th</sup> day.

5. In the present case, the Adjudicating Authority has not hold that the subject matter of the case do not justify to extend the period. It has not been rejected on the ground that the committee of creditors or resolution professional has not justified their performance during the 180 days. In such circumstances, it was duty on the part of the Adjudicating Authority to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.

6. For the aforesaid reasons, we set aside the impugned order dated 18<sup>th</sup> December, 2017 and extend the period of resolution process for another 90 days to be counted from today. The period between 181<sup>st</sup> day and passing of this order shall not be counted for any purpose and is to be excluded for all purpose. Now the Adjudicating Authority will proceed in accordance with law.

The appeal is allowed with the aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

ns/gc