

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

**I.A. No. 1426 of 2020**

**IN**

**Company Appeal (AT) (Insolvency) No. 1040 of 2019**

**IN THE MATTER OF:**

**Mr. Digant L. Kapadia**

**...Appellant**

**Versus**

**Bank of India & Anr.**

**...Respondents**

**Present:**

**For Appellant :**           **Mr. Dhaval Deshpande, Advocate**

**For 1<sup>st</sup> Respondent:**   **Mr. Jitendra Kumar, Advocate for the Bank**

**O R D E R**  
**(Through Virtual Mode)**

**18.06.2020**       ‘Company Appeal (AT) (Insolvency) No. 1040 of 2019’ was disposed of in terms of order dated 20<sup>th</sup> November, 2019 on the basis of settlement arrived at between the parties and the impugned order dated 20<sup>th</sup> September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench admitting the application of Bank of India under Section 7 of the ‘Insolvency and Bankruptcy Code, 2016 (‘I&B Code’, for short) for initiation of the ‘corporate insolvency resolution process’ was set aside. It was observed in the order that the ‘Corporate Debtor’ would make payment of the balance amount as per agreed terms and as intimated by the Bank of India vide its letter dated 1<sup>st</sup> November, 2019. It was further observed that in the event of default in any of the payments, setting aside of the order of admission of application under Section 7 of the ‘I&B Code’, shall stand automatically vacated

and the 'corporate insolvency resolution process' against the 'Corporate Debtor' would revive.

The present application being 'I.A. No. 1426 of 2020' has been filed by the Director of the 'Corporate Debtor', who was the Appellant in '*Company Appeal (AT) (Insolvency) No. 1040 of 2019*', for extension of time as regards instalment payable on 31<sup>st</sup> March, 2020 in terms of order dated 20<sup>th</sup> November, 2019 passed in appeal. It is submitted that the 'Corporate Debtor' has not committed any default but on account of lockdown and extension of lockdown, the 'Corporate Debtor' could not start the operation of its project before end of June, 2020 and accordingly approached the Bank to grant the 'Corporate Debtor' three months' extension for payment of instalment which was due on 31<sup>st</sup> March, 2020 and similar extension in all other instalments each due after interval of three months. The Corporate Debtor further claims to have sent more e-mails to the Bank for further extension after it realised that due to extension of lockdown it will not be able to start its operation before July, 2020.

Mr. Jitender Kumar, Advocate representing the Bank submits that the Bank, in order to mitigate the hardship encountered by the Corporate Debtor in making 1<sup>st</sup> instalment due on 31<sup>st</sup> March, 2020 on account of enforcement of lockdown, allowed the 'Corporate Debtor' to make payment of 1<sup>st</sup> instalment by 30<sup>th</sup> June, 2020. However, in regard to deferment of the future instalments, the matter has been referred to the competent authority and the same is still under consideration.

After hearing the learned counsel for the parties and keeping in view the fact that the appeal stands disposed of in terms of the settlement and also

bearing in mind the fact that the 'Financial Creditor' (Bank of India) has acceded to the request of the 'Corporate Debtor' for re-scheduling of the instalment due on 31<sup>st</sup> March, 2020 by allowing such payment be made by 30<sup>th</sup> June, 2020, we dispose of this application by observing that setting aside of the impugned order in 'Company Appeal (AT) (Insolvency) No. 1040 of 2019' shall not stand automatically vacated before 30<sup>th</sup> June, 2020 and also the Adjudicating Authority shall not be within its province to restore/revive the 'corporate insolvency resolution process' unless a default occurs in regard to the 1<sup>st</sup> instalment now rescheduled for 30<sup>th</sup> June, 2020.

With these observations, the application is disposed of.

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

**[ V.P. Singh ]**  
**Member (Technical)**

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

/ns/gc/