

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 817 of 2019

IN THE MATTER OF:

Punjab National Bank

.... Appellant

Vs

Mr. Kiran Shah,
Interim Resolution Professional of
ORG Informatics Limited

.... Respondent

Present:

**For Appellant: Mr. Shivanshu Kumar and Mr. Vikky Dang,
Advocates.**

ORDER

13.08.2019 This Appeal has been preferred by Punjab National Bank, one of the Members of the 'Committee of Creditors' against order passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, which reads as follows: -

"The IRP is present through learned FCA.

The Committee of Creditors has preferred an application under Section 22 of the Insolvency and Bankruptcy Code on 18.04.2019, whereas the Petition under section 9 of IB Code was admitted on 27.11.2018. Admittedly 180 days of the Corporate Insolvency Resolution Process is expired on 27.05.2019 and till date the Committee of Creditors has not made any endeavor to take appropriate step for filing any application either under Section 31 or 33(1) and 33(2), instead pressing hard for the instant application without any cogent ground that too at very

belated stage, when another 90 days of the CIRP is at verge of completion.

On perusal of the record, it is found that COC could not take any concrete step and on each and every date the Learned Lawyer claimed to appear on behalf of the COC requested for time on one or the other pretext i.e. from 28.05.2019 when already 180 days expired. It appears that COC is least concerned about the sanctity of CIRP, which has to be concluded in time bound manner i.e. 180 days + further 90 days beyond 180 days, if prayed by the COC. As on today i.e. 18.07.2019 total 234 days has already been passed leaving only 36 days. Under such circumstances, I found no reason to keep pending this application filed by the COC under Section 22 of the IB Code as there is no cogent reason shown by the COC to remove the RP.

It is strange that the Learned Lawyer claimed to be appearing on behalf of the Committee of Creditors today again requesting for time to file reply/ rejoinder on the reply filed by the RP when admittedly only 36 days are left ignoring the sanctity of the Code.

*It is pertinent to mention herein that there are as many as 6 COC members viz. **Punjab National Bank, Edelweiss Asset Reconstruction Co. Ltd., Bank of India, Standard Chartered Bank, Bank of Baroda and Barclays Bank PLC** but the Learned Lawyer has not filed any authority letter on behalf of the other members of the COC except Punjab National Bank to appear and plead the case. The said issue was also raised on the last date but the Learned Lawyer failed to*

produce the authority letter and admittedly representing the Punjab National Bank only.

On perusal of the reply filed by the IRP/RP, it is found that in the 5th meeting of the COC has already resolved and recommended for liquidation of the Corporate Debtor Company and accordingly the said Resolution is passed by the COC which is as under:

“RESOLVED THAT pursuant to the sub-section (2) of section 33 of the Insolvency and Bankruptcy Code, 2016 the decision for initiation of the liquidation in the matter of the Corporate Debtor, be and is hereby approved; the rejection of which shall be deemed approval for the application for extension of the CIRP period before the Hon’ble Adjudicating Authority pursuant to regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 since the statutory period of 180 days has expired on 27.05.2019.”

It is mentioned herein that Resolution for the Liquidation of the Corporate Debtor Company reflected at Page No.51-53, Paragraph/Item No.B1 of the Minutes of 6th Meeting of the COC is the self-explanatory and reveals that the other Members of the COC are not in agreement with the Punjab National Bank. It is also reflected at page no.52-53 of the Minutes of 6th Meeting of COC in the reply, while “Chairman asked the present members of the Committee of Creditors, whether they have voted for extension of CIRP period or for the liquidation of the Corporate Debtor Company. All the members present in the meeting replied that they have not voted for liquidation of the Corporate Debtor Company Only. In the

said meeting at page no. 53 paragraph no. 2, it is categorically stated by the representative of the Bank of Baroda namely Mr. M.H. Pathan that no other Financial Creditor or COC member has the contention or allegation against RP, it is only the personal view of Punjab National Bank.”

On the other hand, the RP who is present in person apprised this Bench that COC (consisting of above Banks) has already passed a Resolution for liquidation of the Company on 12.06.2019 by 80.61% voting in favour of the liquidation. The said fact has never been disclosed by the Ld. Lawyer claimed to be appearing on behalf of the COC, the reason best known to them/him. The copy of the Resolution so passed by the COC for liquidation is filed by the RP as proof. In view of passing of such Resolution by COC for Liquidation of Corporate Debtor, Application so filed under Section 22 of the IB Code become infructuous.

Under such circumstances I am constrained to issue notice to the Branch Manager as well as G.M. of the above mentioned Banks constituting COC for their personal appearance before this Bench to apprise the actual fact that even after the COC has resolved for Liquidation of the Corporate Debtor Company why appropriate steps have not been taken by the COC as of now.

The Registry is directed to issue notice to the above named Banks with a copy to the Regional Head.

List the matter on 14.08.2019.”

2. Learned Counsel appearing on behalf of the Appellant brought to our notice order dated 6th August, 2019 passed by this Appellate Tribunal in ***Company Appeal (AT) (Insolvency) No.749 of 2019 – Punjab National Bank vs. Mr. Kiran Shah, IRP of ORG Informatics Ltd.***, wherein, this Appellate Tribunal noticed that the ‘Committee of Creditors’ in its meeting decided to request the Adjudicating Authority to extend the period beyond 180 days and if not allowed, then pass order of ‘Liquidation’. Taking into consideration the facts therein, the impugned order dated 27th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench was set aside.

3. It appears that the impugned order dated 18th July, 2019 was passed prior to the order of this Appellate Tribunal passed on 6th August, 2019 in ***Company Appeal (AT) (Insolvency) No.749 of 2019 - Punjab National Bank vs. Mr. Kiran Shah, IRP of ORG Informatics Ltd.*** Thus, it appears that the Adjudicating Authority while passing the order, could not take into consideration the decision of this Appellate Tribunal as passed, subsequently, on 6th August, 2019. Further, we find that as no order of ‘Liquidation’ has been passed, we are not expressing any opinion, but remitting the matter to the Adjudicating Authority to pass order in accordance with law taking into consideration the order of this Appellate Tribunal dated 6th August, 2019. If the ‘Committee of Creditors’ makes a prayer for ‘extension of certain period’ for maximum of 90 days, the Adjudicating Authority normally should allow it to ensure that a ‘Resolution’ takes place instead of ‘Liquidation’. It cannot reject on the ground that no

specific ground is shown, as it is always open to the 'Committee of Creditors' to call for fresh 'Resolution Plan' and to consider it in accordance with law, if further time, maximum 90 days beyond 180 days is allowed. If it is allowed by the Adjudicating Authority, the period of pendency of application cannot be counted as the order of extension, if allowed, will be from prospective dates and not from the retrospective date.

4. However, we make it clear that the aforesaid observation made by us should not be considered as direction of this Appellate Tribunal, as the Adjudicating Authority is required to be decided as to how many days are to be allowed, beyond 180 days. The Appeal stands disposed of with the aforesaid observations. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC