

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 188 of 2021

In the matter of:

Nilesh Sharma
(Resolution Professional of Today Homes
And Infrastructure Pvt. Ltd.)

....Appellant

Present

For Appellant: Mr. Ashu Kansal, Mr. Milan Singh Negi Adhita,
Mr. Abhijeet Sinha, Ms. Vatsala Kak and Ms. Ankita
Bajpai, Advocates.
Mr. Nilesh, for RP.
Mr. Sumesh Dhawan, for Suspended Board of
Directors.

ORDER
(Virtual Mode)

10.03.2021: Heard the Learned Counsel for the Appellant.

2. Learned Counsel for the Appellant Mr. Nilesh (RP) in this case, filed an Interlocutory Application 3930 of 2020 in (IB)- 2130(ND) 2019 praying for exclusion of time of 131 days from 23.03.2020 to 31.07.2020. The National Company Law Tribunal, New Delhi Bench (Court No. – II) by Order dated 05.02.2021, while disposing of the Appeal excluded the period of 97 days from 25.03.2020 to 30.06.2020.

3. But the Learned Adjudicating Authority has refused to exclude the period of 29 days from 25.12.2019 to 23.01.2020 spent in handing over the charge from the IRP to RP though prayed for and rejected this Appeal.

4. Learned Counsel for the Appellant further submitted that this Bench in *Company Appeal (AT) (Insolvency) No. 934 of 2020*, while dealing with a similar situation had excluded the time consumed and have allowed the Appeal.

5. Mr. Sumesh Dhawan, Learned Counsel for Suspended Board of Directors, submitted that he has no objection.

6. Learned Counsel for the Appellant referring to Page No. 173 Volume II of the Appeal Paper Book, which is the Suo Motu Order passed by this Tribunal in *Company Appeal (AT) (Insolvency) No. 01 of 2020* dated 30.03.2020, referred to the case decided by this Tribunal in **‘Quinn Logistics India Pvt. Ltd.’ V/s. ‘Mack Soft Tech Pvt. Ltd.’ in Company Appeal (AT) (Insolvency) No. 185 of 2018** dated 08th May, 2018 and held as follows;

“(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for ‘Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where ‘Corporate Insolvency Resolution Process’ has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.

(2) It is further ordered that any interim order/stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy

*Code, 2016 shall continue till next date of hearing,
which may be notified later.”*

7. It was submitted by Learned Counsel for the Appellant that the RP is unable to take over the charge and responsibility. The period of 29 days from 25.12.2019 to 23.01.2020, also be excluded which has also been rejected by the Learned Adjudicating Authority.

8. After hearing the parties going through the Judgement cited by the Learned Counsel for the Appellant, **(Supra)** we are of the view that further period of 29 days from 25.12.2019 to 23.01.2020 is to be excluded. The Appeal is allowed and the Impugned Order so far rejection of the prayer for exclusion period of 25.12.2019 to 23.01.2020 is hereby set aside, is allowed that limited extent.

9. Further, the time spent in pursuing this the Interlocutory Application 3930 of 2020 is also excluded from CIRP Process.

10. The Appeal is stands allowed. No order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

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