

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 96 of 2021**

In the matter of:

Jalesh Kumar Grover

....Appellant

Vs.

Committee of Creditors of Akme Projects Ltd.

....Respondent

Present:

Appellant: Mr. Abhishek Anand, Mr. Kunal Godhwani, Mr. Viren Sharma, Advocates.

Respondent: Mr. Keshav Gulati, Advocate.

ORDER

(Through Virtual Mode)

16.02.2021: Prayer of Appellant- Resolution Professional of Corporate Debtor- 'Akme Projects Ltd.' for extension of Corporate Insolvency Resolution Process (CIRP) period beyond 330 days came to be rejected at the hands of the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-II, in terms of the impugned order dated 20th January, 2021 on the ground that 270 days have already been excluded for litigation and in terms of order dated 30th September, 2020, last opportunity had been granted by the Adjudicating Authority to conclude CIRP. The Adjudicating Authority was further of the view that exclusion was being sought on the same and similar grounds as were projected earlier.

2. Mr. Abhishek Anand, Advocate representing the Appellant- Resolution Professional submits that CIRP in the instant case relates to Real Estate Project and two entities namely- 'Spade Financial Services Limited' and 'AAA Landmark Private Limited' had sought inclusion in Committee of Creditors (COC) as Financial Creditors which was declined by the Adjudicating Authority

Contd/-.....

and order of Adjudicating Authority was upheld by this Appellate Tribunal in Company Appeal (AT) (Insolvency) No.829 of 2019 decided on 27th January, 2020. It is further submitted by Mr. Abhishek Anand, learned counsel for the Appellant that against the order passed by this Appellate Tribunal, Civil Appeal Nos. 3063 & 2841 of 2020 were preferred before the Hon'ble Apex Court which came to be dismissed in terms of the judgment dated 1st February, 2020 upholding the orders of this Appellate Tribunal. However, our attention has been invited to Para 39 of the impugned order which reflects the prayer for exclusion of time period spent in litigation including period from 13th October, 2020 to 9th December, 2020 figuring at Serial Nos. 4 & 5 of the table forming part of para 39.

3. On going through the impugned order, it appears that the Adjudicating Authority has either not been apprised of this development or it appears to have been lost sight of due to inadvertence while excluding the period of judicial intervention. We agree with Mr. Abhishek Anand, learned counsel for the Appellant that this being a Real Estate Project involving legitimate interests of various stakeholders including the homebuyers/ allottees, the issue related to exclusion of period while computing the CIRP period had to be seen from the prism of realism and pragmatic approach should have been adopted by the Adjudicating Authority more particularly when Appellant had specifically sought exclusion on the ground that the matter in regard to exclusion of above specified entities in the COC as Financial Creditors was sub-judice before the Hon'ble Apex Court.

4. After going through the record and giving our anxious consideration to the submissions made, we find that this is a fit case for exercise of our appellate jurisdiction to exclude period from 13th October, 2020 up to 9th December, 2020 as sought in the application as also up to 1st February, 2021 i.e., the date when the Hon'ble Apex Court pronounced the order in Civil Appeal No. 3063 of 2020 so that ends of justice are not defeated. Thus, while

computing the period of 330 days, period of 112 days i.e. period from 13th October, 2020 up to 1st February, 2021 shall not be counted and the same shall be counted while computing the CIRP period reckoned from today. The impugned order is accordingly set aside and appeal is allowed in aforesaid terms.

We make it clear that this order, passed in the peculiar circumstances of this case, shall not be a precedent for other cases.

Copy of this order be communicated to the Adjudicating Authority forthwith.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Dr. Ashok Kumar Mishra]
Member (Technical)

AR/g