

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 444 of 2021

[Arising out of order dated 01.04.2021 in I.A. No. 453 of 2021 in Company Petition (IB) 2083 (ND) 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Court-V]

IN THE MATTER OF:

Sunil Kumar Agrawal,

Resolution Professional, KPG International Pvt. Ltd.

Registered Address At:

E-29, South Extension II,
New Delhi 110049

Also Available At:

904, GF, Sector 7C,
Faridabad, 121006, Haryana

Email: irpkpg2020@gmail.com

....Appellant.

Versus

1. Committee of Creditors,

KPG International Pvt. Ltd.

Through Punjab National Bank,
Financial Creditors
Rajendra Bhawan, Rajendra Place
New Delhi. 110025
Email: zs8343@pnb.co.in

....Respondent No. 1.

2. Mrs. Rama Gupta,

Resolution Applicant,

C-117, Pushpanjali Enclave,
Pitampura, New Delhi-110034
Email: ramatayal08@gmail.com

..... Respondent No. 2.

Present:**For Appellant: Mr. Manoj Kumar Garg, Advocate for RP.****For Respondent: Mr. Sagar Bansal, Advocate for CoC.****Mr. Amit Mahaliyan, Advocate for R-2.**

J U D G M E N T
(7th September, 2021)

Justice Anant Bijay Singh;

This appeal has been preferred by the Appellant (Resolution Professional) being aggrieved and dissatisfied by the order dated 01.04.2021 in I.A. No. 453 of 2021 in Company Petition (IB) 2083 (ND) 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Court-V whereby and where under the Ld. Adjudicating Authority has partly allowed the I.A. No. 453 of 2021 and only exclude the period commencing from 25.03.2020 to 30.06.2020 i.e. 98 days on the ground of Lockdown imposed by the Central Government as well as State Government while calculating the total period of Corporate Insolvency Resolution Process.

2. The facts giving rise to the instant Appeal is as under:

i) That the Applicant (Appellant herein) filed I.A. No. 453 of 2021 in Company Petition (IB) No. 2083/ND/2019 before the National Company Law Tribunal, Bench No.-V, New Delhi, inter alia stating therein as follows:

PRAYER

*“ In view of above said facts and circumstances, it is prayed
most respectfully to this Hon’ble Tribunal, to:-*

a) *Allow the present Application and exclude the 221 days from Corporate Insolvency Resolution Process period of 180 days & extend the CIRP period upto 05.03.2021.*

b) *Pass any other order as deem fit and proper to this Hon'ble Tribunal.”*

ii) That the Hon'ble Tribunal vide order dated 27.01.2020 admitted the Insolvency Application filed by the Applicant – Modern Credit Private Limited against the Corporate Debtor i.e. KPG International private Limited and the said order dated 27.01.2020 Mr. Sunil Kumar Agrawal was appointed as Interim Resolution Professional.

iii) The Interim Resolution Professional was appointed as Resolution Professional pursuant to the resolution passed in 3rd Committee of Creditors meeting held on 27.11.2020.

iv) The application bearing I.A. No. 453 of 2021 filed by Resolution Professional (Appellant herein) in terms of the provision under Section 12 of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of the insolvency and Bankruptcy Code, 2016 and Regulation 40(C) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, for exclusion of Covid-19 period and extending the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

v) The period of Lockdown due to Covid-19 from 25.03.2020 to 31.10.2020 imposed by the Central Government and the State Government respectively.

The 180 days' time of the Corporate Insolvency Resolution Process was ended during Lockdown period i.e. on 27.07.2020. So, it was prayed that as per Regulation 40(C) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 the total period of 221 days may be excluded.

vi) The Ld. Adjudicating Authority after hearing the parties partly allowed the I.A. No. 453 of 2021 vide order dated 01.04.2021 and only exclude the period commencing from 25.03.2020 to 30.06.2020 i.e. 98 days on the ground of Lockdown imposed by the Central Government as well as State Government while calculating the total period of Corporate Insolvency Resolution Process. Hence this Appeal.

3. Learned counsel for the Appellant while assailing the impugned order submitted as follows.

i) The Schedule of Corporate Insolvency Resolution Process of the Corporate Debtor is stated herein below:

| S. No. | Event | Date |
|--------|----------------------------|------------|
| 1. | Commencement of CIRP | 29.01.2020 |
| 2. | Expiry of 180 days of CIRP | 27.07.2020 |
| 3. | Expiry of 330 days of CIRP | 24.12.2020 |

The Lockdown due to the pandemic of Covid-19 was imposed by

the Central and State Government w.e.f. 25.03.2020.

ii) That as per the calculations of the Hon'ble Adjudicating Authority granting only an exclusion of 98 days, the schedule of CIRP is as follows:

| S. No. | Event | Date |
|--------|--|------------|
| 1. | Commencement of CIRP | 29.01.2020 |
| 2. | Expiry of 180 days of CIRP | 27.07.2020 |
| 3. | Expiry of CIRP after 98 days extension/exclusion granted vide order dated 01.04.2021 | 02.11.2020 |

iii) That as per the Insolvency and Bankruptcy Board of India Notification dated 29.03.2020, the Covid-19 period will not be counted within the timeline of the Resolution Process.

iv) If the Notification dated 29.03.2020 issued by the Insolvency and Bankruptcy Board of India Notification is strictly adhered to, then the following schedule shall need to be treated for the Corporate Insolvency Resolution Process of the Corporate Debtor.

| S. No. | Event | Date |
|--------|---|------------|
| 1. | Commencement of CIRP | 29.01.2020 |
| 2. | 180 days of CIRP 55 days before 25.03.2020 and 125 days after 31.10.2020 Excluding the period | 05.03.2021 |

| | | |
|----|---|------------|
| | of 25.03.2020 to 31.10.2020 (221 days) | |
| 3. | Expiry of 330 days of CIRP | 02.08.2021 |

v) The legislative intent behind the provisions of the Insolvency and Bankruptcy Code, 2016 shall not be able to be met by the Appellant / Resolution Professional on behalf of the Corporate Debtor in the conducting of the CIRP of the Corporate Debtor.

vi) Severe prejudice shall be caused to the Corporate Debtor if the Impugned order dated 01.04.2021 is not set aside by the Hon'ble Appellate Tribunal along with specific directions, as the Corporate Insolvency Resolution Process period, as per the impugned order dated 01.04.2021 stands expired on 02.11.2020, since the Resolution Plan has been received on 04.01.2021 and the same is approved by the CoC in the 6th CoC Meeting held on 13.01.2021 with a majority voting of 80.43% assent.

4. After hearing and perusal of the impugned order, we are of the considered view that where Ld. Adjudicating Authority excluded only 98 days, we hereby exclude 221 days (the period from 25.03.2020 to 31.10.2020) from the CIRP period as prayed by the Appellant on the ground of Lockdown imposed by the Central Government as well as State Government. Thus, the impugned order is hereby set aside. The time spent in pursuing the instant Appeal i.e. Company Appeal (AT) (Insolvency) No. 444 of 2021 filed by Resolution Professional (Appellant herein) on 18.06.2021 to till the date of

Judgment is also excluded from the CIRP period. The present Appeal stands allowed with the above observations and directions.

5. Registry to upload the Judgment forthwith on the website of this Appellate Tribunal.

6. Registry is directed to send the copy of this Judgment to the Adjudicating Authority, National Company Law Tribunal, New Delhi Court - V, forthwith.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

New Delhi

7th September, 2021

R. Nath.