



**PSL** Advocates  
& Solicitors

## **New Ram Traders (Successful Resolution Applicant) vs. Rajiv Goyal (Resolution Professional/Monitoring Personal) and Another**

**CITATION** IA No.184 and 185 of 2020 in CP (IB) No.30/Chd/Pb/2017  
**DATE** 11 MAY 2020  
**BENCH** The National Company Law Tribunal, Chandigarh Bench  
**CORAM** Ajay Kumar Vatsavayi (Judicial Member)

## BRIEF FACTS:

- The Resolution Applicant (“**Applicant**”) submitted a Resolution Plan which was approved by the Committee of Creditors (“**COC**”) and thereafter, the same was approved by this National Company Law Tribunal, Chandigarh Bench (“**Hon’ble Tribunal**”) vide order dated 13.03.2020 in CA No.893/2019.
- Under the Resolution Plan, the Applicant herein was required to make the total payment of Rs.64.33 Crores approximately. Further as per the approved Plan, the Applicant was to make the following payments within 30 (Thirty) days of the date when plan was approved by this Hon’ble Tribunal i.e. 13.04.2020:

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount</i>
1.	<i>CIRP Cost</i>	<i>Rs.10.50 Crores</i> <i>any increase over and above the said amount is also to be paid by the Resolution Applicant)</i>
2.	<i>Operational Creditor(s)</i>	<i>Rs.24.43 Lakhs</i>
3.	<i>Financial Creditors</i>	<i>Rs.5.00 Crores</i>

The Applicant was required to make rest of the payments within 90 (Ninety) days from the date of the approval of the Plan.

- Thereafter, a Monitoring Committee was constituted in terms of the approved Resolution plan, consisting of the Resolution Applicant, State Bank of India (“**SBI**”) i.e. the erstwhile COC member with 100% vote share and the Resolution Professional. In order to implement the provisions of the Resolution plan, the Applicant was required to open an Escrow Account as well as to appoint an escrow trustee.
- In the First Meeting of the Monitoring Committee held on 18.03.2020, it was agreed that the Escrow Account shall be opened with Union Bank of India. The SBI vide its email dated 26.03.2020 suggested that either SBI CAPS or Axis Trustee Services Limited be appointed as the Custodian or trustee of certain documents. The Applicant communicated the same with Union Bank of India and after exchanging certain draft, the Union Bank of India approved the draft Escrow Agreement vide its email dated 03.04.2020. The Applicant further appointed Axis Trustee Services Limited as Custodian of documents and exchanged draft Custodian Agreement. The Monitoring Committee was promptly informed about the above developments.
- Meanwhile, a nationwide lockdown was declared from 25.03.2020 due to pandemic caused by Coronavirus, due to which movement was extremely restricted and individuals were confined to their homes. Further, Banks were working with skeletal staff and were engaged in providing only essential and emergency services.
- Union Bank of India also vide its email dated 03.04.2020 expressed the difficulty faced by it and informed that due to exceptional circumstances, Account opening will be delayed. Hence, despite the approval of draft Escrow Agreement by the Union Bank of

India, the same could not be executed due to the concerned parties being confined to their homes. Similarly, the Custodian Agreement could not be executed with Axis Trustee Services due to lockdown.

- The Applicant also updated the monitoring committee, vide its email dated 12.04.2020. The monitoring committee considered representation of Resolution Applicant in its meeting held on 27.04.2020 (through Video Conferencing) and resolved to approach this Hon'ble Tribunal for the necessary directions.

#### **NATIONAL COMPANY LAW TRIBUNAL:**

- Hence, an application was filed before the Hon'ble Tribunal seeking the following reliefs:

*i.) To exclude the period of complete lockdown from the due date of first trench of payments & allow Applicant to make first trench of payments within 30 (thirty) days from the date of order excluding the period of lockdown;*

*ii.) To exclude the time period of complete lock down from the due date of making final payments under Approved Resolution Plan & allow applicant to make final payment within 90 (Ninety) days from the date of order excluding period of lockdown;*

*iii.) To pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

#### **CONTENTIONS OF APPLICANT:**

- The Applicant relied on the judgment of Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No(s).3/2020*** in ***Re: cognizance for extension of Limitation***, wherein the Hon'ble Supreme Court, exercising power under Article 142 read with Article 141 of the Constitution of India vide order dated 23.03.2020 held that a period of limitation in all proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.
- Further reliance was placed on the order dated 30.03.2020 passed by the Hon'ble National Company Law Appellate Tribunal in ***Suo Moto-Company Appeal (AT) (Insolvency) No.01 of 2020*** holding 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.

- The Applicant relied on **Regulation 40C** of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, inserted by the Insolvency and Bankruptcy Board of India vide notification dated 29.03.2020, which provided that the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.
- Reliance was also placed on **Regulation 47A** of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 inserted by the Insolvency and Bankruptcy Board of India, vide notification dated 20.04.2020 which provided that the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process

#### **DECISION:**

- The Hon'ble Tribunal held that since the facts are not disputed by the Respondents and in view of the orders of the Hon'ble Supreme Court of India and the National Company Law Appellate Tribunal and the new Regulations issued by the Insolvency and Bankruptcy Board of India, the entire lockdown period i.e. from the date of imposition of lockdown by the Government of India till the reopening of National Company Law Tribunal, Chandigarh Bench, on regular basis, after removal of the lockdown, be excluded, from the compliances required to be made under order dated 13.03.2020 in CA No.893/2019, passed by this Tribunal and in relation to the Corporate Insolvency Resolution Process.
- Hence, the Hon'ble Tribunal allowed the present Application excluding the time period of lockdown from the period specified under the approved Resolution Plan for complying with the terms therein.