

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 405 of 2021

IN THE MATTER OF:

**Binay Kumar Singhania
Resolution Professional
Genegrow Commercial Pvt. Ltd.
Mousumi Apartments,
Ground Floor, 15B,
Ballygunge Circular Road,
Kolkata – 700 019.**

...Appellant

**For Appellant: Mr. Dhanajaya Sud, Mr. Aditya Gauri and Mr. Naresh
Kumar Agarwala, Advocates.**

ORDER
(Virtual Mode)

14.06.2021: Heard Ld. Counsel for the Appellant. The Appellant was appointed as Resolution Professional (RP) in CP (IB) No. 353 of 2018 against the Corporate Debtor – ‘M/s Genegrow Commercial Private Limited’.

2. It is stated that the Corporate Insolvency Resolution Process (CIRP) started on 2nd August, 2019 and the Appellant – Resolution Professional was taking all the necessary steps in time as required under the procedure in Insolvency and Bankruptcy Code, 2016 (in short ‘I&B Code’). It is stated that one of the Ex-Director of the Corporate Debtor moved this Appellate Tribunal in Appeal against admission of the application under Section 7 of I&B Code and this Appellate Tribunal had in Company Appeal (AT) (Insolvency) No. 993 of 2019 (Annexure 10 at Page 137) set aside the order of admission which had been passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench, Kolkata.

Cont’d.../

It is stated that subsequently on 27th January, 2020, the Adjudicating Authority closed the proceedings against the Corporate Debtor passing order (Annexure 11 at Page 155). It appears that being aggrieved by the order of this Appellate Tribunal, the State Bank of India had gone in Appeal before the Hon'ble Supreme Court of India in Civil Appeal No. 2715 of 2020.

3. On 3rd November, 2020, it is stated Hon'ble Supreme Court passed orders staying the orders of this Appellate Tribunal till the next date of hearing.

4. It is stated that the matter is still pending before Hon'ble Supreme Court. Appellant claims that he was informed about the order dated 3rd November, 2020 passed by the Hon'ble Supreme Court by Financial Creditor on 20th January, 2021 and he convened 5th meeting of the Committee of Creditors (CoC) and CoC resolved to authorise the Appellant to seek exclusion of period of 363 days i.e. from 23rd January 2020 till 20th January, 2021 (the date when the RP was informed about the orders of Hon'ble Supreme Court). The Appellant claims that he moved I.A. (IB) No. 200/KB/2021 before the Adjudicating Authority to exclude the period but the Adjudicating Authority has dismissed the I.A. as premature.

5. We have perused the impugned order. In the common order dated 3rd May, 2021, the Adjudicating Authority first dealt with one I.A. (IB) No. 1327/KB/2020 filed by one of the Financial Creditor – State Bank of India, where the said Financial Creditor sought resumption of the CIRP and extension of CIRP period but the Appellant opposed the application questioning the locus of the Financial Creditor to move such application before the Adjudicating Authority and claimed that the

Applicant had not taken steps to revive the Company Petition CP (IB) 353/KB/2018 which has been disposed off. The Resolution Professional submitted before the Adjudicating Authority that the matter in Hon'ble Supreme Court has been tagged with Civil Appeal in the matter of 'Piramal Enterprises Ltd. vs. Vishnu Kumar Agarwal' and that the issue was under consideration of the Hon'ble Supreme Court. The Adjudicating Authority after hearing the parties in I.A. (IB) No. 1327/KB/2020 observed in Para 11 as under:-

*“The Hon'ble Supreme Court, in **Shree Chamundi Mopeds Pvt. Ltd. v Church of South India Trust Association**, has expounded the difference between ‘stay’ of an order and ‘setting aside’ of the order. The Hon'ble Supreme Court elaborated that – “while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. (para 10)””*

6. On such analysis, the Adjudicating Authority declined the prayer sought observing that the stay granted does not lead to automatic revival of the Company Petition which has been already closed by the Adjudicating Authority.

7. Consequent to such observation and findings in I.A. (IB) No. 1327/KB/2020, the Adjudicating Authority disposed off I.A. (IB) No. 200/KB/2021 as premature and this is order in I.A. (IB) No. 200/KB/2021 which is impugned before us.

8. After going through the matter and hearing Learned Counsel for the Appellant, it appears to us that without restoration of the Company Petition which was closed by the Adjudicating Authority vide order dated 27th January, 2020 (Annexure 11 at Page 165), the CIRP cannot continue.

9. Learned counsel for the Appellant submits that he will take necessary steps to move Hon'ble Supreme Court for directions.

10. It is open for the Appellant to take appropriate steps for appropriate remedy. As far as present appeal is concerned we find it difficult to take a different view than which has been taken by the Adjudicating Authority in treating I.A. (IB) No. 200/KB/2021 as premature. In the facts of the matter, we dispose off the present appeal with observations as above.

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Archana/gc.