

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.210/KB/2021

In the matter of

An application under section 95 of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

State Bank of India, Stressed Assets Management Branch-I, Nagaland House, 11 & 13,Shakespeare Sarani, Kolkata-700017.

... Applicant / Financial Creditor

Versus

In the matter of:

Shri Manoj Toshniwal, son of Late Pushkar Narayan Toshniwal , CL- 280, Salt Lake, Sector- II, Kolkata-700091.

...Respondent/ Guarantor

Date of hearing : 28/01/2022

Order Pronounced on : 21/02/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Ramesh Chandra Prusti, Adv.] For the Financial Creditor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. By way of orders passed in this matter, on 14/01/2022 by this Adjudicating Authority, **Mr. Kannan Tiruvengadam**, having Registration No. **IBBI/IPA-001/IP-P00253/2017-18/10482**, was appointed as the RP under section 97(5)(6) of the Insolvency and Bankruptcy Code, 2016.
3. Later on, it was pointed out by Ld. Counsel appearing for the petitioner that the aforesaid RP appointed in the aforesaid order could not have been appointed under Explanation (i)(c) of Regulation (4)(1)(a) of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The Relevant provision is extracted as under:-

“ 4. Eligibility of resolution professional- (1) An insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-

- (a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;*
- (b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and*
- (c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.*

Explanation- For the purposes of this sub-regulation;-

- (i) a person shall be considered independent of the guarantor, if he-*
 - (a) is not an associate of the guarantor;*
 - (b) is not a related party of the corporate debtor; and*
 - (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor;*

4. It was pointed out by Mr. Ramesh Chandra Pursti, Ld. Counsel for the Financial Creditor submitted that **Mr. Kannan Tiruvengadam, RP** had acted as the RP in the matter being **C.P. (IB) No. 1237/KB/2018 (Beni**

Gopal Singh Vs EMC Limited). Therefore, the explanation (i)(c) of Regulation 4(1)(a) of the IBBI (Insolvency Resolution Process for Personal Guarantors) Regulation, 2019 specifically mentions that an Insolvency Professional shall be eligible to be appointed as an RP for a resolution process if he, the Insolvency Professional entity of which, he is a partner or a Director and all the partners and Directors of the said Insolvency Professional entity are independent of the Guarantor, and that for the purposes of this Sub-Regulation, a person shall be considered independent of the Guarantor if he has not acted or is not acting as Interim Resolution Professional, resolution professional or liquidator in respect of the Corporate Debtor.

5. It is submitted that since **Mr. Kannan Tiruvengadam** has already acted as the RP in the aforesaid matter being C.P. (IB) No. 1237/KB/2018 (Beni Gopal Singh Vs EMC Limited), his appointment would probably not be valid as per the aforesaid regulation.
6. We, therefore, deem it proper to replace Mr. Kannan Tiruvengadam by appointing **Mr. Tarun Kumar Ray**, having Registration No. **IBBI/IPA-001//IP-P-01411/2018-2019 /12228**, email **tarun.ray123@yahoo.com** as the Resolution Professional in this matter.
7. This order will be read and shall form part of the order dated 14/01/2022, passed in this matter.
8. List the matter on **18/04/2022** for filing of **Progress Report**.
9. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, the 21st February, 2022

PJ