

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - II, CHENNAI**

IA/971/IB/2020 in IBA/1099/2019

(filed under Section 27 r/w 60 (5) of the Insolvency and Bankruptcy Code, 2016)

*In the matter of **Regen Powertech Private Limited***

Veeral Controls Private Limited,
B-29 G.I.D.C. Electronics Estate,
Gandhinagar, Gujarat – 382044.

... Applicant

Vs

1. Regen Powertech Private Limited,
Sivanandam, 1st Floor, New No.1,
Pulla Avenue, Shenoy Nagar,
Chennai – 600 030.

2. Mr. Ebenezar Inbaraj,
Resolution Professional of
Regen Powertech Private Limited.

... Respondents

Order Pronounced on 1st February 2022

CORAM:

**Justice (Retd) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant :Gaurav Kumar, PCS

*For Respondent :P. H. Arvinth Pandian, Senior Advocate.
A.G. Sathyanarayana, Advocate.*

ORDER

Per: Justice (Retd) S. RAMATHILAGAM, MEMBER (JUDICIAL)

The above application has been preferred by Veeral Controls
Private Limited under Section 27 r/w Section 60(5) of the



Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") seeking relief as follows;

- a) *To remove and replace the Respondent 2 as resolution Professional or Respondent 1 immediately on account of suppression of facts about the contempt proceedings.*
- b) *To report to the IBBI w.r.t. the conduct of Resolution Professional; To stay the frivolous arbitration proceedings at Madras High Court filed by the Respondents.*
- c) *To impose cost on the Resolution Professional for filing frivolous against the applicant.*

2. The Learned Authorized Representative appeared for the Applicant submitted that CIRP was initiated against the Corporate Debtor on 13.12.2019 and Mr. Ebenezar Inbaraj was appointed as Interim Resolution Professional and later confirmed as Resolution Professional in respect of the Corporate Debtor.

3. It was further submitted that prior to the initiation of CIRP, the Corporate Debtor had filed an Arbitration Suit against the Applicant for infringement of Intellectual Property Rights, which is pending before the court and in the meanwhile, the CIRP was initiated against the Corporate Debtor. Pursuant to that the Applicant filed a claim before RP who had accepted the claim, however, the RP has filed a petition before Hon'ble High Court of Madras to reinstate the above said arbitration proceedings.

4. It was further submitted that RP is undergoing contempt proceedings before this Tribunal in MA/96/2019 and show cause notice has been caused against him. Further it was submitted by Learned Authorized Representative that the RP has wilfully not disclosed anything before this Tribunal about the show cause notice and the contempt proceedings pending against him and he is ineligible to be appointed as a Resolution Professional of Corporate Debtor and sought direction to remove RP.

5. The Learned Counsel for the Respondent submitted that the order dated 06.02.2019 passed by this Tribunal in MA/96/2019 was stayed by the Hon'ble High Court, Madras vide order dated 20.02.2019 in Appeal No.1 of 2019. Thereafter, vide order dated 21.03.2019, the stay was extended until further orders and these developments were recorded by this Tribunal in daily orders dated 08.04.2019 and 30.12.2019 in MA/96/2019. Further, it was submitted that the RP has neither made any contempt in any court proceedings nor is disqualified to be appointed as Resolution Professional and RP has valid Authorization for Assignment for the period between 08.01.2020 to 07.01.2021. In the light of above facts, the Respondent sought dismissal of this application.

6. We have heard the submissions made by the Learned Counsel for the parties. At the first instance, the Applicant herein is not entitled to file an Application seeking replacement of RP since such a provision for replacement of RP has been envisaged only under Section 22 and 27 of IBC, 2016. Secondly, the MA/96/2019 which is relied on by the Applicant in the present case came to be dismissed by this Tribunal vide an order dated 11.01.2022 and also the order dated 20.02.2019 passed by this Tribunal was also stayed by the Hon'ble High Court of Madras. Further, it has been time and again held by the Hon'ble Appellate Tribunal that this Adjudicating Authority cannot enforce disciplinary proceedings against the IRP / RP and only IBBI would be the competent authority to initiate disciplinary proceedings against the IRP / RP.

7. Further, Section 217 of the IBC empowers a person aggrieved by the functioning of an RP to file a complaint to the IBBI. If the IBBI believes on the receipt of the complaint that any RP has contravened the provisions of IBC, or the rules, regulations or directions issued by the IBBI, it can, under Section 218 of the IBC, direct an inspection or investigation. Under Section 220 of the IBC, IBBI can constitute a disciplinary committee to consider the report submitted by the investigating authority. If the disciplinary committee is satisfied that sufficient cause exists, it can impose a penalty.

8. Hence, the present Application filed by the Applicant for change of RP is devoid of merits and not sustainable before this Tribunal for the reasons stated supra. Accordingly, IA/971/2020 stands **dismissed**. No costs.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond