

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

I.A. No. 4138-4139 of 2023

in

Company Appeal (AT) (Insolvency) No. 930-931 of 2023

IN THE MATTER OF:

Mukesh Kumar Jain

...Appellant

Versus

Navin Kumar Upadhyay & Anr.

...Respondents

Present:

For Appellant: Mr. Gautam Singhal, Mr. Rajbir Singh, Mr. Mukesh Kumar Jain, Advocates along with RP

For Respondent: Mr. Saurav Agarwal, Mr. Asav Rajan and Mr. Ajay Sharma, Advocates for R-1.

ORDER

1. I.A. No. 4138-4139 of 2023 has been filed by Respondent No. 1 in the Appeal, Mr. Navin Kumar Upadhyay praying for following reliefs:

“A. Set aside/quash the communication contained in the email dated 20.08.2023 issued by the Resolution Professional effectively removing the Applicant as the Executive Editor of the newspaper and appointing Ms. Shobori Ganguli as Executive Editor (Editor in chief) of newspaper run by Corporate Debtor vide email dated 20.08.2023; and

B. Reinstate the Applicant, Mr. Navin Kumar Upadhyay as the Executive Editor of the newspaper of Corporate Debtor in accordance with Paragraph No. 16 (2) of Order dated 30.05.2023 passed by the Adjudicating Authority read with Order Dated 24.07.2023 and Order Dated 10.08.2023 passed by this Hon'ble Tribunal and also

direct the payment of contractual dues/arrears of the Applicant since January 2023 onwards;

C. Remove and direct the Insolvency and Bankruptcy Board of India to investigate and initiate disciplinary proceedings against the Resolution Professional, Mr Mukesh Jain, and direct the new Resolution Professional to initiate proceedings in accordance with law based on the Forensic Report submitted by the Appellant Mr. Amit Goel;

D. Pass any other ex-parte ad interim reliefs in terms of prayers above, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case in the interest of justice, equity and good conscience."

2. We need to notice certain background facts before considering the prayers made in the Application.

3. The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor-CMYK Printech Ltd. vide Order dated 19th January, 2021. One Mr. Ranjeet Kumar Verma was appointed as IRP. On 22nd April, 2021, IRP appointed Respondent No. 1 Mr. Navin Kumar Upadhyay as Executive Editor of The Pioneer Newspaper run by the Corporate Debtor. Company Appeal (AT) Ins. No. 128 of 2021 was filed challenging the Order admitting CIRP by a Suspended Director of the Corporate Debtor which Appeal came to be dismissed by this Tribunal vide its Order dated 16.12.2021. Against the Order dated 16.12.2021, two Civil Appeals were filed in the Hon'ble Supreme Court one by Shoboroi Ganguli and another by Narendra Kumar & Navin Kumar Upadhyay (Respondent No. 1). In the

civil Appeals filed against the Order dated 16.12.2021, Hon'ble Supreme Court passed following interim Order on 25th February, 2022:

“UPON hearing the counsel the Court made the following

O R D E R

Issue notice.

There shall be stay of the following in the meanwhile:

1. Corporate Insolvency Resolution Process of the Respondent No.2; and

2. judgment and final order dated 16.12.2021 passed by the NCLAT in company Appeal (AT) (insolvency) No. 128/2021”

4. The IRP Mr. Ranjeet Kumar Verma was removed and in his place Mr. Mukesh Kumar Jain (The Appellant herein) was appointed as RP. RP filed an I.A. No. 142419/2022 in Civil Appeal No. 2661 of 2022 seeking certain directions from the Hon'ble Supreme Court. On 31st January, 2023, Resolution Professional issued a letter to Respondent No. 1 informing that contract of Respondent No. 1 expired on 31st May, 2022 and after taking over charge by the RP, RP has continued month to month upon expiry of contract on 31st May, 2022 it was further communicated that Respondent No. 1 has already attained the age of 60 years, the RP relieved the Respondent No. 1 from his post of Executive Editor with effect from 01st February, 2023. The Respondent No. 1 after receipt of Letter dated 31st January, 2023 filed I.A. in the Hon'ble Supreme Court being I.A. vide Diary No. 65621 of 2023 bringing on record the letter dated 31st January, 2023 terminating service of Respondent No. 1 and seeking direction from the

Hon'ble Supreme Court to initiate contempt proceedings for disobedience of the Interim Order dated 25th February, 2022 passed by the Hon'ble Supreme Court in the Civil Appeals. A defect was reported in the said application by the Registry. RP has filed I.A. No. 964 of 2023 before the NCLT restraining the Respondent No. 1 from entering into the office of the Corporate Debtor. Respondent No. 1 filed I.A. No. 2403 of 2023 before NCLT challenging his removal, the Adjudicating Authority vide order dated 30th May, 2023 allowed the I.A. No. 2403 of 2023 and dismissed the I.A. No. 964 of 2023 as infructuous. Two appeals were filed challenging the Order dated 30th May, 2023 in this Tribunal being Company Appeal (AT) Ins. No. 930-931 of 2023 by Resolution Professional and another Company Appeal (AT) Ins. No. 943-944 of 2023 on behalf of Mr. Amit Goel, the suspended director.

5. Both the appeals were heard by this Tribunal and this Tribunal passed an Interim Order on 24th July, 2023. The Adjudicating Authority vide Order dated 30th May, 2023 has issued three directions which have been noticed in paragraph 1 of the Interim Order dated 24th July, 2023 which is to the following effect:

“24.07.2023: These two appeals have been filed against the same order dated 30.05.2023 on an I.A. No. 2403 of 2023 filed by Respondent No. 1. Adjudicating Authority has allowed the I.A. and issued direction in paragraph 16 to the following effect:

....

“16. After considering the rival contentions and perusing the order passed by the Hon'ble Supreme

Court on 25.02.2022, we are of the considered view that the Resolution Professional Company Appeal (AT)(Insolvency) No. 930-931 & 943-944 of 2023 Page 2 of 8 has committed an error in not handing over the management of the affairs of the Corporate Debtor to the directors/only management. The actions of the Resolution professional after the order dated 25.02.2022 passed by the Hon'ble Supreme of India are without any authority since once the CIRP has been stayed the Resolution Professional could not have taken any further action. We, therefore, feel it appropriate to direct that all actions taken by the Resolution Professional after the stay order passed by the Supreme Court of India on 25.02.2022 are without any authority and unsustainable and therefore, we pass the following directions :-

- 1. "The Resolution Professional shall immediately hand over the management of the Corporate Debtor to the CEO/Management of the CD.*
 - 2. All actions taken by the Resolution Professional after the order dated 25.02.2022 passed by the Hon'ble Supreme Court of India including the removal of the Applicant and appointment of Mr. Vishal Bakshi are declared to be null and void.*
 - 3. Status, public position of the Corporate Debtor as it was before passing of the order dated 25.02.2022 by Hon'ble Supreme Court of India shall be restored back."*
- ..."*

6. After noticing the sequence of events this Tribunal passed following interim Order in Paragraph 8 and 9 of the Order dated 24th July, 2023 which is to the following effect:

“8. We are of further view that Adjudicating Authority ought not to have entertained the application when the matter is pending before the Hon’ble Supreme Court and was extensively heard by the Hon’ble Supreme Court on several dates. We are thus of the view that the direction issued by the Adjudicating Authority in paragraph 16(1) & (3) deserves to be stayed and we direct that the directions in (1) (3) of paragraph-16 be remain stayed.

9. Mr. Saurabh Kalia, learned Advocate, appearing for Respondent No. 1 accepts Notice and seeks two weeks’ time to file Reply Affidavit and thereafter two weeks’ time is granted to file Rejoinder. We further make it clear that both the parties are at liberty to approach Hon’ble Supreme Court in pending appeal, if any, further directions are sought by any of the parties.”

7. After the aforesaid order of this Tribunal, the Respondent No. 1 filed another application I.A. No. 3580-3583 of 2023 in the present Appeals where following prayers have been made:

“A. It is respectfully submitted that if the present application is not allowed, then there would be irreparable damage caused to the Applicant as well as the Corporate Debtor and all its stakeholders.

B. The Applicant has a good prima facie case in view of the facts, circumstances and grounds set out above as the non-payment of operational dues by the Corporate Debtor may interrupt the publication work of the Corporate Debtor and lead to tis closure/shutting down.

C. That the present application is bona fide and in the interest of justice.

D. The balance of convenience lies in favour of the Applicant and against the Non-Applicant.”

8. I.A. No. 3580-3583 of 2023 was considered by this Tribunal and by its order dated 10th August, 2023, the Applications were disposed of. In paragraph 2,3,4 and 5, following was stated:

“2. By our detailed order dated 24.07.2023, we have noticed the interim order and other proceedings. We have already noticed the order of the Hon’ble Supreme Court staying the CIRP of the Respondent No.2 in paragraph 3 of the order.

3. By this Application, Respondent No.1 who claimed to be Executive Director prays for reliefs as noticed above. In essence, the Applicant prays that officers of the Corporate Debtor be permitted to function and operate the bank account. Counsel for the Applicant also relied on the judgment of this Tribunal in “Ashok Kumar Tyagi vs. UCO Bank & Anr.-IA Nos.4291, 4221, 4340 in Company Appeal (AT) (Ins.) No. 1323 of 2022”. In the said judgment, we have already taken the view that even if the CIRP is stayed, the Corporate Debtor could not be put back in function. In the facts of the said case, we had issued certain interim directions for running of the managing of the Corporate Debtor for carrying day to day function.

4. In the present case, by virtue of the interim order of the Hon’ble Supreme Court, the CIRP process has been stayed, meaning thereby the Resolution Professional shall not take any further steps in the CIRP process. However, we are of the view that for day to day function Resolution Professional can carry its duty and ensure that the

Corporate Debtor runs as a going concern for which he may take steps expeditiously.

5. We dispose of this Application accordingly.”

9. When the prayer of the Respondent No. 1 to permit him to allow the applicant to function was not granted and RP was directed to run and perform the duties as a going concern the present I.A. No. 4138-4139 of 2023 has been filed by Respondent No. 1 praying for reliefs as above.

10. In the I.A. filed by the Applicant, challenge is to the email dated 20th August, 2023. Email dated 20th August, 2023 which is part of the Application is as follows:

“Dear Mr. Abhishek and Mr. Swarn Anand

This is in continuation of meeting of Suspended Directors of CMYK Printech Ltd held yesterday at CMYK Printech Office and attended by all directors except Ms Tanu shree Ganguli.

As you know currently due to sudden death of Respected Narinder Kumar position of Printer and Publisher has become vacant. The matter was discussed in the meeting and directors has suggested name of Ms Shobori Ganguli to perform the such roll and fill the vacancy temporarily. Besides being wife of Late Dr. Chandan Mitra, She has more than 3 decades of Editorial Experience and with exposure of running publication house.

She is also a well accepted face among most of the staff members of the company and it is very much clear and evident from conduct of staff members after order of Honorable NCLT with respect to restoration of CEO.

Therefore, to keep the paper running and after consent of majority of the Directors, "Ms. Shobri Ganguli as

Executive Editor and Printer and Publisher" as a temporary measure for all editions of Pioneer, with immediate effect. Accordingly, all concerned in Cmyk Printech Ltd and Franchisees be informed and take action, accordingly.

Further, all employees currently engaged in the Company (except those have resigned, left or terminated) shall work at the same designation at which they were working as on date of commencement of CIRP.

Ms Shobori Ganguli has agreed to work without any remuneration only expenses of travel in connection with her duty shall be reimbursed.

We are also in process of intimating the same to Hon'ble NCLAT and Hon'able apex court with other things to apprise the status of the Company as Company is incurring big losses every month due to which value of corporate debtors assets is depleting.

Regards

Mukesh Kumar Jain

Resolution Professional"

11. Learned Counsel for the Applicant challenging the email dated 20th August, 2023 issued by the Respondent Professional contends that Resolution Professional has indirectly removed the Applicant from his post of Executive Editor and has appointed Shoboroi Ganguli which is not in accordance with Interim Orders passed by this Tribunal in the present Appeals as well as Order of the Hon'ble Supreme Court dated 25.02.2022. Learned Counsel for the Applicant submits that this Tribunal vide its Interim Order dated 24th July, 2023 has not stayed direction No. 2 of the Adjudicating Authority which clearly meant that all earlier decisions taken

by the Resolution Professional were set aside hence the letter dated 31st January, 2023 also stood set aside and Applicant was entitled to work as Executive Editor and perform his duties. Learned Counsel for the Applicant submits that Applicant is entitled to be reinstated on post of Executive Editor and paid his salary.

12. Learned Counsel appearing for the Resolution Professional as well as Learned Counsel for the Appellant in C.A.(AT) Ins. No. 943-944 of 2023 opposed the submissions of the Applicant and submits that the Applicant is making repeated unsuccessful attempts to be reinstated and to start functioning in the Corporate Debtor. Applicant contract had come to an end on 31st May, 2022 and he was only continuing month to month basis and on 31st January, 2023 he was informed not to function since he has already attained the age of 60 years. It is further submitted by RP that Respondent No. 1 is creating obstruction in functioning. Applicant has also filed an application before the Hon'ble Supreme Court praying for initiation of contempt against the RP which application is still pending. It is submitted that this Tribunal in its interim Order dated 24th July, 2023 passed in these Appeals has observed that the Adjudicating Authority ought not to have entertained the Application when the matter is pending before the Hon'ble Supreme Court. It is submitted that the Applicant cannot be reinstated on his post. It is submitted that earlier publisher and Printer Narendra Kumar having died there was difficulty in running the newspaper hence Shoboroi Ganguli was asked to work as Executive Editor of Printer and Publisher which appointment has been accepted by Shoboroi Ganguli

without any remuneration which is noted in email dated 20th August, 2023. Resolution Professional who is to carry out the corporate debtor as a going concern is fully entitled to take decision in interest of the running of the corporate debtor and applicant is not entitled to be reinstated.

13. From the application filed by the Applicant it is clear that applicant is not working after 31st January, 2023 and further he claims that he has not been paid after December, 2022. Applicant having already filed an Appeal before Hon'ble Supreme Court it ought to have approached the Hon'ble Supreme Court for orders, if any. It is submitted that this Tribunal has already granted liberty in its order dated 24th July, 2023 to the parties to approach the Hon'ble Supreme Court in pending Appeal if any directions are sought by any of the parties.

14. Learned Counsel appearing for Amit Goel has supported the submissions of Resolution Professional and submits that Applicant (Respondent No. 1 herein) is not entitled to be reinstated and the Adjudicating Authority has committed error in issuing direction which is already impugned in the present Appeal.

15. We have considered the submissions of Learned Counsel for the parties and have perused the record.

16. The email which has been challenged by means of Application was issued by the Resolution Professional for carrying out and running the Corporate Debtor. Mr. Narender Kumar the Printer and Publisher has died hence the arrangement was to be made with the RP. By our order dated 10th August, 2023, we have already directed that "*for day to day function*

Resolution Professional can carry its duty and ensure that the Corporate Debtor runs as a going concern for which he may take steps expeditiously.”

17. The CIRP having been stayed by Hon’ble Supreme Court, no further steps in the CIRP can be taken by the RP or CoC. We have already stayed the Order of the Adjudicating Authority by which direction was issued for ex-management to be reinstated on an application filed by Respondent No.

1. There being no management in place RP has to carry out and run the Corporate Debtor as a going concern and the email dated 20th August, 2023 which has been issued by the RP was for purpose and object of running the corporate debtor as a going concern. According to own case of the Applicant, Applicant has not been allowed to function after 31st January, 2023. Applicant has also approached the Hon’ble Supreme Court by filing I.A. vide diary No. 65621 of 2023 bringing on record the letter dated 31st January, 2023 terminating his services and praying for initiating contempt proceedings against the RP in which no orders have been passed.

18. Learned Counsel for the Applicant has relied on the Order dated 24th July, 2023 passed by this Tribunal in the present Appeals and submits that this Tribunal has not stayed the direction No. 2 of the Adjudicating Authority dated 30th May, 2023 where all actions taken by the RP after Order dated 25.02.2022 including the removal of the Applicant were declared null and void. It is true that direction No. 2 was not stayed by this Tribunal in its Interim Order dated 24th July, 2023 but the Order passed by Adjudicating Authority dated 30th May, 2023 is under consideration in the Appeals and we have already observed in paragraph 8 of the Interim Order

dated 24th July, 2023 that the Adjudicating Authority ought not to have entertained the Application (filed by Respondent No. 1) when the matter is pending before the Hon'ble Supreme Court.

19. From the prayers made in the Application I.A. No. 4138-4139 it is clear that Applicant wants his reinstatement on the post of Executive Editor of the Newspaper on which post he is not functioning after 31st January, 2023. The Corporate Debtor being in CIRP, and the Corporate Debtor is being run by the RP, it is for the RP to take a decision as to how the Corporate Debtor is run.

20. Through an email, it is informed that Company is incurring big losses in every month due to which assets of the Corporate Debtor is depleting.

21. From the facts it is clear that RP has not permitted the Applicant to work as Executive Editor after 31st January, 2023. According to own case of the Applicant he was appointed by IRP on 22nd April, 2021 on the post of Executive Editor, which IRP was subsequently removed and replaced by present RP Shree Mukesh Kumar Jain. The entire matter being pending before the Hon'ble Supreme Court in the Appeals whereas one of the Appeal has been filed by the Applicant Navin Kumar Upadhyay, we are of the view that prayers made in the Application 4138-4139 of 2023 cannot be allowed looking to the sequence of the facts and pleadings of the parties on record.

22. However, looking to the fact that present Appeals have been filed against the Order passed by the Adjudicating Authority dated 30th May, 2023 we are of the view that both these Appeals need to be finally decided more so when challenge to the order of this Tribunal affirming the CIRP are

pending before the Hon'ble Supreme Court. We direct that both these Appeals being C.A.(AT) Ins. No. 930-931 and 943-944 of 2023 be listed for 'Final Hearing' on **16th November, 2023** at 02:00 PM.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
06th November, 2023

Basant B.