

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.611/2020
In
CP (IB) No.515/Chd/Chd/2019
(admitted)
Under Section 60 read with
Section 31 of the Insolvency &
Bankruptcy Code, 2016**

In the matter of:

Parivartan Investment and Finance Company
....Petitioner-Financial Creditor

Versus

Haryana Telecom limited
....Respondent-Corporate Debtor

And in the matter of:

IA No.611/2020

Mr. Sanyam Goel,

Resolution Professional for Haryana Telecom Limited

Office at: Unit No. 110, First Floor, JMD Pacific Square

Sector 15, Part II Gurugram,

Haryana-122001

....Applicant

Versus

Registrar of Companies

NCT of Delhi and Haryana

4th Floor, IFCI Tower

Nehru Place, New Delhi-110019

....Respondent

Order delivered on: 07.10.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through video-conferencing in IA No. 611/2020:

For the Applicant

- : 1. Mr. Anand Chibbar, Senior Advocate
2. Mr. Abhishek Anand, Advocate
3. Mr. Viren Sharma, Advocate
4. Mr. Mohit Uppal, Advocate

For Resolution Professional : Mr. Sanyam Goel
For the Respondent : Mr. Piyush Khana, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 611/2020

The present application is filed by Resolution Professional seeking exemption to the applicant being the Resolution Professional in terms of Section 203 of the Companies Act, 2013 read with Rule 8 and 8A of the Companies(Appointment and Remuneration of Managerial Personnel) Rules, 2014 (hereinafter referred to as "Rules") as required in terms of Section 17(2)(e) of the Insolvency and Bankruptcy Code, 2016 and direction to the Registrar of Companies to update the record of resignation of Mr. Rajender Kumar from the post of CFO and not to levy any penalty on the corporate debtor for non-compliance from 29.03.2020 till the order passed by this Adjudicating Authority in the present matter.

2. The brief facts of the present application stated by the applicant-operational creditor are herein below:

2.1 It is submitted that in the present matter the corporate debtor was put into CIRP vide order dated 07.02.2020 and subsequently moratorium was declared.

2.2 It is submitted by the Resolution Professional that Mr. Rajender Kumar CFO(KMP) has already resigned from his post in the month of January 2020, prior to commencement of CIRP. Further, it is stated that corporate debtor is a public limited company having paid up capital of more than of Rs. 5 Crores therefore, in terms of Section 203 of the

Companies Act, 2013 it is mandatory for the corporate debtor to have the whole time CFO and Company Secretary as Key Managerial Personnel. Consequences of contravention are in form of penalty. The same has been intimated to the CoC in its first meeting convened on 09.03.2020.

2.3 It is further submitted that on 29.03.2020, the applicant in order to make compliances, file Form No. GNL-2 updating the record of the resignation of Mr. Rajender Kumar from the post of CFO of the corporate debtor, with the Registrar of Companies vide SRN No. R36186625 dated 29.03.2020 with the requisite fee.

2.4 It is stated that to make the above compliance in terms of Companies Act, 2013 for the appointment of CFO and Company Secretary, the applicant made a public announcement on 16.06.2020. Further, to the above publication no one has come forward for the said positions.

2.5 The Resolution Professional has stated that the record of resignation of Mr. Rajender Kumar was not updated by the Registrar of Companies. Accordingly, the applicant raised a complaint with respect to the same having ticket No. SR1530578 dated 08.08.2020 and also issue an email dated 08.08.2020 to the RoC for getting the same approved in a timely manner.

2.6 The Resolution Professional has stated that Section 17(2)(e) made the applicant responsible for making compliances under the law. And if the applicant fails to appoint suitable persons then the corporate debtor will be liable to pay the fine imposed under the Act which will

create an unjust burden on the CIRP of the corporate debtor. Further, it is stated that the unit of the corporate debtor has been closed for the past 15 years and the corporate debtor is not a going concern. Further, the applicant in the above circumstances is unable to make compliance as required under Section 17(2)(e) of the Code and relevant provisions of the Companies Act, 2013 read with Rules 8 and 8A.

3. To the instant application, the respondent-Registrar of Companies filed its reply vide Diary No. 00873/5 dated 11.04.2022. The brief facts of the short reply is as follows:

3.1 It is stated by the respondent that the applicant has made ROC Delhi and Haryana as a party but the company under reference is registered with the office of answering respondent i.e. Registrar of Companies & Official Liquidator, Himachal Pradesh. Further, the present application is bad for mis-joinder as given the aforesaid, ROC Chandigarh should have been made as a party.

3.2 It is further submitted that as far as exemption from appointment is concerned, admittedly, the same is mandatory provision as envisaged in the statute itself and as far as resignation part is concerned it is submitted that the e-form GNL-2 vide SRN R36186625 dated 29.03.2020 stands approved on 14.08.2020. The provisions of penalty for non-compliance of statutory mandates have been enumerated in the provisions u/s 203 of Companies Act, 2013 itself and the respondent/RoC is bound to comply with the same.

4. We have heard the submissions made by the learned counsel for the applicant and the respondent ROC. The adjudication of the present application require the interpretation of Section 17 (2)(e) of the Code which is extracted hereinbelow:

17. Management of affairs of corporate debtor by interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor shall—

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor

5. Keeping in view of the above submissions, it may be noted that respondent-Registrar of Companies has admitted that the record of resignation of Mr. Rajender Kumar from the post of CFO has been approved on 14.08.2020. As far as the exemption to the applicant in terms of Section 203 of the Companies Act, 2013 read with Rule 8 and 8A of the Companies(Appointment and Remuneration of Managerial Personnel) Rules, 2014 as required in terms of Section 17(2)(e) of the Insolvency and Bankruptcy Code, 2016, is mandatory requirement of the statute, which the applicant-Resolution Professional is required to adhere and comply with. Therefore, the present application is dismissed accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October 07, 2022
PB/ASH