NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 774 of 2022

IN THE MATTER OF:

1. Rahul Arunprasad Patel,
Having Address at:
R/o 112, Sunrise Park,
Near Vastrapur Drive – in Road,
Behind TV Tower,
Ahmedabad - 380054

...Appellant

Versus

1. State Bank of India,
Stressed Asset Management Branch,
2nd Floor, Paramsidhi Complex,
Opp. VS Hospital,
Ellisbridge, Ahmedabad - 380015

...Respondent

For Appellant: Mr. Satwik Varma, Sr. Advocate with Mr. Arjun Sheth, Ms. Henna George and Ms. Shivani Sharma, Advocates

For Respondent: Mr. Ravi Raghunath, Advocate

With

Company Appeal (AT) (Insolvency) No. 781 of 2022

IN THE MATTER OF:

1. Amit Dineshchandra Patel,
Having address at
Vrindavan Bungalow,
Next to Manali Apartments,
Dr. V. Sarabhai Road,
Vastrapur, Ahmedabad 380015

...Appellant

Versus

1. State Bank of India,
Stressed Asset Management Branch,

2nd Floor, Paramsidhi Complex,
Opp. VS Hospital,
Ellisbridge, Ahmedabad - 380015 **...Respondent**

For Appellant: Mr. Satwik Varma, Sr. Advocate with Mr. Arjun Sheth, Ms. Henna George and Ms. Shivani Sharma, Advocates

For Respondent: Mr. Ravi Raghunath, Advocate

J U D G E M E N T

Ashok Bhushan, J:

1. These two Appeals raising same questions of facts and law have been heard together and are being decided by this Common Judgement.

2. Company Appeal (AT) Ins. No. 774 of 2022 has been filed against the Order dated 19th July, 2021 passed by the National Company Law Tribunal, Ahmedabad, Court-I, by which Order, the Adjudicating Authority in an Application C.P.(IB)177(AHM)2021 filed under Section 95 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "The Code") by the State Bank of India against the Appellant-the Personal Guarantor directed for commencement of the Interim Moratorium and appointed Mr. Sunil Kumar Kabra as the Resolution Professional (RP) to file report within one month. Company Appeal (AT) Ins. No. 781 of 2022 has been filed against the Order dated 17th August, 2021 passed in CP(IB) No. 76(AHM)2021, by which Order, the Adjudicating Authority directed for commencement of moratorium and directed Mr. Sunil Kumar Kabra as suggested by the Applicant to file Report within 10 days.

3. It shall be sufficient to notice facts in Company Appeal (AT) Ins. No. 774 of 2022 to decide both the Appeals. The application under Section 95 dated 15th April, 2021 has been filed by the State Bank of India to initiate Insolvency Resolution Process in respect of Appellant under the Code. The Appellant in the Application was referred to as a Guarantor to loan availed by M/s. Shirpur Power Private Limited-the Original Borrower. In the Application under Section 95(1), the Order dated 19th July, 2021 was passed by the Adjudicating Authority which is to the following effect:

> *"The instant application is filed under Section 95 of Insolvency and Bankruptcy Code, 2016 by the Petitioner against the Personal Guarantors.*
>
> *Learned Counsel for the Respondent undertakes to file Vakalatnama. It is to be filed within seven days. Respondent to file affidavit in reply within seven days by giving copy to the other side.*
>
> *The Interim Moratorium shall commence under Section 96 of IBC, 2016 from the date of application.*
>
> *The RP, as suggested by the Applicant, Mr. Sunil Kumar Kabra, is directed to file report within one month.*
>
> *Matter to appear on 14.09.2021.*
>
> *Meanwhile, Parties are directed to complete their respective pleadings/submissions on E-portal within seven(7) days, if already not uploaded."*

4. The Appeal challenging the Order dated 19th July, 2021 has been filed on 15th May, 2022. Notice was issued by this Tribunal on 25th July, 2022 in respect to which Reply has been filed on behalf of Respondent Bank.

5. Learned Sr. Counsel for the Appellant challenging the Impugned Orders passed in these two Appeals submits that Application for Personal Insolvency was filed by the Creditor-State Bank of India and not by the Resolution Professional. It is submitted that the Application which has been filed in Form-C under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as "Rules, 2019") indicate that the Application has been filed by the Creditor-State Bank of India and not by the Resolution Professional. Learned Counsel for the Appellant submits that in Part-IV of the Application although details of Sunil Kumar Kabra – Insolvency Resolution Professional has been mentioned but there is no signature of the Insolvency Resolution Professional in Part-IV which clearly proves that Application has not been filed by the RP. It is submitted that as per Section 97(3), the RP is to be nominated by the Board whereas Adjudicating Authority in the Application filed by Creditor on suggestion of Creditor has appointed the Resolution Professional. The Impugned Order is violative of Section 97(3) of the Code. It is submitted that the Adjudicating Authority ought to have directed the Board to nominate the RP to carry on proceedings in the Application. It is submitted that although along with Form-C, consent form under Form-A has been filed as per Regulation 4(2) of Rules, 2019 but the consent Form-A is contemplated only when the Application is not filed by the RP and is filed by the Creditor. Language of Section 97 of the Code requiring confirmation of the RP by the Board and nomination by Board is mandatory in nature. Nomination of RP by the Board has for a particular purpose and object. It is submitted that when an Application is filed by/through Resolution Professional it is difficult to presume that he would recommend the rejection of the Application filed by himself. The RP becomes interested person in his own Application and become judge in his own case which is not permissible in law. Apprehension of bias is sufficient cause to not appoint Mr. Sunil Kumar Kabra as a RP when appointment of RP is bad in law all consequential steps are bad in law.

6. Learned Counsel for the Respondent refuting the submissions of Learned Sr. Counsel for the Appellant submits that this Appeal has been filed with delay and latches. It is submitted that the Impugned Order is passed on 19th July, 2021 whereas the Appeal has been filed after ten months on 15th May, 2022. On 19th July, 2021 when Order was passed, Learned Counsel for the Appellant was present but no objection was raised regarding the appointment of RP. After passing of the Order, RP has also submitted its report under Section 99 hence the Appeal has become infructuous. It is submitted that present Appeal is abuse of process and is an attempt to delay the Resolution Process. It is submitted that Insolvency Application filed under Section 95(1) was filed through RP since the Respondent Bank has specifically filled the details of the RP under Part-IV of the Form-C. There was no need to follow the procedure for appointment of RP under sub-section 3 and 4 of Section 97, admitting that there was some defect in the Form-C that the RP has not signed Part-IV the same was only procedural defect which is curable. Further when the RP has submitted its Consent Form before the Adjudicating Authority, the defect, if any, stand cured and there was no reason to interfere with the Impugned Order on the above submission.

7. Learned Counsel for both the parties have placed reliance on certain judgements of this Tribunal and Hon'ble Supreme Court which shall be referred to while considering the submissions in detail.

8. Before we consider the rival submissions raised by Learned Counsel for the parties, it is useful to refer to the statutory provisions of IBC occurring in Chapter-III of the Code. Section 95 deals with Application by Creditor to initiate Insolvency Resolution Process. Section 95(1) is as follows:

> ***"95. Application by creditor to initiate insolvency resolution process.-****(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application."*

9. Next provision which needs to be noticed is Section 97 which relates to appointment of Resolution Professional. Section 97 is as follows:

> *"**Section 97: Appointment of resolution professional**.*
>
> *97. (1) If the application under section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.*

(2) The Board shall within seven days of receipt of directions under sub-section (1) communicate to the Adjudicating Authority in writing either—

(a) confirming the appointment of the resolution professional; or

(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

(3) Where an application under section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.

(4) The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub-section (3).

(5) The Adjudicating Authority shall by order appoint the resolution professional recommended under sub-section (2) or as nominated by the Board under sub-section (4).

(6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process."

10. Section 97(1) and 97(2) covers a contingency when Application under Section 94 or 95 is filed through Resolution Professional in which case the

Board is required to confirm in writing the Appointment of the Resolution Professional or reject the Appointment of Resolution Professional and nominate another Resolution Professional. The confirmation is with regard to the fact that there are no disciplinary proceedings against the Resolution Professional.

11. Sub-Section (3) and sub-section (4) of Section 97 covers a situation where application is filed under Section 94 or 95 by debtor or creditor himself in which case the Board within seven days is to nominate a Resolution Professional. Under sub-section (1) and (2) of Section 97, the Board is to confirm that there are no disciplinary proceedings pending whereas under sub-section (3) and (4) of Section 97 the Board is to nominate a Resolution Professional. When sub-section (1) and (2) is contrasted with sub-section (3) and (4) of Section 97 it is clear that purpose and object of both the above provisions are different. Confirmation is asked for from the Board of the Resolution Professional whether there is any disciplinary proceeding pending or not and under sub-section (3) and (4) nomination is to be made since the Application is filed by debtor or creditor himself.

12. The Rules have been framed namely "Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019" where Rule 7 deals with Application by creditor. Rule 7(2) provides as follows:

> *"7(2) The application under sub-section (1) of Section 95 shall be submitted in Form C, along with a fee of two hundred rupees."*

13. It is relevant to notice that under Rule 7(2), the Application under Section 95 has to be in Form C, thus Form C is to be utilized both for Application which is filed by the Creditor through Resolution Professional or Application which is filed by the Creditor himself. Form C is common for both. Form C is divided in four parts. Part-I deals with "Particulars of Applicant", Part-II deals with "Particulars of the Guarantor", Part-III deals with "Particulars of Debt" and Part-IV deals with "Particulars of and Declaration by Insolvency Resolution Professional (if Application is filed through Insolvency Resolution Professional)". Thus Part-IV is attracted only when Application is filed through Insolvency Resolution Professional. Part-IV of Form C is as follows:

"PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL (IF APPLICATION FILED THROUGH INSOLVENCY PROFESSIONAL)

1.	*Title and full name*			
2.	*Address*	*Present*	*Permanent*	*Business*
3.	*Email address (es)*			
4.	*Contact Number*	*Home*	*Mobile*	*Business*
5.	*Declaration by insolvency professional*	*I, [name of insolvency professional], an insolvency professional enrolled with [name of insolvency professional agency] having registration number [registration number] have been proposed as the resolution professional by [name of applicant guarantor] in connection with the proposed insolvency resolution process of [name of the guarantor].* *I hereby:* *(i) agree to accept appointment as the*		

		resolution professional if an order of appointment is passed by the Adjudicating Authority; *(ii) state that the registration number allotted to me by the Board is [insert registration number] and that I am currently qualified to practice as an insolvency professional;* *(iii) disclose that I am currently serving as an interim resolution professional/resolution professional / authorized representative / liquidator / bankruptcy trustee in [insert number and details of the proceedings];* *(iv) certify that there are no disciplinary proceedings pending against me with the Board or [name of the insolvency professional agency he is a member of]:* *(v) affirm that I am eligible to be appointed as a resolution professional in respect of the guarantor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;* *(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 [insert disclosures, if any].* *(Signature of the insolvency professional)*
[Name of the creditor] has paid the requisite fee for this application through [state means of payment] on [date]. *Yours sincerely,*		
Signature of creditor/person authorized to act on behalf of the		

creditor [Please enclose the authorization document if this application is being submitted on behalf of the creditor]
Name in block letters
Address of person signing

14. When we look into the Form C after end of the Part-IV, there are following further columns:

[Name of the creditor] has paid the requisite fee for this application through [state means of payment] on [date]. *Yours sincerely,*
Signature of creditor/person authorized to act on behalf of the creditor [Please enclose the authorization document if this application is being submitted on behalf of the creditor]
Name in block letters
Address of person signing

15. The perusal of Form C above indicates that for both the Applications filed through RP or Application filed by the Creditor, in the end, name of the creditor, signature of the creditor/person authorized to act on behalf of the creditor, name and address of person signing are mentioned above. The above is compulsory for both type of applications.

16. Learned Counsel for the Appellant by referring to Part IV of the Application which was filed by the State Bank of India submits that Application has been signed by Mr. Nitin K. Chauhan on behalf of State Bank of India and not by Resolution Professional hence Application is to be treated by Creditor himself and not by Resolution Professional. The above submissions cannot be accepted since as noticed above after column 4, the columns which are mentioned are columns for name of creditor, signature of the Creditor, Name in block letters and Address of person signing, both for Application filed by the Creditor through Resolution Professional and by Creditor himself. The above columns had to be filled up. The difference to find out whether the Application filed by the Resolution Professional or Creditor himself is the difference with regard to the filing of Part-IV. When Part-IV is not filled up in an Application, Application is clearly by Creditor himself but when Part-IV is filled up, Application is not by the Creditor himself but through Resolution Professional. A harmonious reading of the Rules, 2019 read with Form C leads to above conclusion.

17. Learned Counsel for the Appellant has much emphasized in the Application which has been filed in Form C by the State Bank of India, there are no signatures of the Resolution Professional. For considering the above, submissions, it is necessary to extract Part-IV of Application filed by the State Bank of India in the present case. Which is at page 44 and 45 of the Appeal Paper Book:

"Part-IV

<table>
<tr><td colspan="5">PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL (IF APPLICATION FILED THROUGH INSOLVENCY PROFESSIONAL)</td></tr>
<tr><td>1.</td><td>Title and full name</td><td colspan="3">Sunil Kumar Kabra</td></tr>
<tr><td rowspan="2">2.</td><td rowspan="2">Address</td><td>Present</td><td>Permanent</td><td>Business</td></tr>
<tr><td>C-805 Ofira Building, Opp.- Swar Shangini, V.I.P. Road, Bharthana, Vesu, Surat</td><td></td><td>M-19-20—21 Metro Tower, Ring Road, Surat-395002</td></tr>
</table>

<table>
<tr><td>3.</td><td>Email address (es)</td><td colspan="3">jlnusco@gmail.com, ipsunilkabra@gmail.com</td></tr>
<tr><td rowspan="2">4.</td><td rowspan="2">Contact Number</td><td>Home</td><td>Mobile</td><td>Business</td></tr>
<tr><td></td><td>9909959959</td><td></td></tr>
<tr><td>5.</td><td>Declaration by insolvency professional</td><td colspan="3">I, Sunil Kumar Kabra, an insolvency professional enrolled with IBBI having registration number IBBI/IPA-001/IP-PO1011/2017-18/11662 have been proposed as the resolution professional by State Bank of India in connection with the proposed insolvency resolution process of Rahul Arunprasad Patel.
I hereby:
(i) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority;
(ii) state that the registration number allotted to me by the Board is IBBI/IPA-001/IP-PO1011/2017-18/11662 and that I am currently qualified to practice as an insolvency professional;
(iii) disclose that I am currently serving as an interim resolution professional / resolution professional / authorized representative / liquidator / bankruptcy trustee in
• Liquidation: As liquidator in Danke Electricals Limited;
• CIRP: As IRP in Surya Exim Limited
(iv) certify that there are no disciplinary proceedings pending against me with the Board or [Indian Institute of Insolvency Professionals of ICAI]:
(v) affirm that I am eligible to be appointed as a resolution professional in respect of the guarantor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors)</td></tr>
</table>

		Regulations, 2019; *(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 [**A copy of written communication from the proposed interim resolution professional is annexed herewith and marked as Exhibit: Q].***
State Bank of India has paid the requisite fee for this application through Bharatkosh. *Bharatkosh Online Payment Receipt No.: 1904210007577* *Date:19/04/2021* *Amount Rs. 2,000/-(Two Thousand Only)*		

Signature of creditor/person authorized to act on behalf of the creditor [Please enclose the authorization document if this application is being submitted on behalf of the creditor]	....
Name in block letters	*Mr. NITIN K. CHAUHAN*
Address of person signing	*State Bank of India* *Stressed Assets Management Branch,* *2nd Floor, Paramsiddhi Complex,* *Opp. V.S. Hospital, Ellisbridge* *Ahmedabad - 380006*

(Emphasis Supplied)

18. Part-IV of the Application being filled up, the conclusion is irresistible that Application was filed through Resolution Professional. The last line of Part-IV which is in Bracketed Form "**A copy of written communication from the proposed interim resolution professional is annexed herewith and marked as Exhibit: Q".** Thus the Application filed by the State Bank of

India in Part- IV although does not appear that RP has made his signature but Application is accompanied by communication for the proposed Interim Resolution Professional as Annexure Q which indicates that the written communication is from the Resolution Professional which was annexed as Annexure Q. Thus, the Part-IV cannot be read to mean in the present case that there is no consent of the Resolution Professional. Part-IV not containing the signature of the Resolution Professional and containing the written communication at best is a minor irregularity/defect which cannot have any adverse effect since the written communication given by the Resolution Professional was part of the Application in Form C.

19. Learned Counsel for the Appellant has filed the Exhibit Q which was part of Form C in the Appeal which is annexed as Annexure E at page 50. Exhibit Q is in Form A which is under Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as "Regulations, 2019). We may extract Regulation 4(2) which is to the following effect:

> *"4(2). An insolvency professional, other than who has filed an application under section 94 or 95 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as resolution professional in a resolution process."*

20. Regulation 4 of Regulations, 2019 deals with eligibility of Resolution Professional. Regulation 4(2) provides that Insolvency Professional other than who had filed an Application under Section 94 and 95 to provide a written consent in Form A to the Adjudicating Authority before his appointment as Resolution Professional in Resolution Process. The above Form A does not contemplate filing of written consent with regard to an Application which is filed through Resolution Professional under Section 95, it was thus not necessary to submit written consent in Form A. In the present case since submission of Form A is contemplated in cases other than "who has filed an Application under Section 94 and 95 on behalf of the Guarantor or Creditor, as the case may be". The purpose of Regulations, 2019, Regulation 4(2) is that before Resolution Professional is appointed, he should give his written consent to the Adjudicating Authority. The Regulations thus clearly contemplates for those cases where appointment is to be made under Section 97(2) and (3) but the mere fact that written consent in the present case is annexed along with Form C does not in any manner affect the nature of the Application which was filed by the Creditor through Resolution Professional in place of signing the Form C written consent has been given which is done additionally by the Resolution Professional. The object and purpose both of signature and giving written consent is same and we do not find any substance in submission of Learned Counsel for the Appellant that due to non-signature of the Resolution Professional there is violation of Rules, 2019 and Regulations, 2019 fatally affecting the Application under Section 95(1).

21. Learned Counsel for the Appellant has relied on Judgement of this Tribunal in **"Pologix Infrastructure Private Limited Vs. ICICI Bank Limited [Company Appeal (AT) Ins. No. 30, 37, 54 of 2017]".** In the above case, this Tribunal had occasion to consider a case where there was difference of opinion between two members of the Adjudicating Authority hence the matter was referred to the Third Member who held the application maintainable as the power of attorney was given in favour of the Legal Manager to initiate proceedings before the NCLT. In the above context, the Adjudicating Authority admitted Section 7 Application which was challenged before this Tribunal. This tribunal however in the said case has observed that if there is any defect in the name and address and position of the authorized representative the Application cannot be rejected and the Applicant is to be granted seven days' time to produce the Board Resolution and remove the defect. It is useful to reproduce paragraph 37 and 38 of the Judgement.

> *"37. As per Entry 5 & 6 (Part I) of Form No. 1, 'Authorised Representative' is required to write his name and address and position in relation to the 'Financial Creditor'/Bank. If there is any defect, in such case, an application under section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the Board Resolution and remove the defect.*
>
> *38. This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate*

Insolvency Resolution Process', in spite of default of debt."

22. Thus, in written description or information mentioned in entry has been held to be defect which is curable and the Application cannot be rejected on the said ground. In the present case only defect pointed out by Learned Counsel for the Appellant is that there is no signature of Insolvency Resolution Professional but from the facts, it is clear that instead of signature of Resolution Professional there was a written consent of the Resolution Professional, thus defect if any stood removed by said written consent and we see no reason to hold that Application was incompetent or liable to be rejected.

23. Learned Counsel for the Appellant has also made submissions that Appointment of Resolution Professional as recommended by the Creditor will be appointment of person who shall carry a bias in favour of Application and in no case he will submit a report rejecting the Application. This Tribunal had occasion to consider the scheme under Section 97 in **Company Appeal (AT) Ins. No. 316-317 of 2021, "Ravi Ajit Kulkarni Vs. State Bank of India".** Where this similar argument was not accepted and such apprehension expressed, was not found to have any substance. In paragraph 39, following has been observed:

"39....

It has been argued by Learned Counsel for the Appellant that the Respondent – State Bank of India filed the application through Resolution Professional and such Resolution Professional cannot himself *propose rejection of the application. We have already referred to the declaration which is sought from the Resolution Professional under the Regulations while giving consent and the statement required to be made in „Form C" provided in the Rules. The Rules show that the IBBI follows a procedure of maintaining a panel of Insolvency Professionals with information about disciplinary proceedings against them from time to time. Under the Regulations relating to Resolution Professionals various safeguards have been provided and the Resolution Professionals are creatures of IBC read with Rules and Regulations and subject to discipline through IBBI. As mentioned the legislature has confidence in the Resolution Professionals under the system that they will act as Professionals in terms of IBC, its Rules and Regulations. IBC provides that the Creditor may, himself or through Resolution Professional file application under Section 95. Section 97 of IBC does not bar the same Resolution Professional from being appointed as Resolution Professional by the Adjudicating Authority. The safeguard for the Debtor is in Section 98 where the Debtor may seek replacement of the Resolution Professional. Thus, we are not accepting the fear expressed by the Appellant that how could the Resolution Professional appointed by the Creditor itself if appointed by the Adjudicating Authority deal with the application filed by himself for the Creditor and give Report. What the Resolution Professional under Section 99 would be doing was requiring the Debtor to furnish proof of repayment as per Section 99(2) and after doing the necessary spade work Resolution Professional has to recommend*

> *acceptance or rejection of the application with reasons. The decision making whether to admit or reject the application would be only by the Adjudicating Authority."*

24. Learned Counsel to support his submission that RP becomes an interested person in his own application and would become judge in his own case, has relied on a Judgement of the Hon'ble Supreme Court **"Perkins Eastman Architects DPC Vs. HSCC (India) Ltd. [2020 20 SCC 760]"** and "**Voestalpine Schienen GMBH Vs. Delhi Metro Rail Corporation Limited [2017 4 SCC 665]"** and another Judgment of the Hon'ble Supreme Court in **"Ranjit Thakur Vs. Union of India and Ors. [1987 4 SCC 611]".** There can be no dispute with regard to preposition laid down by the Hon'ble Supreme Court in the above case.

25. When we look the scheme of the IBC and Rules framed thereunder, Applications filed by Debtors and Creditors including Applications filed under Section 7, 9 and 10, the particulars of proposed Interim Resolution Professional are always provided which is apparent from Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority), Rules, 2016 where Form 5 and Form 6 provides for filing of the Application by Operational Creditor where the Applicants are required to mention the proposed Insolvency Resolution Professional. Form 1 deals with an Application to be filed by Financial Creditor where also particulars of the proposed Insolvency Resolution Professional are to be given by the Applicant himself. Thus the mere fact that Applicants in Applications under Section 7, 9 and 10 as well as in Section 94 and 95 provides details of Insolvency

Resolution Professional/Resolution Professional by the Applicant himself, no bias can be read into the said procedure. The Scheme of IBC is such that IRP/RP plays a pivotal role in Insolvency Resolution Process. Thus we are not satisfied that the mere fact that Resolution Professional has been recommended by the Applicant, he shall have bias in favour of the Application filed by him and he shall always submit a report of admitting the Application any bias has to be read in the scheme. The RP is to perform his function and duties as per the IBC and the Rules which castes duty on the Resolution Professional to act in accordance with Insolvency and Bankruptcy Code, 2016, Rules and Regulations framed thereunder.

26. We thus do not find any substance in the submissions of Learned Counsel for the Appellant that Resolution Professional recommended by the Applicant is biased and appointment of Mr. Sunil Kumar Kabra is bad in law. Both the Appeals lack merit. Both the Appeals are dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

NEW DELHI
21st November, 2022
Basant