

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 762 of 2022

[Arising out of order dated 24th May, 2022 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA No. 568 of 2019, IA No. 548/2020, 550/2020 & 194/2022 in CP(IB) No. 391/Chd/Pb/2018 (admitted)]

IN THE MATTER OF:

**Sumat Kumar Gupta,
Resolution Professional,
M/s Vallabh Textiles Company Limited,
Resident of c/o 2581/3, B-1,
Near Zoom Hotel Building,
Industrial Area-A, Transport Nagar,
Ludhiana- 141 003.**

... Appellant

Vs.

**M/s Vardhman Industries Limited
Through Mr. Rajiv Negandhi
JSW Centre,
5th Floor Bandra Kurla Complex,
Bandra (East) Mumbai
Mumbai City MH 400 051.**

... Respondent

Present:

**For Appellant: Dr. Rajansh Thukral and Ms. Surekha Thukral,
Advocates**

For Respondents: None

J U D G M E N T

{Per: Barun Mitra, Member (Technical)}

The present appeal, filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') by the Appellant/Resolution Professional, arises out of order dated

24.05.2022 (hereinafter referred to as 'Impugned Order') passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh) in IA 568/2019 in CP (IB) No.391/Chd/Pb/2018. By the Impugned Order, the Adjudicating Authority directed the Appellant/Resolution Professional to reconsider and evaluate the claims of the Financial Creditor afresh; reconstitute the Committee of Creditors ('CoC' in short) for fresh Corporate Insolvency Resolution Process ('CIRP' in short) and, inter-alia, made certain observations against the Appellant/Resolution Professional on the manner in which he conducted the CIRP proceedings. The instant Appeal has been filed by the Appellant/Resolution Professional, in his personal capacity, with a prayer to expunge the said observations on the ground, that being adverse, it has the effect of damaging the reputation and dignity of the Appellant as Insolvency Professional.

2. The brief facts of the case, as stated and argued by the Appellant, is that he was appointed initially as Interim Resolution Professional ('IRP' in short) and later confirmed as Resolution Professional of the Corporate Debtor, M/s Vallabh Textiles Company Limited which was admitted for CIRP. It is further stated that the Appellant/Resolution Professional made public announcement inviting claims on 13.04.2019 with the last date of filing claims fixed as 26.04.2019. Following the public announcement, M/s Vardhman Industries Ltd. filed claim as Financial Creditor for Rs. 10,77,47,444/- (Rupees Ten crores seventy-seven lakhs forty-seven thousand and four hundred forty-four only) on 26.04.2019 in Form C. The Appellant/Resolution Professional thereafter, sent an email to the

Financial Creditor on 01.05.2019 seeking certain additional details and documentation by way of account statement of the Corporate Debtor in the books of the Financial Creditor for the period 2007 to 2019. The Appellant/Resolution Professional has further submitted that as he was required to decide the claims within seven days from the last date of the receipt of claims as stipulated by Regulation 13 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as CIRP Regulations), and as the additional details sought for were not received from the Financial Creditor, he rejected the claim of the Financial Creditor on 02.05.2019. The Appellant/Resolution Professional submitted that the claim was rejected on three grounds viz. (i) that the claim was filed on the basis of old authorization; (ii) that the claim should have been filed through the Resolution Professional; and (iii) that the account statement attached with the claim was not sufficient to authenticate the claim amount.

3. It has also been admitted by the Appellant/Resolution Professional that the Financial Creditor thereafter re-submitted the claim on 24.05.2019 in Form C under Regulation 8 of CIRP Regulations. However, the said claim was not entertained by him and the same was duly communicated to the Financial Creditor on 04.06.2019 stating that since the earlier claim, submitted on 26.04.2019, within the period prescribed by the public announcement had already been rejected on 02.05.2019, no belated claim can be filed.

4. Aggrieved by the rejection of their claim, the Financial Creditor filed an application before the Adjudicating Authority seeking for directions to be issued to the Resolution Professional to admit his claim and/or to verify his claim. The Adjudicating Authority after hearing both the parties directed the Resolution Professional to reconsider the claims including evaluating the claim to be classified as Financial Creditor and to reconstitute the CoC and in the process had made certain observations against the Resolution Professional in the discharge of his duties. Aggrieved by the Impugned Order, the Learned Counsel for the Appellant/Resolution Professional, however, submits that he is challenging the Impugned Order only in respect of certain adverse remarks made against him by the Adjudicating Authority which deserve to be expunged.

5. The two paragraphs of the Impugned Order to which the Appellant/Resolution Professional has drawn the attention to, is reproduced below and the relevant portion prayed for being expunged is as emboldened hereunder :-

“10. In the present case, the issue that falls for our consideration is whether the claims of the applicant have been properly verified before the rejection of the same by the Resolution Professional. To reiterate, the applicant has submitted the relevant copies of the audited accounts of Vardhman Industries Limited (Applicant) in respect of Vallabh Textiles Company Limited (Respondent). We have

closely perused the financial statement annexed as Annexure A-8 and A-9 with the application. **From the correspondence between the parties, it is clear that no serious effort was made by the Resolution Professional to classify the debts into financial and operational debts of the applicant.** There is no denying the fact that the Resolution Professional needs documents and supporting evidence to decide on the nature of a claim for the purpose of admission of the same. The documents brought on record have not shown any kind of non-compliance by the applicant to any query raised by the Resolution professional in this regard”.

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“12. **In the result of the aforementioned discussion, this Bench is of the view that the Resolution Professional has failed in his duty to analyze the evidence placed before him regarding the nature of transactions of the applicant reflected in the books of the corporate debtor and present the complete facts regarding the admissibility of the claims made by the applicant before the CoC.** The Resolution Professional in the present case was duty-bound to verify these transactions and put the same before the CoC with the complete factual and legal position rather than

reject it summarily. In view of the foregoing, this Bench directs the Resolution Professional to reconsider the claims made by the applicant with reference to the evidence already before him. He may call for additional evidence if required and decide in the light of the discussions in the foregoing paragraphs. Based on the evidence before him, he is directed to also evaluate the claim of the applicant to be classified as a financial creditor and to reconstitute the CoC with the applicant as a member. With the above said observations, CA No. 568/2019 is allowed and disposed of accordingly”.

6. We have duly considered the detailed arguments advanced by the Learned Counsel for the Appellant and perused the records carefully. Respondent did not file any counter-affidavit.

7. We find that the general purport of the remarks contained in paragraphs 10 and 12 of the Impugned Order are broadly intertwined. Put in a nutshell, the two observations contained in the Impugned Order as brought before us for our consideration are summed up hereunder: -

(i) Whether serious efforts were made by the Appellant/Resolution Professional in properly verifying the claim submitted before him by the Financial Creditor

including classifying the debts into financial and operational debts.

(ii) Whether the Appellant/Resolution Professional had failed in his duty to analyse the evidence placed before him regarding the nature of transactions made by the Financial Creditor reflected in the books of Corporate Debtor and presenting the complete facts before the CoC on the admissibility of the claims of the Financial Creditor.

8. The tenability of the above observations made by the Adjudicating authority about the Appellant/Resolution Professional can be best appreciated if we put in perspective the objectives of the IBC and the role and responsibilities of Interim Resolution Professional/Resolution Professional in furthering these objectives. The objective of the IBC is, inter-alia, to promote entrepreneurship, maximize value of assets, make available credit, and balance the interest of all stakeholders, in a time bound manner. As a natural corollary thereto, the statutory framework governing CIRP seeks to put in place an arrangement which can resolve insolvency in a timely, efficient, transparent, predictable manner.

9. The Bankruptcy Law Reforms Committee Volume I (November 2015) in Chapter 4 under the title 'Institutional Infrastructure' has focused on the role and responsibilities of Resolution Professional and the relevant excerpts are as under: -

“Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process.”

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“In performing these tasks, an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner. The role of the IPs is thus vital to the efficient operation of the Insolvency and Bankruptcy Resolution Process.”

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“In the case of Insolvency Resolution, a failure of the process may result from two main sources: collusion between the parties and poor quality of the execution of the process itself. Hence, it is important that the professionals responsible for implementing the insolvency resolution process adhere to certain minimum standards so as to prevent failures of the process and enhance credibility of the systems as a whole.”

10. Coming to the factual matrix, we find that it is an undisputed fact that the Financial Creditor submitted his claims under Rule 8 of CIRP Regulations in Form C well within the prescribed time limit in terms of the public announcement made by Appellant/Resolution Professional on

13.04.2019. The last date of submission of claims, as provided in the public announcement was 26.04.2019 and the Financial Creditor had submitted on 26.04.2019 his claim details along with supporting documents as also found in the Appeal Paper Book.

11. It is also an undisputed fact, that the Resolution Professional is entitled to seek substantiation of claims under Regulation 10 of CIRP Regulations which reads as follows:

“10. “Substantiation of claims – The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.”

Invoking CIRP Regulation 10, the Appellant/Resolution Professional sent an email on 01.05.2019 seeking additional information with respect to account statements spanning over a period of 12 years from 2007 to 2019 from the Financial Creditor. We entirely agree that the Appellant/Resolution Professional was well within his rights to exercise the discretion of seeking additional information from the Financial Creditor. What, however, merits consideration is the reasonability on the part of the Appellant/Resolution Professional to have allowed only just twenty-four hours to the Financial Creditor to submit additional information spanning over a period of 12 years (2007-2019) and the propriety of his action of rejecting the claim of the Financial Creditor soon thereafter on 02.05.2019 after having allowed only one day's time to

furnish such additional information which entailed voluminous documentation.

12. The Learned Counsel for Appellant/Resolution Professional while making his arguments pointed out that the Financial Creditor while filing the claims on 26.04.2019 should have filed separate claims for financial and operational debt and that it was incumbent on the part of Financial Creditor to have separated and bifurcated the transactions on account of supply of goods and services from the loan related transactions. He also argued that there was a difference between the closing balance as on 31.03.2009 and the opening balance as on 01.04.2009 of nearly Rs.6 crores and that the transactions were not properly verified.

13. As to whether serious efforts were made by the Appellant/Resolution Professional to verify the claims submitted by the Financial Creditor, from the documents available on record, we are inclined to agree with the Adjudicating Authority that there is not much evidence to validate that the Appellant/ Resolution Professional undertook adequate and credible effort on his part to deep-dive into the account statements to distinguish between the operational and financial transactions but for sending a bald and bare four-line mail requisitioning additional information pertaining to 12-year period. The conduct of the Appellant/ Resolution Professional stands out in sharp contrast to that of the Financial Creditor whose bona-fide in providing information at every stage to substantiate his claim cannot be doubted. The Adjudicating Authority after making an in-depth

examination was justified in holding that Appellant/ Resolution Professional made no serious efforts to verify the claims of the Financial Creditor.

14. We have further noted that consequent upon rejection of his claim on 02.05.2019, the Financial Creditor again refiled his claims on 24.05.2019 with requisite supporting documents which included:

- I. Form C - the Financial Creditor Claim of Vardhman Industries Limited.
- II. Authority Letter authorizing Anil Kumar Surya (CFO – Vardhman Industries Limited) to file the claim on behalf of Resolution Professional for Vardhman Industries Limited.
- III. Order of Hon'ble NCLT New Delhi dated January 17, 2018 appointing the undersigned as the Resolution Professional.
- IV. Account Statement of Vallabh Textiles Co. Ltd in the books of Vardhman Industries limited since the inception of transaction.
- V. Certificate of Incorporation and PAN Number of Vardhman Industries Limited.

15. We therefore take cognizance of the fact that, prima-facie, there is no negligence, or inaction or lack of bona-fide on the part of the Financial Creditor to submit claim with proof to the Resolution Professional both on 26.04.2019 and 24.05.2019. The Adjudicating Authority therefore cannot be faulted for coming to the conclusion that

there is no evidence of non-compliance on the part of the Financial Creditor on both occasions when he submitted his claims.

16. The refiled claim dated 24.05.2019 was again rejected by Appellant/Resolution Professional on 04.06.2019 on the ground that since the claim submitted by Financial Creditor was already rejected earlier, he cannot file a belated claim again. The Appellant/Resolution Professional took the stand that Regulation 12(2) of CIRP Regulations can be availed for submission of claims only by such creditors who fail to submit claim with proof within the time stipulated in the public announcement. This brings before us the question whether the Appellant/Resolution Professional was correct in holding that Regulation 12(2) of CIRP Regulations places an embargo on resubmission of claims by such Financial Creditors who have earlier submitted their claims under CIRP Regulation 12(1) before last date mentioned in the public announcement but their claim was rejected for want of authentication or substantiation.

17. For better understanding, it would be desirable to examine CIRP Regulation 12 which is as reproduced below:

“12. Submission of proof of claims-

*(1) **Subject to sub-regulation (2)**, (emphasis added) a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.*

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement may

submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Where the creditor in sub-regulation (2) is [a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim: Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.”

18. It is amply clear from a plain reading of the above CIRP Regulations that Regulation 12(1) is subject to Regulation 12(2) as expressed in the opening sentence of Rule 12(1). Furthermore, Regulation 12(2) clearly permits a creditor who has failed to submit his claim with proof within the stipulated time of the public announcement to avail extended time period to submit such claims on or before the ninetieth day of the insolvency commencement date. It therefore does not stand to reason why any Financial Creditor who submits his claim under Regulation 12(1) within the stipulated time line but fails to satisfy the Resolution Professional can be denied the benefit of availing the extended time period available under Regulation 12(2) to substantiate his claim. If this benefit is denied, it will disincentivize creditors from submitting claims under Regulations 12(1) as it gives them a shorter window of time to substantiate their claims thereby running the risk of their claim being disregarded for want of time.

19. Be that as it may, CIRP Regulation 12 does not lay down any specific embargo on a creditor who on having failed to satisfy the Resolution Professional with respect to the claims submitted by him under Regulation 12(1) from refiling his claim under Regulation 12(2) as long as it is done on or before the ninetieth day of the insolvency commencement date. CIRP is a largely creditor driven process and therefore a claim submitted by a creditor deserves to be handled with due care and seriousness to ensure successful resolution of insolvency. Thus, CIRP Regulations need to be viewed in a purposive manner so as to advance the cause of insolvency resolution while safeguarding the interest of all the stakeholders. The Appellant/Resolution Professional, therefore, ought not to have summarily rejected the claim refiled by the Financial Creditor on the stand-alone ground that his earlier claim under Regulation 12(1) having been rejected, he cannot file a belated claim. This narrow and pedantic interpretation of the CIRP Regulations 12 by the Appellant/Resolution Professional has stymied the bona-fide efforts on the part of the Financial Creditor to substantiate his claims.

20. Section 18 of the IBC lays down the various duties of the IRP in respect of handling claim proposals. Section 18(1)(b) lays down that IRP shall ***“receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15.”*** As regards the role of the Resolution Professional in this regard, Section 25(e) of the IBC lays down that he shall ***“maintain an updated***

list of claims.” The Resolution Professional while examining claims is therefore expected to act in a manner which inspires confidence in the Financial Creditor so as to ensure the credibility of the insolvency process. In the present matter, therefore, the question before us is therefore whether a Resolution Professional is competent to decide or reject the claims of the Financial Creditor by himself without presenting the complete facts before the CoC on the admissibility of the claims. This aspect has already been settled by the Hon’ble Supreme Court in **‘Swiss Ribbons Pvt. Ltd. & Anr.’ Vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018** wherein it held that Resolution Professional has no adjudicatory power and that he is **“really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the Adjudicating Authority.”** The Resolution Professional has been vested with administrative as opposed to quasi-judicial power. In view of the above, the Appellant/Resolution Professional by summarily rejecting the belated claims at his own level without presenting the complete facts to the CoC has misconstrued his role, duties, and responsibilities.

21. The Resolution Professional is an important instrumentality in the insolvency resolution process and his role is crucial and critical to fulfill the objective of the IBC. It is therefore incumbent upon him to discharge his responsibilities with the highest standards of professional excellence, dexterity, integrity, rectitude, and good faith. The Adjudicating Authority based on the facts and documents presented before it, found lack of

professionalism on part of the Appellant/Resolution Professional in analyzing the admissibility of claims before him. We find no reasons to disagree with the Adjudicating Authority and affirm the findings that there has been failure of duties on the part of the Appellant/Resolution Professional.

22. In view of the above discussions, facts, and circumstances, we are of the considered opinion that there are no convincing reasons to interfere with the Impugned Order. We are, therefore, unable to accept the contention of the Appellant that the adverse remarks made by the Adjudicating Authority in Paragraphs 10 and 12 of the Impugned Order be expunged. In the result, the appeal having no merit is dismissed.

(Justice Ashok Bhushan)
Chairperson

(Justice M. Satyanarayana Murthy)
Member(Judicial)

(Barun Mitra)
Member(Technical)

Place: New Delhi

Date: 27.07.2022

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