SL No. 101

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 15.11.2021 AT 10:30 AM
THROUGH VIDEO CONFERENCE

IA (IBC)/586/2021 in Company Petition IB/205/2021
U/s 7 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

State Bank of India **...Financial Creditor**

Vs

India Power Corporation Ltd **...Corporate Debtor**

CORAM:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL

ORDER

Orders pronounced in IA 586/2021 vide separate sheets.

In the result, this application is dismissed. The Applicant is directed to file counter along with documents, if any, by 23-11-2021 and shall serve copy of the same to the Financial Creditor. In default, the opportunity to file counter stands forfeited. The rejoinder, if any, to the same shall be filed by the Financial Creditor within 7 days thereafter.

The main matter is already adjourned to 03.12.2021.

MEMBER (T) **MEMBER (J)**

Srinivasa Rao

NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD

IA No. 586/2021
In
CP (IB) No. 205/7/HDB/2021

Application under Section 60 (5) of IBC, 2016, r/w Rule 11 of NCLT Rules

In the matter of **India Power Corporation Limited**

Filed by

India Power Corporation Limited
Centre for Excellence, Plot No. X-1, 2 & 3
Block EP, Sector V, Salt Lake
Kolkata - 700091 ...Applicant

Versus

State Bank of India
State Bank Bhavan, Madam Cama Road
Mumbai – 400021
Acting Branch
Stressed Assets Management Branch
D.No. 3-4-1013/A, 1st Floor, CAC
TSRTC Bus Station, Kachiguda
Hyderabad - 500027 ....Respondent

Date of order: 15.11.2021

Coram:

Dr N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical

Appearance:

For Applicant: Shri Anirban Bhattacharya, Advocate assisted by Shri I.V. Siddhivardhana, Advocate

For Respondent: Shri Bishwajith Dubey, Advocate

PER: SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

ORDER

1. This Application which is at the behest of the Corporate Debtor, is for my recusal. The Respondent/Financial creditor viz, the State Bank of India invoked Section 7 of the Insolvency & Bankruptcy Code against the Applicant/ Corporate Debtor, for initiation of Corporate Insolvency Resolution Process, inter-alia, on the ground that the Corporate Debtor/Applicant herein failed to service the debt which is to the tune of Rs. 500,47,58,255.44 including interest.

2. The Applicant/Corporate Debtor having been served with the notice on 24.09.2021, entered appearance through a Counsel and was directed to file counter, if any, after serving copy on the Financial Creditor/Respondent herein.

3. However, instead of filing counter, the present application is filed seeking my recusal inter-alia, contending that it has come to the knowledge of the Applicant that I was an employee and a Senior Level Executive for over a period of 30 years in the

State Bank of India, the Financial Creditor herein which creates a reasonable apprehension of bias on the mind of the Applicant that justice would not be done and this matter ought to be heard by some other Ld Member (Technical).

4. The Respondent/SBI has not filed counter in this application despite giving opportunity. However, the Learned Counsel for the Respondent/SBI during the course of hearing of this Application, submitted that there are absolutely no justifiable grounds in the Application and the so called apprehension of the Applicant that justice will not be done to the Applicant if this matter is heard by the present Learned Member (Technical) is absolutely unfounded. According to the Learned Counsel, this application is filed only to protract the proceedings. Thus, submitting, the Learned Counsel for the Financial Creditor prayed for dismissal of the Application.

5. In the above backdrop of the facts and circumstances, the point that arises for consideration is.

Whether the plea of reasonable apprehension of bias in the mind of Applicant that justice would not be done unless the matter is heard by some other Member (Technical) is well founded?

POINT

6. We have heard the Learned Counsel for both sides and perused the record.

7. The solitary plea on which the Application is founded, is that since I served as General Manager (Corporate Services) for over 30 years in SBI which is the Financial Creditor herein, a

"reasonable apprehension of bias" is created in the mind of the Applicant, that justice will not be done to the Applicant if the same is heard by the Bench comprising myself as Member, hence the main petition requires to be heard by some other Bench. In support of the plea that I had served in State Bank of India, the Financial Creditor herein, the Applicant, filed a copy of my profile which appears to have been downloaded from Linkedin.

8. At the outset, it is pertinent to state herein that, the rule that justice should not only be done but should manifestly and undoubtedly be seen to be done is undoubtedly of utmost importance and shall invariably be followed. The Rule against bias which is one of the fundamental principles of natural justice shall be applied to all judicial as well as quasi-judicial proceedings. It is also well accepted that a "reasonable apprehension" in the mind of a litigant that the judge hearing the case is not impartial, IS a ground for seeking recusal of a judge hearing the case or for a judge to recuse himself. At the same time, it is also important to see that the judges do not readily accede to the plea of "apprehension of bias" in every matter as it may encourage the litigants to seek disqualification of a judge on a mere plea of bias and have their case adjourned or be tried by someone whom they feel more likely to decide the case in their favour.

9. The full Bench of Hon'ble Supreme Court of India in ***Supreme Court Advocates-on-Record Association and Another versus Union of India (Recusal Matter) (2016) 5 Supreme Court Cases 808,*** had laid down certain principles to

determine whether the impartiality of a judge is sufficiently in doubt warranting his/her recusal, which are as follows:-

- If a Judge has a financial interest in the outcome of a case, he is automatically disqualified from hearing the case.

- In cases where the interest of the Judge in the case is other than financial, then the disqualification is not automatic but an enquiry is required whether the existence of such an interest disqualifies the Judge tested in the light of either on the principle of "real danger" or "reasonable apprehension" of bias.

- The Pinochet case added a new category i.e. that the Judge is automatically disqualified from hearing a case where the Judge is interested in a cause which is being promoted by one of the parties to the case.

10. When the case on hand is tested on the touch stone of the aforesaid principles, it is not at all the case of the Applicant that I have any financial interest in the outcome of the case. As already stated, the solitary basis for the so called apprehension of the Applicant that justice will not be done to him if the case is heard by the present Bench, appears to be my past service as General Manager (Corporate Services) in the Respondent/Financial Creditor.

11. It is pertinent to mention herein that, as General Manager (Corporate Services) at Corporate Centre, Mumbai, my role was mostly confined to staff functions which include overseeing premises and Estate, office administration, security, official language implementation etc. As General Manager, I was not at all associated with banking operations more particularly credit related areas of the same. I have served in Hyderabad centre of the Bank during 1992 to 1998.

Thereafter, I didn't have any opportunity to work at Hyderabad centre. The name of the Corporate Debtor came to my knowledge for the first time during the proceedings only.

12. Therefore, the plea that justice will not be done to the applicant is baseless and unfounded. That apart, during the course of the hearing, my Learned Brother Member (Judicial) had specifically asked the Learned Counsel for the Applicant whether on any occasion I, either directly or indirectly or in any manner dealt with the account of the Applicant with the financial creditor and the Learned Counsel for the Applicant fairly answered in negative.

13. It is needless to say that SBI is the largest public sector bank in India with wide-spread lending pan-India having lakhs of employees and customers. When admittedly, I am not at all involved in any manner in any of the financial transactions between the respondent/financial creditor and the present Applicant herein, I am unable to find any basis for the plea of the applicant that justice will not be done in the matter if the matter is heard by the Bench with me as Member (Technical).

14. Further, I am reminded of the oath that I took as Member of NCLT which I quote **""I, ..., having been appointed as member of the National Company Law Tribunal do solemnly affirm swear in the name of God that I will faithfully and conscientiously discharge my duties as member to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will",** and I am committed to my oath. In view of my discussion supra,

the prayer of my recusal in the instant case, if acceded to, would amount to committing breach of oath of office.

15. That apart, my recusal in the instant case will also set a wrong precedent in as much as SBI is a party/or made party in several matters before various Benches of NCLT, and any unscrupulous litigant who wants the proceedings to be protracted can easily file this kind of application and thus may make a wrongful gain to himself.

16. Before I conclude, let me state that I have no personal desire to hear this matter. I was a part of this Bench because of my nomination to it by the Learned President, NCLT. Had I found even a semblance of basis for the so called apprehension of the Applicant that I am biased, I would have volunteered myself to recuse. Since the apprehension of the Applicant being absolutely unfounded. I am of the firm view that it is not proper to recuse myself from hearing the matter. The application, therefore deserves to be dismissed.

(Veera Brahma Rao Arekapudi)
Member (Technical)

ORDER OF DR N. VENKATA RAMAKRISHNA BADARINATH, MEMBER (JUDICIAL)

1. While fully endorsing the views expressed by my Learned Brother Member (Technical), I wish to add that in my considered view, the prayer for recusal of my Learned Brother is not at all well founded. In the factual backdrop of this case, acceding to the prayer for recusal would be laying down a wrong precedent.

2. The only ground pleaded for recusal is the long past service of the Ld. Member (Technical), in State Bank of India, the Financial Creditor herein . Since the recusal in the instant case is sought by the litigating party, unless justified, such a prayer shall never be acceded to, as recusal for a judge in a case of this nature would give an impression that judge had been scared out of case, because of the objection.

3. ***Hon'ble Supreme Court of India in Civil Appeal No. 2570 of 2020 in the matter between State Bank of India v M/s Metenere Limited dated 19.08.2020*** held that the approach adopted by the Hon'ble NCLAT in upholding the order passed by the Adjudicating Authority, NCLT Ahmedabad Bench, that the *"proposed Resolution Professional, since had a long association of serving four decades with the Financial Creditor and currently drawing pension, the apprehension of bias expressed by the Corporate Debtor qua appointment of the insolvency professional, created a reasonable apprehension in the mind of the Corporate Debtor that the Resolution Professional will be biased, as such was dis-entitled to be Resolution Professional"* is not correct and accordingly set

aside the order of Adjudicating Authority (Ahmedabad Bench) and NCLAT.

4. Since the plea in the case on hand being similar to the case supra, the same is liable to be rejected.

5. It may be further stated that mere possibility of such a feeling is not enough. There must exist circumstances where a reasonable and fair-minded man would think it probably or likely that the Judge would be prejudiced against a litigant. It is needless to say that a judge before assuming office, takes an oath to discharge his duties without fear or favour. If the prayer for recusal without their being any justifiable reason is acceded to, it would amount to breach of oath of office.

6. It is the duty of every judge to discharge his responsibilities with absolute earnestness and sincerity and it is also the duty of the judge to abide by oath of office, to uphold the Constitution and the laws.

7. Therefore, I hold that the prayer for recusal of my Learned Brother Member (Technical) being totally unfounded and mischievous, is liable to be rejected.

8. The Application therefore stands rejected.

(Dr N.Venkata Ramakrishna Badarinath)
Member (Judicial)

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