

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

I.A.(IB) 781/KB/2021

In

C.P (IB) No.980/KB/2018

In the matter of

An application under section 27 of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the NCLT,2016;

And

In the matter of:

Union Bank of India, a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings)Act, 1970 having its head office at 239, Vidhan Bhawan Marg, Mumbai-400021 and carrying on business through its different branches including its Branch Office at Stressed Asset Management Wachel Molla Mansion, 8, Lenin Sarani, Dharamtalla, Kolkata-700013.

.... Financial Creditor

Versus

P K S Limited through Mr. Shashi Agarwal, Resolution Professional, holding IBBI Registration No IBBI/IPA-001/IP-P00470/2017-18/10813 and office at Subarna Apartment, 21 N, Block-A, New Alipore, Kolkata-700053.

.... Corporate Debtor

And

In the matter of

Union Bank of India

... Applicant

Date of hearing : 07/02/2022

Order Pronounced on : 16/02/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Joy Saha, Sr. Adv. } For RP
2. Mr. Shashi Agarwal, RP in person

1. Mr. Jishnu Chowdhury, Adv. } For the members of the suspended Board of
2. Mr. Kuldeep Mallik, Adv. Directors
3. Mr. Aritra Basu, Adv.
4. Mr. Abhijit Sarkar, Adv.

1. Mr. Shiv Shankar Banerjee, Adv } For STC Limited in IA/1095/2020
2. Mr. Arik Banerjee, Adv.
3. Mr. Arijita Ghosh, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This application has been filed by the Union Bank of India seeking confirmation of appointment of Mr. Jai Narayan Gupta, as the RP in replacement of the present Resolution Professional Mr. Shashi Agarwal.

3. It is submitted that initially vide order dated 8th August, 2019 one Mr. Pinaki Sarkar, had been appointed as IRP but since he desired to withdraw himself from the CIRP of the Corporate Debtor herein, Mr. Kanakabha Roy, holding IBBI Registration No. IBBI/IPA-003/IPA-ICAI-N-00204/2018-2019/12456, was appointed as IRP and eventually confirmed as RP but he was also removed by this Adjudicating Authority upon an application filed by the Suspended Board against him alleging biased decisions and Mr. Shashi Agarwal, having Registration No. IBBI/IPA-001/IP-P00470/2017-18/10813

was appointed in his place as the RP. It is submitted that subsequently, from the hearing held on 23rd August, 2021, the applicant Union Bank of India came to know from the arguments of the counsel for the Suspended Board of Directors that the present RP is not further interested to pursue the application for fraudulent transactions. It is submitted that the applicant apprehends that the Resolution Professional is also not acting sincerely and is wasting valuable time of the CIRP which is itself a time bound process. In the CoC meeting that was held thereafter, a resolution was passed to remove the present RP and replace him by one Jai Narayan Gupta and Mr. Gupta is stated to have also given his written consent to such appointment. The present application under section 27 of the Code has been thus filed to replace the Resolution Professional with another professional.

4. During the course of arguments in this matter, Mr. Joy Saha, Ld. Counsel appearing for the present Resolution Professional Mr. Shashi Agarwal, who was also present in person submitted that Mr. Shashi Agarwal is also not interested to continue as the RP in this matter, since the CoC has already taken decision to replace him by another Resolution Professional.

5. It is submitted in the application that the CoC in its meeting dated 26th August, 2021 passed a resolution for removal of the present RP, which was approved by the CoC by 89.44% votes. Therefore, the applicant proposed the name of Mr. Jai Narayan Gupta, who is a Chartered Accountant and registered Insolvency Professional and had conducted the transaction and forensic audit. A copy of the minutes dated 26th August, 2021 is annexed with the application as Annexure-A-9 and the consent of Mr. Jain Narayan Gupta in Form AA on 27th August, 2021, along with AFA, as Annexure-A-10 (collectively).

6. Along with this application considering the confirmation of the appointment of Mr. Jai Narayan Gupta, as the RP in this matter, another IA (IB) No.882/KB/2021 filed by Narayan Chandra Saha, Director of Suspended

Board of PKS Limited seeking leave of this Adjudicating Authority to intervene in IA (IB) No. 781/KB/2021 and also seeking dismissal of the IA (IB) No. 781/KB/2021 was also heard.

7. In the said application, the applicant has submitted that Union Bank of India (Respondent No.3) had proposed the name of Mr. Kanakabha Roy, as IRP initially who was ordered to replace the earlier IRP vide order dated 3rd December, 2019 because of the voting share of the Respondent No.3. It is submitted that Mr. Kanakabha Roy was an employee of Respondent No.3 and had served Respondent No.3 for 34 years and himself handled the account of the Corporate Debtor for a substantial length of time. It is further submitted that Mr. Kanakabha Roy was ineligible to be appointed as RP, being biased and was controlled by Respondent No.3. The applicant further submitted that vide application being IA/542/KB/2020 filed by the Suspended Board of Directors, Mr. Kanakabha Roy was removed by this Adjudicating Authority vide order dated 3rd July, 2020 and the said order was challenged by Mr. Kanakabha Roy before the Hon'ble NCLAT and Hon'ble Supreme Court of India but both his appeals were dismissed by orders dated 18.08.2020 and 30.09.2020 respectively. Mr. Kanakabha Roy is a Director of Intelligent IP Management Solutions Private Limited and this company renders services in respect of CIRP and liquidation process. It is submitted that Respondent No.4 is a Director of said company and 99.99% shareholder. Mr. Tapan Chakraborty, another person who has worked with Respondent No.3 is holding only 0.001% shares.

8. It is submitted that Respondent No.4 was acting as a professional representing Mr. Kanakabha Roy, the Resolution Professional. It is submitted that Respondent No.4 (Jai Narayan Gupta) controls the said company and has controlled previous RP, Mr. Kanakabha Roy. It is submitted that Mr. Kanakabha Roy was a puppet in the hands of Respondent No.4 and he attended all the hearings before this Adjudicating Authority as a Professional

on record of the RP and it would be evident that he was present even at Hon'ble NCLAT hearings. It is further submitted that on the date of hearing i.e. 3rd July,2020, Respondent No.4(Jai Narayan Gupta) was present and attempted to make certain submissions, which were not permitted because the Resolution Professional Mr. Kanakabha Roy was present. It is submitted that scurrilous and scandalous statements were thereafter made by Respondent No.4 on public domain created by the Adjudicating Authority, when the petitioner's application was allowed.

9. It is submitted that Union Bank of India (Respondent No.3) has adopted a vendetta against the Directors of the Corporate Debtor and for this reason that frivolous and mischievous applications under section 66 of the Code have been made. It is stated that Respondent No.4 is taking biased decisions against the Directors of the Corporate Debtor and has a personal vendetta, as would be evident from the statements made.

10. The applicant in IA(IB)No. 882/KB/2021 has placed before us as Annexure-A-I, which is claimed to be a copy of the WhatsApp message circulated by C.A. Jai Narayan Gupta, who is proposed to be appointed as the New Resolution Professional now replacing the earlier RP Mr. Shashi Agarwal. It is submitted by Mr.Jishnu Chowdhury, Ld. Counsel appearing on behalf of the applicant in IA (IB) No. 882/KB/2021 opposing appointment of Mr. Jai Narayan Gupta, that Jai Narayan Gupta has circulated the messages in the WhatsApp Group of which Dy. Registrar, NCLT Kolkata Bench was also a member. The extracts of the said messages are reproduced as under:-

KB 3.7.20 CAUSE LIST

Dy Registrar Nclt, 91 92305118...

+ 91 9331022920

cajainarayangupta

" I was attending an Insolvency case before the Kolkata Bench of NCLT on Friday, 03.07.2020. I was representing Respondent being the RP. The Applicant was the suspended directors to remove the RP. The legal counsel, Mr. Jishnu Chowdhury, of Applicant argued the case. Then, CoC counsel

spoke. When I started to argue, Mr. Jishnu said that I was Chartered Accountant and I was not allowed to argue. Then, the Bench of Jc. Jinan, also from legal profession, abruptly ordered to close the VC link. This is most disrespectful gesture of legal profession towards member of Accountancy profession. Whether we can expect justice from the judiciary and can they be allowed to treat the member of Accounting profession in this manner? They cannot deprive the Chartered Accountants off their livelihood with such derogatory action.

MESSAGE POSTED BY MR JAI NARAYAN GUPTA ON 05.07.20 IN WHATSAPP GROUP CREATED BY REGISTRAR, NCLT, KOLKATA REGARDING HEARING HELD ON 03.7.20

It is an order tilted towards Applicant, not speaking as the objection to the Application not narrated, based false information given by the Applicant, after the bench itself commenting during the hearing that NCLAT case had different facts, relied on the same in decision, not giving sufficient opportunity of being heard, admitting urgent application lthough non filing of vital documents before the Bench, keeping silence on the illegal and objectionable comments of Legal Counsel of the Applicant.”

11. In the light of the aforesaid “derogatory remarks” circulated by Respondent No.4, Mr. Jai Narayan Gupta, and the circumstances explained above, we do not wish to approve the appointment of Mr. Jai Narayan Gupta as the Resolution Professional in place of Mr. Shashi Agarwal and shall appoint a profession out of the list of Insolvency Professionals approved by the IBBI.

12. We, therefore, appoint **Mr. Subodh Kumar Agarwal, IP** having Reg. No. **IBBI/IPA-001/IP-P00087/2017-18/10183**, email ID subodhka@gmail.com to act as Resolution Professional (RP), Mr. Shashi Agarwal, the outgoing RP is directed to hand over all documents in his possession to the newly appointed RP, within seven days from today. The incoming RP shall file further progress report in the matter accordingly.

13. We also order that payment of fees and CIRP cost spent by Mr. Shashi Agarwal, stated to be Rs. 5 Lac and odd, be considered on merit by the COC and paid to the erstwhile RP within two weeks.

14. With the above directions, **I.A. (IB)No. 781/KB/2021** shall stand disposed of.

15. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 16th day of February, 2022

Pj