

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.392/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 20.07.2022 in
IA No. 259/2022 in CP(IB) No.12/BB/2021
passed by the 'Adjudicating Authority' (National Company Law
Tribunal, Bengaluru Bench, Bengaluru)

In the matter of:

Sunit Suri,
R/o: 10, Ashoka Avenue,
Fatehpuri Behri, Mehrauli,
New Delhi - 110075
V

... Appellant

1. Mr. Ahsan Ahmed (RP)
SDU Travels Pvt. Ltd.
IP Registration No.IBBI/IPA-002/IP-N00987/
2020-21/13183,
At : C-108, Third Floor, Sector – 2,
Noida, Uttar Pradesh-201301

... Respondent No.1

2. Committee of Creditors
SDU Travels Pvt. Ltd.
At : C-108, Third Floor, Sector – 2,
Noida, Uttar Pradesh-201301

... Respondent No.2

Present :

For Appellant : Mr. P.J. Sri Ganesh, Advocate

For Respondent : Mr. Ahsan Ahmad, Advocate

ORDER
(Virtual Mode)

07.11.2022: According to the Learned Counsel for the ‘Appellant’ the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) on 20.07.2022 had passed the following Order in IA No.259/2022 in CP(IB) No.12/BB/2021: -

“This application has been filed under Section 60(5) of the IBC, 2016 read with regulation 3 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by Mr. Sunit Suri, who is the ex-director of the Corporate Debtor for the replacement of IRP.

2. Heard Mr. Chetan Tripathi, learned Counsel for the Applicant.

3. The learned IRP who was present in person submits that the instant I.A. is filed by the ex-director of the Corporate Debtor not with the approval of the CoC. Hence, the IRP prays to dismiss the instant I.A.

4. Therefore, we are of the view that the instant I.A. is not maintainable as for the replacement of IRP, it must be filed by CoC/RP.”

and found ‘No Merits’ in the ‘Application’ and ‘dismissed’ the same, as not maintainable.

2. The Learned Counsel for the ‘Appellant’ submits that the ‘Appellant’, being a ‘Suspended Director’ / ‘Shareholder’ of the ‘Corporate Debtor’ is entitled to maintain the instant Company Appeal (AT)(CH)(Ins) No.392/2022 before this ‘Tribunal’ against the ‘Impugned Order’ dated 20.07.2022 in IA No.259/2022 in CP(IB) No.12/BB/2021, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru).

3. It is represented on behalf of the 'Appellant', the 'Impugned order' of the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench, Bengaluru) in IA No.259/2022 in CP(IB) No.12/BB/2021 dated 20.07.2022 is to be set aside, because of the reason that it is 'incorrect' to 'observe' / 'state' that the 'Application' for removal of the 'Interim Resolution Professional', was not filed by the 'Committee of Creditors. Furthermore, the 'Members' of the 'Committee of Creditors' are 'Related Parties' of the 'Corporate Debtor'.

4. The Learned Counsel for the 'Appellant' submits that after the 'Appointment' of the 'Interim Resolution Professional', it was found by the 'Appellant' that the 'Interim Resolution Professional', is not acting independently and acting towards the interest of 'Mr. Umesh Hingorani, Mr. Hemant Golchha and Mr. Sanjay Bhakta Mathema (Suspended Board of Directors), against the interest of the 'Other Creditors' of the 'Corporate Debtor'.

5. The 'real grievance' of the Learned Counsel for the 'Appellant' is that in the instant Company Appeal (AT)(CH)(Ins) No.392/2022, the 'Appellant' has prayed for replacing the 'Interim Resolution Professional' Mr. Ahsan Ahmad, on the ground that the 'Interim Resolution Professional' Mr. Ahsan Ahmad, is working under the 'influence' of the 'Suspended Board of

Directors’ and further that, he does not have ‘bonafide intention’ and he is acting under the ‘Directions’ and in the interest of the ‘Suspended Board of Directors’ and towards their benefits, which vividly evident, as the ‘Interim Resolution Professional’ had allocated shares, in ‘Committee of Creditors,’ to the ‘Entities’ / ‘Persons,’ related to the ‘Corporate Debtor’.

6. The other stand taken on behalf of the ‘Appellant’, is that the ‘Impugned Order’ is to be set aside, because of the existence of nexus between ‘R. Kothari and Company LLP, KMSR Kothari Consultancy Pvt. Ltd.’ – the ‘Corporate Debtor’ and the ‘Interim Resolution Professional’, Mr. Ahsan Ahmad and, therefore, ‘the Interim Resolution Professional’ cannot be presumed to act, ‘independently’.

7. The Learned Counsel for the ‘Appellant’ to lend his support to his ‘contention’ that IA No.259/2022 in CP(IB) No.12/BB/2021 is maintainable before the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru), falls back upon the ‘Order’ of this ‘Tribunal’ in Comp. App. (Ins) 687 of 2020 dated 18.08.2020, in the matter of Kanakabha Ray V Narayan Chandra Saha & Ors. wherein, it is observed as under: -

“ After hearing the learned counsel for the Appellant we find that admittedly the Appellant had been in gainful employment of the ‘Financial Creditor’ for 34 years and had been dealing with the accounts of the ‘Corporate Debtor’ – a fact which

*the 'Corporate Debtor' claims not to be in know-of previously. The Appellant may not be currently in employment of the 'Financial Creditor' or drawing salary under it but the fact remains that on account of services rendered in past an element of loyalty is there which cannot be ignored. In view of this fact appreciation on the part of the 'Corporate Debtor' that the Appellant would not be fair in his working as 'Resolution Professional' cannot be dismissed off-hand more so when an instance of deviation was pointed out which the Appellant, when confronted, admitted as a mistake. This factual position emanates from the impugned order. This is independent of any prejudice caused actually and factually as the bias has to be viewed from the perspective of the 'Corporate Debtor' on the mere basis of apprehension on account of past services rendered by the Appellant with the 'Financial Creditor'. In such circumstances, no exception can be taken to the powers of the Adjudicating Authority acting independent of the opinion of the 'Committee of Creditors' in this regard. This case is squarely covered by the judgment rendered by this Appellate Tribunal in '**State Bank of India vs. M/s. Metenere Ltd. – Company Appeal (AT) (Insolvency) No. 76 of 2020**' decided on 22nd May, 2020. Paragraphs 7 and 8 which are relevant and germane to the disposal of instant appeal are reproduced herein below:*

*“7. This Appellate Tribunal had an occasion to consider ineligibility or disqualification for appointment as 'Interim Resolution Professional' or 'Resolution Professional'. Taking note of the relevant provisions of law in '**State Bank of India v. Ram Dev International Ltd. (Through Resolution Professional)– Company Appeal (AT) (Insolvency) No. 302 of 2018**' decided on 16th July, 2018, this Appellate Tribunal observed that merely because a 'Resolution Professional' is empanelled as an Advocate or Company Secretary or Chartered Accountant with the 'Financial Creditor' cannot be a ground to reject the proposal of his appointment unless there is any disciplinary proceeding pending against him or it is shown that the person is an interested person being an employee or on the payroll of the 'Financial Creditor'. Admittedly, no disciplinary proceedings are pending against Mr. Shailesh Verma and he is not on aforesaid panel or engaged*

as a retainer by the 'Financial Creditor'. He had a long relationship with the 'Financial Creditor', spanning around four decades, before demitting office as the Chief General Manger in 2016 but currently he is merely a pensioner drawing pension as a benefit earned for the past services in terms of the relevant Service Rules which he is getting independent of the benevolence of the ex-employer i.e. the Appellant- 'Financial Creditor'. But it cannot be denied that the Appellant restricted its choice to propose Mr. Shailesh Verma as 'Interim Resolution Professional' obviously having regard to past loyalty and the long services rendered by the later. This conclusion is further reinforced by filing of instant appeal by the 'Financial Creditor' who is upset with the impugned order directing the Appellant- 'Financial Creditor' to substitute the name of 'Interim Resolution Professional' in place of Mr. Shailesh Verma. This has to be viewed in the context of apprehension of bias raised by the Respondent- 'Corporate Debtor' for the apprehension of bias necessarily rests on the perception of Respondent- 'Corporate Debtor'. It is profitable to refer to the following observations of the Hon'ble Apex Court in "**Ranjit Thakur v. Union of India and Ors.– (1987) 4 SCC 611**":

"17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, "Am I Biased?"; but to look at the mind of the party before him"

8. The fact that the proposed 'Resolution Professional' Mr. Shailesh Verma had a long association of around four decades with the 'Financial Creditor' serving under it and currently drawing pension coupled with the fact that the 'Interim Resolution Professional' is supposed to collate all the claims submitted by Creditors, though not empowered to determine the claims besides other duties as embedded in Section 18 of the 'I&B Code' raised an apprehension in the mind of Respondent- 'Corporate Debtor' that Mr. Shailesh Verma as the proposed 'Interim Resolution Professional' was unlikely to act fairly justifying the action of the

Adjudicating Authority in passing the impugned order to substitute him by another Insolvency Professional. Observations of the Adjudicating Authority in the impugned order with regard to 'Interim Resolution Professional' to act as an Independent Umpire must be understood in the context of the 'Interim Resolution Professional' acting fairly qua the discharge of his statutory duties irrespective of the fact that he is not competent to admit or reject a claim."

8. On a careful 'perusal of the contents of the aforesaid 'Order' dated 18.08.2020 in Comp. App. (Ins) 687 of 2020, this 'Tribunal' is of the 'earnest opinion' that the same is 'inapplicable' to the 'Facts' of the 'present Case' and the same is 'distinguishable' on the 'available facts' and 'Materials on Record' in the instant Comp. App. (AT)(CH)(Ins) No.392/2022.

9. When this 'Tribunal' posed a query to the Learned Counsel for the 'Appellant', as to how the 'Appellant' / 'Suspended Board of Directors' can prefer the instant Comp. App. (AT)(CH)(Ins) No.392/2022, before this 'Tribunal' under Section 22 (3) of the 'Insolvency & Bankruptcy Code, 2016 which enjoins 'Committee of Creditors' to replace the 'Interim Resolution Professional', who shall file an 'Application' before the 'Adjudicating Authority' for the appointment of the 'Proposed Resolution Professional' (along with the consent from the 'Proposed Resolution Professional') in the specified form, in terms of Section 22 (3) of the 'Insolvency & Bankruptcy Code, 2016, the Learned Counsel for the 'Appellant' answered the same, by pointing out that 'except seeking the aid of Rule 11 of the National Company

Law Appellate Tribunal Rules, 2016, ‘inherent power’ and no other Provision under the ‘Insolvency & Bankruptcy Code, 2016, enjoins him to prefer an ‘Appeal’ / ‘Application’ before the ‘Tribunal’.

10. To be noted, the principle of an interpretation of the ‘Statute’ is that, when the ‘language’ ‘employed’ in the ‘Relevant Section’ / towards a ‘Proviso of Code’ / ‘Act’ / ‘Statute’, then, it has to be read in a ‘simple’ / ‘plain’ and ‘harmonious manner’, without causing any ‘volatile harm’ to the ‘language’ used therein, and not in ‘any other manner’.

11. The ingredients of Section 22 (3) of the ‘Insolvency & Bankruptcy Code, 2016 very clearly confers power on the ‘Committee of Creditors’ to replace the ‘Interim Resolution Professional’, by preferring an ‘Application’ before the ‘Adjudicating Authority’, for the ‘Appointment of the ‘Proposed Resolution Professional’ (along with the Written Consent from the ‘Proposed Resolution Professional’ in the ‘Specified Form’).

12. When the ingredients of Section 22 (3) (b) of the Code explicitly ‘spells out’ for the ‘Appointment’ of the ‘proposed Resolution Professional’, then, this ‘Tribunal’ is of the ‘considered opinion’ that the ‘invocation of Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 cannot be pressed into service, in the teeth of the I&B Code, 2016, showering ‘Powers’

only on the ‘Committee of Creditors’, to ‘replace’ the ‘Interim Resolution Professional’.

13. In view of the foregoing and in the light of aforesaid deliberations, this ‘Tribunal’, holds that the ‘conclusion’, arrived at by the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) in IA No.259/2022 in CP(IB) No.12/BB/2021 dated 20.07.2022, observing that the said ‘Interlocutory Application’ is not maintainable, for the ‘Replacement’ of the ‘Interim Resolution Professional’, is free from any ‘Legal Flaw’. Consequently, the instant Comp. App. (AT)(CH)(Ins) No.392/2022 sans ‘Merits’ and it fails.

In fine, the instant Comp. App. (AT)(CH)(Ins) No.392/2022 is **‘dismissed’**. No Costs.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

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