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NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH
NATIONAL COMPANY LAW TRIBUNAL, HELD AT ON 21.02.2022 at 10.30 AM
THROUGH VIDEO CONFERENCING

PRESENT: SMT. R. SUCHARITHA, MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)

IN THE MATTER OF : S.A Premkumar & Anr

MAIN PETITION NUMBER : CP(IB)/80(CHE)/2021

(IA/MA) APPLICATION NUMBERS

IA/148(CHE)/2022, IA/150(CHE)/2022

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ORDER

Mr. P.H. Arvind Pandian, Senior Advocate appears along with Mr. Kumarpal R Chopra, Advocate for the Applicant and Mr. Ravi Rajagopalan, Advocate appears for the Respondent through vide conferencing platform.

2. IA/150/CHE/2022 is an urgent hearing Application for IA/148/CHE/2022, which stands **allowed**.
3. IA/148/CHE/2022 is an Application filed by the Applicant / Creditor under Rule 154 of NCLT Rules, 2016 r/w Rule 11 of NCLT Rules, 2016 r/w Section 98(1) of the IBC, 2016 seeking reliefs as follows:-
 - a. Allow this Application and rectify the order dated 04.02.2022 passed by this Hon'ble Tribunal, thereby appointing Mr. G. Ramachandran as the Resolution Professional.
 - b. Allow this Application and substitute Mr. AmierHamsa Ali Abbas Rawther with Mr. G. Ramachandran as the Resolution Professional; or
 - c. Allow this Application and replace Mr. AmierHamsa Ali Abbas Rawther with Mr. G. Ramachandran as the Resolution Professional or
 - d. pass any such orders, which this Hon'ble Tribunal may deem fit and proper to pass in the circumstances of the case.
4. Ld. Senior Counsel for the Applicant submits that in an Application filed under Section 95 of the IBC, 2016, this Tribunal vide Order dated 04.02.2022 has appointed one Mr. AmierHamsa Ali Abbas Rawther as the Resolution Professional based upon the details filled by the Applicant in Form-C.



5. Ld. Senior Counsel for the Applicant brings to the notice of this Tribunal the Regulation 4(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019, which is extracted hereunder.

4. Eligibility of resolution professional.

(1) An insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-

(a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;

(b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and

(c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.

Explanation.- For the purposes of this sub-regulation, - (i) a person shall be considered independent of the guarantor, if he-

(a) is not an associate of the guarantor;

(b) is not a related party of the corporate debtor; and

(c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor; (ii) the expression "related party" shall have the meaning assigned to it in sub-section (24) of section 5.

6. From the Explanation given to the above Regulation, it is seen that an Interim Resolution Professional who is appointed in respect of the Corporate Debtor cannot act as an Insolvency Professional in respect of the Personal Guarantor of the concerned Corporate Debtor.

7. Hence, it was submitted that the present Resolution Professional Mr. AmierHamsa Ali Abbas Rawther is required to be replaced by another Insolvency Professional in respect of the Personal Guarantor. Further, it was submitted that it was an error committed on the part of the Applicant / Creditor while filling in Part-IV of Form-C.

8. Further, it was also submitted by the Learned Senior Counsel for the Applicant that the main Company Petition under Section 95 of IBC, 2016 is filed by the Creditor, however in para 4 of the order dated 04.02.2022 it has been stated that the Application is filed through the Insolvency Professional, which is an inadvertent error and sought to rectify the same by way of filing the present Application.

9. In this regard, it is seen that an Application under Section 95 of IBC, 2016 is to be filed as per Rule 7(2) of *Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019* in Form - C. In the said Form - C, the details in respect of Part - IV of the Application is required to be filled up only when the Application is filed through the Insolvency Professional. In the present case, the Applicant has filled in the details in Part - IV of the Application and hence this Tribunal has observed in para 4 of the order dated 04.02.2022 that the main Company Petition has been filed through the Insolvency Professional. The Applicant in the main Company Petition has categorically stated that the Application has been filed through the Creditor and hence the Creditor need not fill up the details in Part - IV of Form - C, since it becomes superfluous.

10. Be that as it may, in the present case, as per Regulation 4(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019, the Insolvency Professional as found in Part - IV of the Application cannot be appointed as the Insolvency Professional in respect of the personal guarantor.



11. In this connection, Rule 154 of NCLT Rules, 2016 is extracted hereunder;

154. Rectification of Order.- (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.

(2) An application under sub-Rule (1) may be made in Form No. NCLT. 9 within two years from the date of the final order for rectification of the final order not being an interlocutory order.

12. Rule 154 of NCLT Rules, 2016 empowers this Tribunal to correct its order on its own motion or on an application moved by any party. In the present case, it is seen that the Applicant has averred in the Application that on account of certain inadvertent the Creditor has filled in the name of the Insolvency Professional in Part – IV of the Application. Thus, in exercise of the powers conferred under Rule 154 r/w Rule 11 of NCLT, Rules, 2016 the said error is rectified.

13. It is also pertinent to mention here that the order dated 04.02.2022 passed by this Tribunal in appointing Mr. AmierHamsa Ali Abbas Rawther as the Resolution Professional in respect of the Personal Guarantor is in violation of IBBI Regulations and not in violation of provisions of IBC, 2016. Hence there arises no situation for review or recall of the order dated 04.02.2022 passed in CP/IB/80/CHE/2021. The Regulations framed by IBBI is only a guideline and not a mandatory provision, which is binding upon this Adjudicating Authority. Hence, the present application filed under Rule 154 read with Rule 11 of NCLT Rules, 2016 is maintainable and this Tribunal under Rule 154 of NCLT Rules, 2016 is also *suo motu* empowered to correct / rectify the error.

14. Under the said circumstances, the error in para 4 of the order dated 04.02.2022 wherein it states that the Application filed through the Insolvency Professional stands rectified and it is clarified that the main Company Petition has been filed by the Creditor under Section 95 of IBC, 2016.

15. Further, in terms of Regulation 4(1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019, the order dated 04.02.2022 is hereby modified to the extent of appointing the Independent Resolution Professional **G.Ramachandran** with **Reg. No. IBBI/IPA-002/IP-N00167/2017-18/10437** who shall file his report in terms of Section 99(1) of IBC, 2016 within a period of ten (10) days.

16. Post the main Company Petition CP/IB/80/CHE/2021 for hearing on **28.03.2022**.

17. The earlier IRP viz. Mr. Amier Hamsa Ali Abbas Rawther stands relieved.

18. Except the above said corrections, in all other aspects the order dated 04.02.2022 passed in CP/IB/80/CHE/2021 remains intact.

19. Accordingly, IA/148/CHE/2022 stands **allowed**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond