

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1030 of 2025

IN THE MATTER OF:

Tokas Filling Station

...Appellants

Versus

Venture Supply Chain Pvt. Ltd. & Ors.

...Respondents

Present:

**For Appellant : Mr. Mrinal Harsh Vardhan, Ms. Rituparna Patra
and Ms. Akankrita Sinha, Advocates.**

**For Respondents : Mr. Gautam Singhal, Mr. Rajat Chaudhary, Ms.
Kanika Balhara, M. Sanchya Bansal, Advocates for
R1 and R2 a/w IRP in person.**

Ms. Sakshi, Advocate for R3.

O R D E R
(Hybrid Mode)

17.07.2025: Heard counsel for the appellant as well as Ld. Counsel for the R1 & 2/IRP as well as Counsel for the R3.

2. This appeal has been filed challenged the order dated 30.06.2025 to the limited extent in so far as it appoints the Respondent no.2 as IRP.

3. The short facts necessary to be noticed for deciding the appeal are the appellant filed an application under Section 9 as an operational creditor for initiating CIRP against the CD in which appellant proposed an IRP i.e. Respondent no.3.

4. The Adjudicating Authority by the impugned orders while admitting Section 9 application has appointed the respondent no.2 as the IRP by giving reasons in paragraph- 5(d).

5. Ld. Counsel for the appellant challenging the order submits that when the appellant, who is an operational creditor has proposed an IRP as per Section 9(4) of the IBC there was no reason for not appointing the said IRP by the Adjudicating Authority, he has referred to Section 16(3) of the IBC and submits that by Section 16(3)(b) IRP proposed by the appellant was required to be appointed.

6. Ld. Counsel appearing for R2, the IRP who has been appointed in the impugned order, refuting the submissions, submits that Adjudicating Authority has power to change the IRP and appoint another IRP and in the present case reasons have been given in paragraph- 5(d) especially that IRP proposed is from different place i.e; Amritsar where the CD is at Delhi. It is submitted that there was sufficient ground for appointing R2. He has placed reliance on judgment of this Tribunal in *CA (AT) (Ins) No. 253 of 2018 Sharvan Kumar Vishnoi Vs. Crown Alba Writing Instrument P. Ltd.*

7. Ld. Counsel for the R3 submits that the respondent no.3 was proposed as the IRP and there can be no discrimination on the ground of place or residence of R3 and the Adjudicating Authority ought to have appointed R3.

8. We have considered the submissions counsel for the parties and perused the records.

9. There is no dispute between the parties on the fact that the operational creditor by filing Section 9 application has proposed the R3 as the IRP. Section 9(4) of the IBC provides as follows:-

“9(4) An operational creditor initiating a corporate insolvency resolution process under this section, may

propose a resolution professional to act as an interim resolution professional.”

Section 9(4) gives an opportunity to the operational creditor to propose a Resolution Professional to act as an Interim Resolution Professional. Section 16 deals with appointment and tenure of IRP Section 16(3) which is relevant is as follows:

“16(3) *Where the application for corporate insolvency resolution process is made by an operational creditor and-*

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.”

Present is a case which is covered by Section 16(3)(b) where IRP has been proposed.

10. Now we look into the reasons which have been given by the Adjudicating Authority in paragraph-5(d) which are as follows:-

“5(d) *Section 9(4) of the Code does not mandate the Operational Creditor to propose the name of a Resolution Professional along with the application to act as the Interim Resolution Professional (IRP) for the Corporate Debtor. However, in the present case, the Operational Creditor has proposed the name of Mr. Parminder Singh Bhullar as the IRP. Upon perusal of the records, it is noted that the proposed IRP is a resident of Amritsar—143104, whereas the registered office of the Corporate Debtor is situated in Delhi—110037.*

In view of the foregoing, we are of the considered opinion that the discharge of duties by the IRP would impose a financial

burden on the Committee of Creditors (CoC). Therefore, in order to optimize costs and preserve the value of the Corporate Debtor, the IRP should preferably be a resident of Delhi or the National Capital Region (NCR). Therefore, this Adjudicating Authority appoints Mr. Santanu Kumar Samanta as the Interim Resolution Professional of the Corporate Debtor from the available list of the panel of Resolution Professionals as maintained by the IBBI. The registration number of the IRP is IBBI/IPA-001/IP-P-02324/2020-2021/13511, the contact No. of the IRP is +919810031794 and the email id of the IRP is santanukumar@yahoo.com.

The appointed IRP is further directed to submit a valid Authorization for Assignment along with Written Consent in Form-2 and a copy of Registration Certificate within 3 days of the pronouncement of this order.”

11. The reason given by the Adjudicating Authority is that 9(4) of the Code does not mandate the operational creditor to propose the name. It is true that Section 9(4) does not mandate but present is a case where under Section 9(4) operational creditor has elected to propose an IRP and hence the present is a case where IRP has been proposed and Section 16 need to be looked into, under Section 16(3)(b) when a proposal for an Interim Resolution Professional is made, the IRP shall be appointed. Submission of the Respondent No.2 that Adjudicating Authority is fully competent to change the IRP. He has placed the reliance on the judgment of *Shravan Kumar Vishnoi* where this Tribunal was faced with a case where Adjudicating Authority has appointed the RP different from one proposed and in paragraph-7 to 11 following was observed:-

“7. The (regular) ‘Resolution Professional’ can be replaced by ‘Committee of Creditors’ only by vote, which should not be

less than seventy-five percent of voting shares in terms of Section 27 of the 'I&B Code'.

8. In the present case, the Appellant was named as 'Interim Resolution Professional' but the Adjudicating Authority for the grounds mentioned in the impugned order appointed one Mr. Anurag Goel as 'Resolution Professional'.

9. We accept the submissions made on behalf of the Appellant that in normal course the person proposed under sub-section (4) of Section 9 as 'Interim Resolution Professional' is required to be appointed if there is no departmental proceeding is pending. However, that does not mean that the Adjudicating Authority has no discretion to name another person to be appointed as 'Interim Resolution Professional', if it comes to its notice that the proposed 'Interim Resolution Professional', named by the 'Operational Creditor' or 'Financial Creditor' is busy in some other 'Resolution Process'.

10. In present case, as one Mr. Anurag Goel has already appointed as 'Interim Resolution Professional' and the Insolvency & Bankruptcy Board of India (IBBI) has approved his name, and if the appeal is allowed then Appellant can continue only for another fifteen-days. For the said reason, we are not inclined to interfere with the impugned order dated 10th May, 2018.

11. However, we make it clear that the impugned order dated 10th May, 2018 will not affect the career of the Appellant – Shravan Kumar Vishnoi, who may be appointed as the 'Interim Resolution Professional' or 'Resolution Professional' in any other case. The appeal stands disposed of with the aforesaid observations. No cost."

The Adjudicating Authority's power to appoint the IRP due to any valid reason has to be conceded, but when the statutory scheme indicated that IRP proposed by the operational creditor has to be accepted there has to be a very strong reason for not appointing the said IRP. The Adjudicating Authority in the impugned order has not adverted to Section 16(4) and has changed the

IRP who was proposed. The question whether IRP belong to a different place and shall not be able to effectively carry on the CIRP is the question which needs to be considered by the CoC when the question comes for continuance of IRP or appointment of RP. We thus are of the view that, no sufficient reasons have been given in paragraph-5(d) for changing the IRP which was proposed by the operational creditors. We thus set aside the direction in paragraph- 5(d) and direct the appointment of the IRP who was proposed by the operational creditor. We make it clear that it shall be open for the CoC to consider in the meeting of the CoC to either continue the IRP or replace the IRP with the IRP appointed by the Adjudicating Authority or any other person. The appeal is allowed to the above.

Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

harleen/NN