

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 313 of 2018

IN THE MATTER OF:

Dharmendra Kumar

...Appellant

Vs

IBBI & Ors.

....Respondents

Present:

For Appellant: Mr. Rohit Rathi and Mr. Ashutosh Kumar, Advocates.

For Respondents: Mr. Puneet Jain and Mr. Harsh Jain, Advocates for IBBI.

ORDER

24.08.2018: The Appellant, who was appointed as Interim Resolution Professional during the Corporate Insolvency Resolution Process of 'M/s IAP Company Pvt. Ltd.', filed an application before the Adjudicating Authority to withdraw himself from the Corporate Insolvency Resolution Process and requested for his discharge. The Adjudicating Authority by impugned order dated 16th /17th May, 2018 while rejected the plea taken by the Interim Resolution Professional also imposed a cost of Rs.50,000/- and observed that the attitude of the Appellant is unprofessional and directed the Insolvency and Bankruptcy Board of India (IBBI) to take action against the Appellant as contemplated under the Regulations framed by it.

2. Learned counsel appearing on behalf of the Appellant submits that the Appellant has right to withdraw himself from the Resolution Process and the Adjudicating Authority cannot force him to function. As per him, he is supposed to function for 30 days as Interim Resolution Professional, thereafter the Committee of Creditors has to decide whether to continue him as Resolution Professional or to replace him by another Resolution Professional and for his continuation consent is required to be taken.

3. Learned counsel appearing on behalf of the IBBI submits that the Interim Resolution Professional(s) are appointed by the Adjudicating Authority there for it is the Adjudicating Authority who may decide whether to discharge him or not and issue order of discharge in appropriate case for the reasons if mentioned by the Resolution Professional in his application is genuine. In absence of any proper ground shown by the Appellant, the Adjudicating Authority refused to discharge the Appellant.

4. The appointment and tenure of Interim Resolution Professional is prescribed under Section 16 of the I&B Code. As per sub-section (5) of Section 16, the term of the Interim Resolution Professional cannot exceed beyond thirty days from the date of his appointment. In the present case, the order of moratorium was passed and Interim Resolution Professional has appointed on 28th February, 2018, thereafter, his tenure of 30 days was to be completed by 30th March, 2018. However, we find that the Appellant filed the application before the said date on 21st March, 2018 without waiting for another 9 days. In this background, if the Adjudicating Authority has refused to accept his request for discharge, we find no reasons to interfere with its decision.

5. At this stage it is desirable to refer Section 22 of the I&B Code, which relates to appointment of Resolution Professional. In the first meeting of Committee of Creditors by majority voting as prescribed under the said provision, the Committee of Creditors may either resolve to appoint the Interim Resolution Professional as Resolution Professional or to replace Interim Resolution Professional by another Resolution Professional. Therefore, after completion of tenure of the Interim Resolution Professional, if the Committee of Creditors resolve to appoint Interim Resolution Professional as Resolution Professional, at that stage, the consent is required to be taken from the Interim Resolution

Professional as to whether he intends to continue as Resolution Professional or to wants to be discharged having completed 30 days. Without his consent the Interim Resolution Professional cannot be forced to continue beyond 30 days.

5. In the present case, we find that the Committee of Creditors have decided to continue the Appellant as Resolution Professional and the said order has not been challenged by the Appellant. On the other hand he is already functioning as the Resolution Professional. In the facts and circumstances and perusal of the records we are of view that Adjudicating Authority's directions to impose cost and to refer the matter to IBBI for initiating action against the Appellant is uncalled for. For the reason aforesaid, we set aside the part of the impugned order by which the Adjudicating Authority (i) imposed cost on the Appellant, (ii) passed strictures against him and (iii) directed the IBBI to initiate disciplinary proceeding. The order passed by the Adjudicating Authority cannot be relied upon for future engagement of Appellant as Interim Resolution Professional or Resolution Professional or Liquidator in any other Corporate Insolvency Resolution Process or Liquidation Proceeding. The appeal stands disposed of with aforesaid observations and directions. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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