

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 253 of 2018

IN THE MATTER OF:

Sharvan Kumar Vishnoi

...Appellant

Versus

Crown Alba Writing Instrument P. Ltd.

...Respondent

Present: For Appellant :

**Mr. Ashok Kriplani, Advocate and
Mr. Vinod Kr. Chaurasia, PCA**

O R D E R

28.05.2018 This appeal has been preferred by Sharvan Kumar Vishnoi, whose name was proposed for 'Interim Resolution Professional' by 'Bhansali Engineering Polymers Ltd.' ('Operational Creditor'). By the impugned order dated 10th May, 2018 the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) appointed one Mr. Anurag Goel as a 'Resolution Professional' on the ground that the appellant –'Shravan Kumar Vishnoi has already appointed as 'Resolution Professional' in another case i.e. 'M/s. Centenary Polytext Pvt. Ltd. vs. Dhanashree Agro Product Pvt. Ltd.'

2. Learned counsel for the appellant submits that the 'Operational Creditor' proposed the name of the 'Interim Resolution Professional' in terms of Section 9(4) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code'). As per Section 16(3)(b) of the I&B Code, the Adjudicating Authority is required to appoint the 'Resolution Professional' proposed under subsection(4) of Section 9 subject to no pendency of disciplinary proceedings.

Therefore, according to him, except the pendency of disciplinary proceeding, the Adjudicating Authority cannot reject the proposal on any other ground.

3. As per Section 16(5) of the 'I&B Code' the term of the 'Interim Resolution Professional' cannot exceed thirty days from the date of his appointment. A regular 'Resolution Professional is to be appointed under Section 22 of the 'I&B Code', which reads as follows:

“22. Appointment of resolution professional -

- (1) *The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.*
- (2) *The committee of creditors, may, in the first meeting, by a majority vote of not less than seventy-five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.*
- (3) *Where the committee of creditors resolves under sub-section (2)—*
 - (a) *to continue the interim resolution professional as resolution professional, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or*

- (b) *to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.*
- (4) *The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.*
- (5) *Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.”*

4. From the aforesaid provision, it is clear that the ‘Committee of Creditors’ by majority vote of not less than seventy-five percent of the voting share of the ‘Financial Creditors’, either resolve to appoint the ‘interim resolution professional’ as the ‘resolution professional’ or to replace the ‘interim resolution professional’ by another ‘resolution professional’.

5. The ‘Resolution Professional’ can be replaced by ‘Committee of Creditors’ under Section 27 of the ‘I&B Code’ by a vote of seventy-five percent of voting shares and not less than the same.

6. In view of the aforesaid provisions, the following facts emerges:

- (i) 'Interim Resolution Professional' has continue as 'Resolution Professional' if the 'Committee of Creditors' by majority of vote not less than seventy-five percent approved the name to continue as 'Resolution Professional'.
- (ii) In case the 'Interim Resolution Professional' is appointed as 'Resolution Professional' another person can be appointed by the 'Committee of Creditors' but by majority of vote not less than seventy-five percent of share.
- (iii) "Resolution Professional' can be replaced by another one only under Section 27 by the 'Committee of Creditors' of majority votes not less than seventy-five percent of the voting shares.

Except special circumstances and good reasons, the Adjudicating Authority should not replace a 'Resolution Professional', if named and approved by the 'Financial Creditor' or 'Committee of Creditors'.

7. In the present case, the ground shown by the Adjudicating Authority is not justified as there is no illegality committed by the 'Resolution Professional' or the 'Interim Resolution Professional' nor any departmental proceeding is pending. However, it is not clear whether the 'Committee of Creditors' have approved the name of the appellant – Shравan Kumar Vishnoi, who in normal term comes to an end after thirty days. Further, as we find that one Mr. Anurag Goel has appointed as 'Resolution Professional' and the Insolvency & Bankruptcy Board of India (IBBI) has approved his name, we are not inclined to interfere with the impugned order dated 10th May, 2018, though the grounds shown is not correct.

8. We make it clear that the impugned order dated 10th May, 2018 will not affect the career of the appellant – Shравan Kumar Vishnoi, who may be appointed as the ‘Interim Resolution Professional’ or ‘Resolution Professional in any other case.

9. The appeal stands disposed of with the aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc