

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 105 of 2017**

**IN THE MATTER OF:**

**State Bank of India**

**...Appellant**

**Versus**

**S. Muthuraju & Ors.**

**...Respondents**

**Present:**

**For Appellant :**               **Shri Om Prakash, Senior Advocate assisted by Shri M. Anbalagan, Advocate**

**For Respondent No.1:** **Shri Krishnendu Datta and Ms. Pritha Srikumar Iyer, Advocates**

**For Respondent No. 2** **Shri Nikhil Nayyar and Shri Dhananjay, Advocates**

**ORDER**

**09.08.2017** This appeal was preferred by State Bank of India (one of the financial creditor) against order dated 7<sup>th</sup> July, 2017, which reads as follows:

*“Mr. T. Saikrishnan, Applicant IRP present. Counsel for the Financial Creditor i.e. State Bank of India present. Counsel for 2 and 3 promoters present. The Application is disposed of in terms of the submissions that had been made by the Counsel for financial Creditor that they are ready to cooperate with the IRP in accordance with law. The assurance that has been given by the Counsel for financial Creditor reflects that there is no resistance from the Financial Creditor. However, the financial Creditor is directed to cooperate with*

*the IRP and provide necessary information as desired by IRP within the stipulated time. The Financial Creditor shall also hand over possession of the assets under its control. Accordingly, the petition is disposed of and the IRP is directed to constitute a committee of the Creditors at the earliest.”*

On 26<sup>th</sup> July, 2017, the Appellate Tribunal taking into consideration the submissions made on behalf of the appellant that the Interim Resolution Professional (IRP) is not recognizing that debt due is to the appellant – Financial Creditor, State Bank of India, passed the following order:

*“In the meantime, IRP will take into consideration the stand of the appellant – State Bank of India, who claims to be ‘Financial Creditor’. We may only observe except in a decision with regard to the creditors, ‘prima facie’ it appears that the Interim Resolution Professional has not been empowered to decide as to who is creditor or not? The appellant will also provide all evidences to the IRP in support of the claim, if not provided.”*

Shri Krishnendu Datta, learned counsel appearing for the Interim Resolution Professional (IRP) submits that the appellant – State Bank of India is being treated as creditor subject to verification of the quantum of debt due to the appellant. While, we record such statement made, we observe that we are not deciding the issue whether IRP has power to decide the amount of debt due to one or other creditor or not. IRP is required to act in accordance with the law. We further make it clear that if more than 30 days have passed after the appointment of Interim Resolution Professional, learned Adjudicating Authority

will take steps to appoint insolvency resolution professional, and, if so required, may allow the Interim Insolvency Resolution Professional to function as Insolvency Resolution Professional.

In view stand taken by Interim Resolution Professional, the appellant is allowed to take part in the meeting of creditors and to deliberate in accordance with law.

We further make it clear that we have not decided the issue as to whether the Financial Creditor – State Bank of India, if taken over the possession of the land of the Corporate Debtor under the SARFAESI Act, 2002 the said Financial Creditor can be asked to hand over the possession of such land, which may be decided by the learned Adjudicating Authority, if such question is raised by Insolvency Resolution Professional or any Creditor or any other aggrieved person.

The appeal stands disposed of with the above observations.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Balvinder Singh ]  
Member (Technical)