

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 198 of 2017

IN THE MATTER OF :

Rajinder Kapoor
Proprietor R.K.Kapoor & Co. **...Appellant**

Versus

Anil Kumar
Interim Resolution Professional & Ors. **...Respondents**

Present: For Appellant: Mr. Sanjay Kumar Chhetry, Advocate

And Company Appeal (AT) (Insolvency) No. 200 of 2017

IN THE MATTER OF :

Ashwini Kumar Prabhakar
Director
Rolex Cycles Pvt. Ltd. **...Appellant**

Versus

Anil Kumar
Interim Resolution Professional & Ors. **...Respondents**

Present: For Appellant: Mr. Arun Francis, Advocate

ORDER

22.09.2017 – The appellants have challenged the order dated 8th September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in CA Nos. 122/2017 with C.A. Nos. 123/2017 & 124/2017 in CP (IB) No. 37/Chd/Pb/2017.

2. Learned Counsel for the appellant(s) submits that the term of 'Interim Resolution Professional' (thirty days) has already expired.

Thereafter, the Adjudicating Authority was required to appoint 'Insolvency Resolution Professional'.

3. Referring to provisions of 'Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") while we observed that it is open for the Adjudicating Authority to allow the 'Interim Resolution Professional' to continue as Resolution Professional, learned Counsel for the appellants submits that the Committee of Creditors has already decided to remove the present 'Interim Resolution Professional' and to appoint another 'Insolvency Resolution professional'.

4. In this connection, we may refer to the provisions of Section 27 of the 'I&B Code' which deals with replacement of Resolution Professional by Committee of Creditors, which reads as follows: -

"27. Replacement of resolution professional by committee of creditors. – (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

(2) The committee of creditors may, at a meeting, by a vote of seventy-five per cent. of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under subsection (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.”

5. In view of the aforesaid provision, we are of the view that the Adjudicating Authority is duty bound to consider the name of another 'Resolution Professional', if proposed by the Committee of Creditors or may call for name from the 'Insolvency and Bankruptcy Board of India', if no name has been proposed. We hope and trust that the Adjudicating Authority will act in accordance with law, as quoted above, and pass appropriate order on the next date of hearing.

6. Till appropriate order in this regard is passed by the Adjudicating Authority, the Adjudicating Authority will not give effect to the impugned order and directions to the extent it is against the provisions of 'I&B

Code'. However, till the regular 'Insolvency Resolution Professional' is appointed, the Interim Resolution Professional may be asked to perform the day to day routine work, strictly in accordance with the provisions of the 'I&B Code'.

7. Both the appeals stand disposed of with aforesaid observations and directions. However, in the facts and circumstances, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member(Technical)

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