

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 302 of 2018

IN THE MATTER OF:

State Bank of India

...Appellant

Vs

**Ram Dev International Ltd.
(Through Resolution Professional)**

....Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr. P. B. A. Srinivasan, Mr. Naveen Hegde and Ms. Aishwarya Nabh, Advocates and Ms. Rekha Kureel, AGM (Law), SBI.

For Respondent: Mr. Rakesh Kumar Jain, RP in person and Mr. Vinod Chaurasia, PCA for RP.

ORDER

16.07.2018: The 'State Bank of India', a member of the Committee of Creditors has preferred this appeal against order dated 15th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in Company Petition No. (IB)178(PB)/2017, whereby Mr. K. G. Somani, who was proposed to act as Resolution Professional by the majority voting share of the Committee of Creditors has been held to be ineligible on the ground that he was in the panel of erstwhile 'State Bank of Hyderabad', which is now merged with the 'State Bank of India', which is one of the members of the Committee of Creditors.

2. The question arises for consideration in this appeal is whether the Adjudicating Authority can reject the proposal of the Committee of Creditors for appointment of Resolution Professional, on the ground that the name of proposed Resolution Professional is appearing in the panel of one of the member of the Committee of Creditors?

3. Learned Senior Counsel for the Appellant referred to the provisions of the Code and submitted that Mr. K. G. Somani was not empaneled as Retainer of State Bank of Hyderabad. He was not in the payroll of the Bank and is not an employee. He is a panel lawyer, as generally maintained by the Banks, Public Sector Undertakings and Governments, who cannot be treated to be employee of the Bank.

4. Mr. Rakesh Kumar Jain, who was earlier functioning as Resolution Professional and was replaced by the majority decision of the Committee of Creditors has appeared. Learned counsel for Mr. Rakesh Jain submits that for removing the earlier Resolution Professional, the Committee of Creditors have not shown any reason; no adverse comments has been recorded by them.

5. To decide the issue, it is necessary to refer relevant provisions of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code'), as discussed hereunder:

6. For initiation of Corporate Insolvency Resolution Process by Financial Creditor under Section 7 or by the Corporate Applicant under Section 10, the Financial Creditor alongwith the application require to provide the name of proposed 'Interim Resolution Professional' in terms of Section 7(3)(b). Similarly, the Corporate Debtor alongwith the Application under Section 10 is also required to provide the name of proposed 'Interim Resolution Professional' in terms of Section 10(3)(b). For initiation of Corporate Insolvency Resolution Process by Operational Creditor under Section 9 no such compulsion has been made, though it is open to an 'Operational Creditor' to propose the name of the 'Interim Resolution Professional'. The only bar for appointment of an Resolution Professional is that if any disciplinary proceeding is pending against such proposed Resolution Professional he cannot be appointed.

7. There is no other ineligibility prescribed for appointment of Interim Resolution Professional or Resolution Professional, either under I&B Code or the Regulations framed by the IBBI. However, in a particular case, the Adjudicating Authority for one or other good reason can remove a Resolution Professional for his act of omission and commission. Similarly, for the ground(s) to be recorded in writing, the name of the proposed Resolution Professional can be rejected by the Adjudicating Authority.

8. Section 22 of I&B Code relates to appointment of Resolution Professional. In the first meeting of the Committee of Creditors by majority voting of not less than 75% voting share (as per un-amended provision) of the Financial Creditors, can either resolve to appoint the Interim Resolution Professional as a Resolution Professional or to replace the Interim Resolution Professional by another Resolution Professional.

9. Section 27 deals with replacement of Resolution Professional by the 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 sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.”

10. From the aforesaid provision it is clear that during the Corporate Insolvency Resolution Process, at any time, if the Committee of Creditors ‘*is of opinion*’ that the Resolution Professional appointed under Section 22 is required to be replaced, it may replace him with another Resolution Professional in the manner provided under said section. In terms of Section 27(2), the Committee of Creditors at a meeting by vote of 75% of voting share (as per un-amended provision) can propose to replace the Resolution Professional appointed under Section 22 with another Resolution Professional.

11. Admittedly, Mr. Rakesh Kumar Jain was appointed as Interim Resolution Professional and after completion of 30 days of period his name was approved by the majority vote of the Committee of Creditors in terms of Section 22(2) to function as a Resolution Professional. In terms of the said provision he is continued and functioned as Resolution Professional.

12. According to learned counsel for Mr. Rakesh Kumar Jain, the Resolution Professional had done tremendous job for completion of the Corporate Insolvency Resolution Process and has also lodged complaint against the Board of Director of the Corporate Debtor. However, no criminal complaint lodged by him.

13. Learned counsel appearing on behalf of Mr. Rakesh Kumar Jain, further submitted that no adverse comment has been made against him by the Committee of Creditors and no reasons has been recorded for replacing the Resolution Professional.

14. Though such submission seems to be attractive, we are of the view, it is not desirable for a Committee of Creditors to record its opinion in view of the following reasons:

- (i) If the Committee of Creditors record any adverse opinion for replacement of Resolution Professional, it will not only harm him for the present but will also affect him in future during appointment as Resolution Professional in another proceeding. In such case, the Committee of Creditor will have to refer the matter to IBBI for initiation of departmental proceeding, which is also not desirable in all the cases.
- (ii) If the Committee of Creditors forms opinion on the basis of performance of the Resolution Professional and not because of allegation, it will also go against the Resolution Professional in interest of the Resolution Process.

15. We have already held that except for pendency of a disciplinary proceeding or ineligibility in terms of provisions of the I&B Code, there is no bar for appointment of a person as Resolution Professional. A Resolution Professional if empaneled as an Advocate or Company Secretary or Chartered Accountant with one or other 'Financial Creditor' that cannot be a ground to reject the

proposal, if otherwise there is no disciplinary proceeding is pending or it is shown that the person is an interested person being employee or in the payroll of the Financial Creditor.

16. In the present case, as we find that the Adjudicating Authority has failed to take into consideration the aforesaid fact and as there is no allegation against Mr. K. G. Somani and no disciplinary proceeding is pending against him and he is not in the payroll of one or other member of the Committee of Creditors, we are of the view that the Adjudicating Authority was required to approve his name.

17. For the reasons recorded above, we set aside impugned order dated 15th May, 2018 passed by Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in Company Petition No. (IB)178(PB)/2017 and replace Mr. Rakesh Kumar Jain by appointing Mr. K. G. Somani as Resolution Professional, who will act in accordance with law and ensure early completion of the Resolution Process.

18. So far as fee and cost incurred by Mr. Rakesh Kumar Jain is concerned, he may submit his claim before the Committee of Creditors, who should take into consideration such claim while preparing Information Memorandum and Resolution Plan in terms of Regulation 31 and 32 of 'The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016'. The appeal is allowed with aforesaid observations and actions. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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