

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

**Company Appeal (AT) (Insolvency) No. 113-114 of 2018**

[Arising out of Order dated 9<sup>th</sup> February, 2018 and 15<sup>th</sup> February, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in CA/59/(IB)/2018 and CA/70/(IB)/18 in CP/564/(IB)/2017.]

**IN THE MATTER OF:**

**ICICI Bank Limited**

Through its Chief Manager  
Having its Registered Office at:  
ICICI Bank Tower  
Near Chakli Circle, Old Padra Road,  
Vadodra.  
Having its Regional Office atL  
No.1, Cenotaph Road  
Teynampet, Chennai – 600 018.

**...Appellant**

**Vs**

**1. Oceanic Tropical Fruits Private Limited**

Through the Resolution Professional  
Having its Registered Office at:  
29, Zackaria Colony, 4<sup>th</sup> Street,  
Choolaimedu, Chennai – 600 094.  
Also having its Business Address at:  
No.6, 1<sup>st</sup> Floor, Wellington Estate  
Ethiraj Salai, Egmore, Chennai – 600 008.

**Respondent No.1**

**2. State Bank of India**

Through Assistant General Manager,  
Stressed Assets Management Branch,  
Having its Office at:  
Red Cross Building, Montieth Road,  
Egmore, Chennai – 600 008.

**Respondent No.2**

**3. Central Bank of India**

Through its General Manager  
Recovery Branch, Montieth Road,  
Egmore, Chennai – 600 008.

**Respondent No.3**

**4. Mr. C. Balasubramanian**

Insolvency Resolution Professional  
IP Registration No. IBBI/IPA-002/IP-  
N00052/2016-17/10096,  
Having its Address at:  
'SRINIDHI', G4 RMC Flats No.1,  
Venkatesapuram Colony, Vadapalani,  
Chennai – 600 026.

**Respondent No.4**

**5. Venkataramana Nagarajan**

Insolvency Resolution Professional  
IP Registration No. IBBI/IPA-002/IP-  
N00055/2017-18/10107,  
Having its Address at:  
New No.29, Kavarai Street, West Mambalam,  
Chennai – 600 033.

**Respondent No.5**

**Present:**

**For Appellant:** Ms. Pratishtha Vij and Mr. Diwakar Maheshwari,  
Advocates.

**For Respondents:** Mr. Arnav Dash and Mr. P. V. Dinesh, Advocates for  
R-1 & R-5.  
Mr. Rajender Beniwal, Advocate for R-2 & R-3.

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by 'ICICI Bank Limited' (Financial Creditor) against order dated 9<sup>th</sup> February, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai. By

the Impugned order the 'Adjudicating Authority' appointed one Shri V. Nagarajan as 'Resolution Professional' on the proposal of two of the Financial Creditors viz. 'State Bank of India' and 'Central Bank of India'.

2. The Corporate Insolvency Resolution Process was initiated at the instance of Appellant – 'ICICI Bank Ltd.' pursuant to a petition under Section 7 whereby the Appellant suggested the name of 'Interim Resolution Professional'. However, on completion of term of the 'Interim Resolution Professional', the Committee of Creditors in their meeting dated 14<sup>th</sup> November, 2017 appointed Shri V. Nagarajan as Resolution Professional, which has been affirmed by the Adjudicating Authority and the Insolvency and Bankruptcy Board of India ('IBBI' for short).

3. Learned counsel appearing on behalf of the Appellant submitted that the 'State Bank of India' and the 'Central Bank of India' having 73.62% voting right proposed appointment of new 'Resolution Professional'. According to him in terms of Section 22 no 'Resolution Professional' can be appointed by the 'Committee of Creditors' having less than 75% of voting right.

4. Learned counsel appearing on behalf of the Appellant while submitted that Section 22(2) is mandatory, according to learned counsel for the Respondent 75% of the voting share as prescribed under Section 22(2) is not mandatory.

5. We have heard learned counsel for the parties and perused the records.

6. Section 16 relates to appointment and tenure of 'Interim Resolution Professional'. The 'Adjudicating Authority' is required to appoint 'Interim Resolution Professional' within 14 days from the date of admission of Section 7 or 9 or 10 application. Normally, the 'Interim Resolution Professional' proposed by the 'Financial Creditor' (under Section 7) or by the 'Corporate Applicant' (under Section 10) are to be accepted by the 'Adjudicating Authority' provided that no disciplinary proceeding are pending against the Resolution Professional. Where no proposal is made for appointment of any 'Interim Resolution Professional', the Adjudicating Authority is required to refer the IBBI for recommendation of an 'Insolvency Resolution Professional' who may act as an 'Interim Resolution Professional'. The tenure of 'Interim Resolution Professional' is also prescribed under Section 16(5), as quoted below:-

**“16. Appointment and tenure of interim resolution professional.-** (1) *The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.*

(2) *Where the application for corporate insolvency resolution process is made by a financial creditor or the*

*corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.*

*(3) Where the application for corporate insolvency resolution process is made by an operational creditor and—*

- (a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*
- (b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.*

*(4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.*

*(5) The term of the interim resolution professional shall not exceed thirty days from date of his appointment.”*

7. As the term of ‘Interim Resolution Professional’ cannot exceed 30 days from the date of his appointment, provision has been made under Section 22 for appointment of ‘Resolution Professional’. At the 1<sup>st</sup> meeting of the ‘Committee of Creditors’, the ‘Committee of Creditors’ by majority vote of not less than 75% of the voting share may either resolve to appoint the ‘Interim Resolution Professional’ as ‘Resolution Professional’ or to replace the ‘Interim Resolution Professional’ by a ‘Resolution Professional’. Where ‘Interim Resolution Professional’ is allowed to function as ‘Resolution Professional’, the matter to be intimated to the ‘Adjudicating Authority’. For replacement of ‘Interim Resolution Professional’, an application is required to be filed by the ‘Committee of Creditors’ before the ‘Adjudicating Authority’. This is clear from Section 22 as quoted below:

**“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 subsection (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 subsection (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.*

8. From the aforesaid provision, we find that the 'Interim Resolution professional' cannot be appointed as 'Resolution Professional', except by a majority vote of not less than 75% of voting share of the 'Committee of Creditors'.

9. Similarly, to replace the 'Interim Resolution Professional' by another 'Resolution Professional', a majority vote of not less than 75% of voting share of the 'Committee of Creditors' is required.

10. It is only when the 'Adjudicating Authority' receive the recommendation of the 'Committee of Creditors' to replace the 'Interim Resolution Professional' by another 'Resolution Professional', the 'Adjudicating Authority' is required to forward the name of proposed 'Resolution Professional' to the IBBI for confirmation and appoint him after confirmation by the IBBI. In the meantime, in view of power conferred by Sub-section (5) of Section 22, the Adjudicating Authority is empowered to direct the Interim Resolution Professional to function as Resolution Professional until such time as the IBBI confirms appointment of the proposed Resolution Professional.



11. The question arises for consideration in this appeal is as to what step to be taken if the 'Committee of Creditors' fail to get minimum vote of 75% of the voting share of the 'Financial Creditors' for appointment of 'Interim Resolution Professional' as 'Resolution Professional' or to replace 'Interim Resolution Professional' by another (Regular) 'Resolution Professional'.

12. In the present case, the Appellant – 'ICICI Bank Ltd.' wanted to allow the 'Interim Resolution Professional' to continue as (Regular) 'Resolution Professional' as per Section 22(2). On the other hand, the two other members of the 'Committee of Creditors' i.e. 'State Bank of India' and 'Central Bank of India', who have 73.62% of voting share wanted to appoint another person as (Regular) 'Resolution Professional' (hereinafter referred to as 'Proposed Resolution Professional').

13. We do not agree with the submissions made by the learned counsel for the Respondent that the 'Interim Resolution Professional' can be replaced even by less than 75% of voting share of the 'Financial Creditors'. According to us, the 75% of the voting share of the 'Financial Creditors' for approval of appointment of 'Interim Resolution Professional' as (Regular) 'Resolution Professional' is mandatory. However, if there is no agreement and the 'Committee of Creditors' fail to achieve 75% of the voting share of the 'Financial Creditors', in view of the time limit of 30 days from the date of

appointment prescribed under Section 16(5), the 'Interim Resolution Professional' cannot continue as 'Resolution Professional'.

14. Therefore, to replace the 'Interim Resolution Professional' by another 'Resolution Professional' the 'Committee of Creditors' cannot appoint another person as (Regular) 'Resolution Professional', without majority voting which should not be less than 75% of the voting share of the 'Financial Creditors'. In such case, the matter is to be referred to the 'Adjudicating Authority', who is required to request the IBBI to name a 'Resolution Professional' and in the meantime may allow the 'Interim Resolution Professional' to function.

15. At this stage, it is also desirable to notice Section 27, which relates to Replacement of (Regular) 'Resolution Professional' by 'Committee of Creditors'. This provision also stipulate that the (Regular) 'Resolution Professional' can be replaced at any time during the 'Corporate Insolvency Resolution Process' by the 'Committee of Creditors', but by vote not less than 75% of the voting share, as quoted below:-

***“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.”*

16. From Sub-section (1) of Section 27, it is evident that the ‘Committee of Creditors’ is required to form the opinion that the ‘Resolution Professional’ appointed under Section 22 is required to be replaced and in such case only by voting not less than 75% of the voting share a ‘Resolution Professional’ can

be replaced. In such case also the 'Committee of Creditors' is required to forward the name of the 'Proposed Resolution Professional' proposed by them to the 'Adjudicating Authority', who in its term will forward the name of the proposed 'Resolution Professional' to the IBBI for its confirmation, whereinafter the 'Proposed Resolution Professional' can be appointed in the same manner as provided under Section 16. In the meantime, the 'Resolution Professional' already appointed under Section 22 is to continue till the appointment of another 'Resolution Professional'.

17. In view of the aforesaid provisions, we hold that minimum 75% of the voting share as prescribed under Section 22 and Section 27 are mandatory. However, under Section 22, if the name of 'Interim Resolution Professional' is not approved, he may continue till the appointment of a (Regular) 'Resolution Professional'. In such case, the 'Committee of Creditors' is not required to give reason for not approving the 'Interim Resolution Professional' to function as (Regular) 'Resolution Professional'. On the other hand for replacement of the 'Resolution Professional' under Section 27(1), the 'Committee of Creditors' is required to form opinion, and to write the reasons for replacement of the (Regular) 'Resolution Professional'.

18. In the present case, the 'State Bank of India' and the 'Central Bank of India' having failed to get 75% of the voting share, and having obtained only 73.62% of the voting share, it was not open to them to propose the name of

another 'Resolution Professional', and should have referred the matter to the 'Adjudicating Authority' with request to call for name of a 'Resolution Professional' from the IBBI.

19. In that view of the matter, the impugned order appointing Shri V. Nagarajan as 'Resolution Professional' cannot be upheld. However, Shri V. Nagarajan, Resolution Professional having proposed in the meeting of 'Committee of Creditors' on 14<sup>th</sup> November, 2017 and the IBBI having already confirmed his appointment after more than 90 days of his appointment, we are not going to interfere with the order of appointment. The appeal stands disposed of with aforesaid observations. However, in the facts and circumstances there shall be no order as to costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI

4<sup>th</sup> July, 2018

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