

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Company Appeal (AT) (Insolvency) No. 263 of 2017

[Arising out of Order dated 26th October, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CP(IB)No.213/KB/2017]

IN THE MATTER OF:

**Sandeep Kumar Gupta
Resolution Professional**

...Appellant

Vs.

Stewarts & Lloyds of India Ltd. & Anr.

...Respondents

**Present: For Appellant: - Mr. P. Nagesh and Mr. Dhruv Gupta,
Advocates.**

**For Respondents:- Ms. Swarupama Chaturvedi,
Advocates for IBBI.**

And

Company Appeal (AT) (Insolvency) No. 303 of 2017

[Arising out of Order dated 15th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CP(IB)No.213/KB/2017]

IN THE MATTER OF:

**Sandeep Kumar Gupta
Resolution Professional**

...Appellant

Vs.

Stewarts & Lloyds of India Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. P. Nagesh and Mr. Dhruv Gupta, Advocates.

**For Respondents:- Ms. Swarupama Chaturvedi and Mr. B.N. Dubey, Advocates for IBBI.
Mr. Nakul Mohta, Advocate for Liquidator.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals have been preferred by Mr. Sandeep Kumar Gupta, the 'Resolution Professional' against orders dated 26th October, 2017 and 15th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, in Company Petition (IB) No. 213/KB/2017, whereby and whereunder the Adjudicating Authority decided not to appoint the 'Resolution Professional' ('Appellant' herein) as 'Liquidator', he having failed to take appropriate steps for completing the 'Resolution Plan' and appointed one Ms. Mamta Binani, as 'Liquidator'.

2. Learned counsel appearing on behalf of the Appellant submitted that the observation of the Adjudicating Authority is contrary to the relevant fact which should be expunged.

3. It was also submitted that the Adjudicating Authority wrongly recorded that the Appellant did not issue advertisement in the newspaper for inviting 'Resolution Plan'. In fact, the Appellant duly issued Public

Announcement in 'Business Standard', English version in its Kolkata edition on 15th September, 2017 and 'Ajkal', Bangla version, in its Kolkata edition on 15th September, 2017 inviting 'Resolution Plan' and stating the last date for submission of 'Resolution Plan' is 25th September, 2017.

4. It was further submitted that the Adjudicating Authority failed to appreciate that the 'Committee of Creditors' in their meeting duly approved the appointment of the Appellant as the 'Resolution Professional' and the Adjudicating Authority vide its order dated 25th July, 2017 duly appointed the Appellant as 'Resolution Professional'. Therefore, the finding of the Adjudicating Authority that 'Resolution Professional' was appointed on the recommendation of the 'Corporate Debtor' is baseless.

5. As regards the removal of the Appellant, it was submitted that as per sub-section (1) of Section 34 of the Insolvency and Bankruptcy Code, 2016, the 'Resolution Professional' can only act as 'Liquidator' for the purpose of liquidation and can be replaced by the Adjudicating Authority only on the ground as stipulated in sub-section (4) of Section 34. The replacement in terms of sub-section (4) of Section 34 can only take place in two eventualities i.e. in case the 'Resolution Plan' submitted by the 'Resolution Professional' under Section 30 is rejected for failure to meet the requirement in sub-section (2) of Section 30 or in case the Insolvency and Bankruptcy Board of India (hereinafter referred to as "Board")

recommends the replacement of the 'Resolution Professional' for reasons to be recorded in writing.

6. According to Appellant, in the present case the eventualities under sub-section (4) of Section 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') are not triggered as there was no 'Resolution Plan' for the Resolution of the 'Corporate Debtor'. Therefore, there is no question of any contravention of requirement of sub-section (2) of Section 30 of the 'I&B Code'. It was also submitted that there was no recommendation from the 'Board' for replacement of the Appellant and the Board is not empowered to propose name of 'Insolvency Professional' to act as 'Liquidator'.

7. Learned counsel for the 'Board' submitted that the order dated 26th October, 2017, calling for name of a 'Liquidator' from the Board was forwarded by letter dated 16th November, 2017. However, before the said letter, the Adjudicating Authority had already appointed the 'Liquidator' on 15th November, 2017.

8. We have heard learned counsel for the Appellant and the Respondents-'Board'.

9. Without going into the controversy, as to whether the finding of the Adjudicating Authority recorded is correct or not, from the record, we find that the 'Resolution Professional' filed his progress Report on 15th July,

2017 along with the Minutes of 1st Meeting of the 'Committee of Creditors' dated 12th June, 2017, as recorded by the Adjudicating Authority and not been disputed by the Appellant. The Adjudicating Authority also noticed that within 180 days only one meeting of the 'Committee of Creditors' took place on 12th June, 2017 and thereafter no progress was made as no meeting of 'Committee of Creditors' was held. Ultimately just before completion of 180 days, the 'Resolution Professional' submitted his report that no 'Resolution Plan' has been submitted by any 'Resolution Applicant'.

10. In view of the aforesaid undisputed facts, while we hold that the observations made in the impugned order should not be construed to be misconduct on the part of the Appellant, but as we find that the Adjudicating Authority was not satisfied with the performance of the 'Resolution Professional', we hold that the Adjudicating Authority was well within its jurisdiction to engage another person as 'Resolution Professional' or 'Liquidator'. Further, the list of 'Resolution Professionals' being made available by the 'Board' to the Adjudicating Authorities, any person is appointed out of the said list submitted by the 'Board', it should be treated to be an appointment of 'Resolution Professional'/'Liquidator' on the recommendation of the 'Board'.

11. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 26th October, 2017. In absence of any merit we

dismiss the appeal. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

28th February, 2018

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