

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

**Company Appeal (AT) (Ins) No.1168 of 2019**

<b><u>IN THE MATTER OF:</u></b>	<b>Before NCLT</b>	<b>Before NCLAT</b>
Navneet Jain R/o Jain Street, Samana, Patiala, Punjab – 147101	Applicant	Appellant
<b>Versus</b>		
1. Manoj Sehgal Resolution Professional Of Sarbat Cotfab Private Limited TRC Corporate Consulting Pvt. Ltd. Plot No.359, Udyog Vihar, Phase – I, Gurugram – 122015, Haryana	Respondent No.1	Respondent No.1
2. Tejinder Singh Kocher R/o 63/B, Model Town, Patiala – 147 001	Respondent No.2	Respondent No.2
3. Bhupinder Sing Mann, (Suspended Director of Corporate Debtor) R/o Lutki Majra, Jor Majra, P.O. Dhanetha, Tehsil, Samana, Distt. Patiala – 147001	Respondent No.3	Respondent No.3

**For Appellant:** **Shri S.K. Jain and Shri Karan Malhotra,  
Advocates**

**For Respondent:** **Ms. Varsha Banerjee and Shri Mukund Rawat,  
Advocates  
Shri Sangram Patnaik and Shri Rajiv Gupta,  
Advocates (R-3)**

**ORDER**

**13.12.2019** Heard Counsel for the Appellant who claims to be shareholder of the Corporate Debtor – Sarbat Cotfab Pvt. Ltd. The present Appeal has been filed by the Appellant being aggrieved by the dismissal of his CA 492/2019 by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Chandigarh) by Impugned Order dated 9<sup>th</sup> October, 2019. The Application was filed in CP(IB)No.122/Chd/CHD/2017.

2. The learned Counsel for the Appellant states and it is claimed in the Appeal that the Application CA 492/2019 (Annexure A-3) was filed claiming that the present Respondent No.2 - Tejinder Singh Kocher (the Resolution Applicant who had filed the Resolution Plan) would have to be treated as related party under Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC – in short) and thus ineligible as the said Tejinder Singh Kocher was business partner with Bhupinder Singh Mann – now suspended Director of the Corporate Debtor. The Application stated that Applicant (Appellant) came to know that Respondent - Tejinder Singh Kocher has with two other persons submitted Resolution Plan and Applicant claimed that there was a Bar under Section 29A of IBC.

3. The Adjudicating Authority has disposed the Application CA 492 of 2019 with the following order:-

“This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**Code**) by a shareholder of the Sarbat Cotfab Private Limited (**Corporate Debtor**) objecting to the resolution plan submitted by the second respondent on the ground that the second respondent is barred

from submitting a resolution plan in terms of Section 29A of the Code.

2. It is stated that the applicant is a shareholder of the corporate debtor company and the Corporate Insolvency Resolution Process (**CIRP**) was initiated against the corporate debtor in pursuance of admission of CP (IB) No.123/Chd/CHD/2017 filed by Phoenix Arc Private Limited, a financial creditor, on 15.02.2018. The first respondent was appointed as the Interim Resolution Professional (**IRP**), who was later again appointed as the Resolution Professional (**RP**). The second respondent submitted a resolution plan cumulatively with two other persons as a resolution applicant, which is now pending consideration before this Adjudicating Authority for approval.

3. It is stated by the applicant that the second respondent Mr. Tejinder Singh Kocher has been a business partner of one of the Suspended Directors of the corporate debtor company namely Mr. Bhupinder Singh Mann, who is the third respondent in the CA and hence, the second respondent is not eligible to be resolution applicant, in terms of Section 29A of the Code. It is also stated that the second respondent is into the business of Punjabi Music and film production, media, etc. and he is famously known as “Babbu Kocher” in the Music and Film Industry and that the third respondent, who is a Suspended Director has been an active business partner with the second respondent. The second respondent and the third respondent have acted as co-producers for many Punjabi Songs, which were produced in the name of ‘Prabh Films’. The third respondent is known as “B.S. Mann”. The applicant filed number of various newspaper advertisements and photographs, etc. wherein the second and third respondents were shown to be together and their names were mentioned therein. Basing on the same, the applicant seeks a declaration that the second respondent is ineligible under Section 29A of the Code to submit the resolution plan.

4. Heard Mr. Nahush Jain, learned counsel for the applicant and Mr. Atul V. Sood, learned counsel for the RP and perused the pleadings.

5. Except filing copies of the paper clippings, the applicant failed to show any valid document to prove that the second and third respondents are business partners in any firm or company. Newspaper cuttings cannot be equated with any valid legal document to show the relationship between two persons.

6. In the circumstances, we do not find any merit in the CA No.492/2019 and accordingly, the same is dismissed. However, the applicant is at liberty to place any valid legal document before the Resolution Professional establishing the business relationship between second and third respondents and on receipt of the same the Resolution Professional shall examine and take an appropriate action, in terms of the Code and Regulations.”

4. The learned Counsel for the Appellant says that his grievance is that when this Application CA 492/2019 was heard and reserved for orders, in between, he filed CA 850/2019 (Annexure A-8 Page – 177) making same prayer but bringing on record further documents. It is stated that meanwhile even the RP filed CA 852/2019 (Annexure A-9) wherein reference was made to the business connections between the two Respondents but the RP had stated that the said Bhupinder Singh Mann had retired from “Prabh Films” and “Prabh International” on 31<sup>st</sup> October, 2017. The learned Counsel submits that in fact in those two Applications, the learned Adjudicating Authority had issued Notice and on 7<sup>th</sup> October, 2017 passed the following Order (Annexure A-10 Page – 258):-

“CA No.852/2019 is filed by the Resolution Professional for placing on record the documents pertaining to Section 29A compliance. CA No.850/2019 is filed by a Shareholder of the Corporate Debtor Company objecting the resolution plan submitted by the second respondent on the ground of non-compliance of Section 29A. Since both these applications are relating to the same subject matter, we permit the Resolution Professional to

implead the applicant in CA No.850/2019 as respondent in CA No.852/2019 and the learned Counsel appearing for the Resolution Professional shall file the amended memo of parties to that effect, today itself.

2. The learned counsel appearing for the shareholder accepts the notice in CA No.852/2019 and seeks time to file the reply. The same be filed within one week with copy in advance to the counsel opposite and rejoinder thereto, if any, may be filed at least three days before the date fixed with copy in advance to the counsel opposite. The Resolution Professional, who is one of the respondents in CA No.850/2019 shall also file his reply within one week with copy in advance to the counsel opposite. The learned counsel appearing for the second respondent in CA No.850/2019 may also file his reply, if any, within one week after exchanging the copy of the reply between the parties.

3. List both these CAs on 23.10.2019.”

5. According to the Counsel, it is surprising that in spite of such Order being passed on 07.10.2019, the Adjudicating Authority disposed of the CA 492/2019 on 9<sup>th</sup> October, 2019 (with the Order as reproduced above) stating that the Appellant had not shown any valid document to prove that second and third Respondents were business partners in any firm or Company other than showing paper clippings. The learned Counsel for the Appellant is pointing out the documents which were filed with the above two applications to show sale tax returns before the GST Authorities in 2019. The Counsel referred to document for instance which is at Page – 200 of the Appeal filed. The grievance is that the Adjudicating Authority decided the Application without considering any of these documents.

6. The learned Counsel for the RP submits that the Appellant cannot have grievance with the Impugned Order which directed the Appellant to

show legal documents to the Resolution Professional if the Appellant was interested in proving that there were business relations between the second and third Respondents. It is stated that in spite of Orders of the Adjudicating Authority, the Appellant did not come to the RP to show any such documents.

7. The learned Counsel for the Respondent No.3 is objecting to the claims being made by the Appellant to submit that there was no material to show that there were business relations which would attract provisions of Section 29A of IBC so as to create any bar. The learned Counsel also submits that apart from Respondent No.2, there were further two Applicants who were part of the Resolution Plan submitted and the Resolution Plan has been submitted by three Applicants which includes one of them as the present Respondent No.2 - Tejinder Singh Kocher.

8. The learned Counsel for Respondent No.3 is further submitting that even Bhupinder Singh Mann could not be said to be ineligible considering the fact that the Corporate Debtor is MSME.

9. Having heard Counsel for both sides, what transpires is and which is not disputed fact is that in the meanwhile, the Resolution Plan submitted by Respondent No.2 along with two more persons is said to have been approved by the Committee of Creditors and is already placed before the Adjudicating Authority for approval and is pending consideration. The learned Counsel for the RP is submitting that the Appellant by filing various

Applications is not letting the Adjudicating Authority take decision on the Resolution Plan which has been submitted on 27<sup>th</sup> August, 2018.

10. Having gone through the matter, when it appears from the Impugned Order that the Application CA 492/2019 was dismissed on the basis that only paper clippings had been shown and the Appellant had been referred to the Resolution Professional to show valid legal documents, we find that the Appellant should have moved the Resolution Professional.

11. If Section 30(1) of IBC is perused, it requires Resolution Applicant to state that he is eligible under Section 29A of IBC. As per Sub-Section (2) of Section 30, Resolution Professional has to examine each Resolution Plan received by him to confirm that each Resolution Plan, inter alia, “does not contravene any of the provisions of the law for the time being in force” (which would also include Section 29A). If the Resolution Professional lets the Resolution Plan go ahead to COC (Committee of Creditors), it is for COC to consider if Section 29A is attracted, and if yes, it may act as per provisions under Section 30(4). In this process mentioned as above, there is no scope for an Intervenor to rush to Adjudicating Authority filing application to adjudicate on the eligibility, which Application should be disposed as pre-mature. We find that only when COC has approved a Resolution Plan, can a person claim to be aggrieved to move the Adjudicating Authority. Adjudicating Authority cannot give a premature decision on eligibility as it would interfere with responsibility and duties of Resolution Professional under Section 30(2) and COC under Section 30(4) of IBC. We can also keep in view observations of Hon’ble Supreme Court of

India in paragraphs – 79 and 80 in the matter of **“Arcelormittal India Private Limited vs Satish Kumar Gupta & others”** – 2018 SCC OnLine SC 1733. If the Statute has to be workable, right to move Adjudicating Authority needs to be strictly construed, so as not to defeat the objects of the Statute.

12. However, in the present matter, the fact remains that now already the approved Resolution Plan is before the Adjudicating Authority and the Appellant has already filed one Application - CA 850/2019 along with documents to claim that the Respondent No.3 - Bhupinder Singh Mann had business relations with one of the Resolution Applicants - Tejinder Singh Kocher. As such, it would be appropriate that the Adjudicating Authority looks into all these documents and takes a decision further keeping in view, the submission as is being made by the Counsel for Respondent No.3 that Corporate Debtor is MSME. The question will be decided on law and facts. The Adjudicating Authority will take the decision regarding Section 29A along with taking decision on the Resolution Plan already submitted if it needs to be approved. The Adjudicating Authority need not be influenced by the observations made in the Impugned Order or in the present Judgement. It would be free to take independent decisions.

With these observations, the present Appeal is disposed of. No costs.

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

[V.P. Singh]  
Member (Technical)

*/rs/md*