

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****I.A.NO.4096/2019****IN****COMPANY APPEAL(AT)(INSOLVENCY) NO.712/2019****In the matter of:**

Bhagwan Singh Rawat

Appellant/Applicant

Vs

State Bank of India

Respondent

Mr Balaji Srinivasan with Ms Srishti Vaid, Advocates for Appellant/Applicant.

Mr Ankur Mittal with Ms Meera Murali, Advocate for R1 and Ms Honey Satpal, Advocate for RP.

ORDER

06.02.2020- The appellant has filed IA No.4096/2019 for a direction to IRP to pursue the counter claim filed by the Corporate Debtor, company in OA No.1156/2018 before the Debt Recovery Tribunal through Shri Vimal Gupta, Advocate.

2. The appellant is a director of suspended Board of Directors of Corporate Debtor and the CIRP has been directed by the NCLT, Principal Bench, New Delhi vide order dated 22.5.2019. The order is under challenge in this appeal by the suspended Director of the Corporate Debtor.

3. Learned counsel for the appellant submits that Corporate Debtor company has filed counter claim before the DRT, New Delhi against the Respondent No.1 Bank. For contesting the counter claim Corporate Debtor appointed Shri Vimal Gupta, Advocate and full fee Rs.10 lakh has been paid to him. However, at the instance of Respondent No.1 Bank, the IRP has

discharged Shri Vimal Gupta from the case pending before DRT and appointed new counsel. Such act of the IRP causes irreparable injury to the appellant and it is prejudicial to the interest of the Corporate Debtor company. This act will further increase financial burden on the Corporate Debtor. It is also submitted that Shri Vimal Gupta, Advocate is still ready to render his services for pursuing the counter claim before the DRT without any extra fee.

4. IRP has opposed the application and submits that he has been appointed on 22.5.2019. After his appointment as per his legal and professional duty he has appointed new counsel Law Offices of A. Anand on 30.8.2019. Once CIRP has initiated against Corporate Debtor then it is the duty of the IRP to manage the affairs of the Corporate Debtor. The appellant/applicant is a suspended director of the Corporate Debtor has no locus standi to file such application. The appointment of new counsel is well within the jurisdiction of the IRP and is bonafide. The allegation that IRP appointed new counsel at the instance of Respondent No.1 Bank has no basis. Hence the application be dismissed.

5. Respondent No1. Bank supported the argument of IRP and denied the allegations made in the application.

6. We have carefully examined the papers. We are of the view that once the CIRP has been ordered then the IRP has to manage the affairs of the company under the directions of COC. After filing of appeal on 15.7.2019 this Tribunal has directed IRP that he will not withdraw any writ petition or any case from any court of law or any Tribunal filed by the Corporate Debtor without permission of this Tribunal. IRP has not committed any breach of

the order of this Tribunal. We would like to refer to Section 25(B) of Insolvency & Bankruptcy Code which reads as under:-

“25. Duties of resolution professional-

Xxxxxx

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings”;

We are of the opinion that the Resolution Professional has done his statutory duty. We find no substance in the objection in regard to appointment of new counsel by IRP, therefore, the application is hereby dismissed.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi
BM/