

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

**Company Appeal (AT) (Insolvency) No. 749 of 2019**

**IN THE MATTER OF:**

**Punjab National Bank**

**...Appellant**

**Versus**

**Mr. Kirah Shah,  
IRP of ORG Informatics Ltd.**

**...Respondent**

**Present:**

**For Appellant : Ms. Natasha Dhruvan Shah , Mr. Atul Sharma and  
Mr. Vikky Dang, Advocates**

**For Respondent : Mr. Saurabh Kalia, Advocate**

**O R D E R**

**06 .08.2019** This appeal has been preferred by the 'Punjab National Bank', lead bank of the 'Committee of Creditors' against order dated 27<sup>th</sup> June, 2019 passed by the Adjudicating authority (National Company Law Tribunal), Ahmedabad Bench, which reads as follows:

*The parties are represented through their respective Learned Counsel/FCA(s).*

*The instant application is filed under Section 22 of the Insolvency and Bankruptcy Code on 18.04.2019 with a prayer to replace the IRP with the proposed RP by the COC.*

*On perusal of the record, it is found that, no ground is given/ mentioned in the application showing the cause of replacement of the IRP, who is the appointee of this*

*Adjudicating Authority. It is a matter of record that CP(IB) No. 120 of 2017 was admitted on 27.11.2018, whereas the instant application was preferred on 18.04.2019, after lapse of five months, when the CIRP is on the verge of the completion.*

***As per Section 22(1) of the Insolvency & Bankruptcy Code, 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 sub-section (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***

***(b) to replace the interim resolution professional it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.***

*Thus, it is expected from the COC that immediately after first meeting of the COC, the COC supposed to prefer an application under Section 22 which was not done in case.*

*On 11.06.2019 when the issue with regard to the replacement as well as ground were asked by the bench to the Learned Lawyer of the COC then the conducting lawyer of the COC took time for taking necessary instruction and to file supplementary affidavit. The said supplementary affidavit is filed today with a copy to the Resolution Professional.*

*It is pertinent to note that CIRP i.e. 180 days has already been expired on 17.05.2019 but the COC has not taken any necessary steps either to extend the time for further 90 days or able to submit any resolution plan as on date, rather came with an application under Section 22 of the Code on 18.04.2019, ignoring the time bound process of CIRP.*

*Learned FCA/ Resolution Professional is present in person and apprised to this bench that the COC has already passed Resolution for liquidation of the corporate debtor. The said fact is also conceded by the Learned Lawyer of the COC, if that be the situation, we don't find any reason to replace the IRP/RP at this stage.*

*It is mentioned herein that the CIRP has to be completed in time bound manner and as such the COC is expected to take steps diligently and not in perfunctory or casual manner.*

*The Resolution Professional who is present today further submitted that from the date of his appointment as IRP the professional fee as well as expenditure incurred till date during the CIRP has not yet been paid to him. Hence, an appropriate direction may be given to the COC. The COC is hereby directed to take necessary steps towards the payment of remuneration and expenditure of the IRP.*

*Meanwhile, Resolution Professional is at liberty to file his reply upon the supplementary affidavit within two weeks by serving an advance copy to the COC.*

*The Registry is directed to inform this matter by issuing notice to the GM as well as CMD of the respective banks to look in to the matter along with the today's order as well as the order dated 11.06.2019."*

Having heard the learned counsel appearing on behalf of the Appellant and the learned counsel appearing on behalf of the 'Resolution Professional', we are of the view that the 'Committee of Creditors' is not required to record any reason or ground for replacing of the 'Resolution Professional', which may otherwise call for proceedings against such 'Resolution Professional'. For the purpose of proceedings reported to the 'Insolvency and Bankruptcy Board of India' (for short, 'the **IBBI**', the 'Committee of Creditors' cannot await the decision of the IBBI for the purpose of replacement. The 'Committee of Creditors' having decided to remove the 'Resolution Professional with 88% voting share, it was not open to the Adjudicating Authority to interfere with such decision, till it is shown that the decision of the 'Committee of Creditors is perverse or without jurisdiction. The 'Committee of Creditors' with majority voting share of 88% having decided to replace 'Mr. Kiran Shah', he cannot function as 'Resolution Professional', though he will be entitled to his fee and cost, if any, incurred by him in terms of the 'I&B Code'.

For the aforesaid reason, it was not open to the Adjudicating Authority to direct the same very 'Resolution Professional' to file an application for 'Liquidation' particularly when the 'Committee of Creditors' in its meeting decided to request the Adjudicating Authority to extend certain period and if not allowed, then pass order of 'Liquidation'.

For the reason aforesaid, we set aside the impugned order dated 27<sup>th</sup> June, 2019 passed by the Adjudicating Authority. It is informed that the Adjudicating Authority has already passed the order of 'Liquidation' and therefore, we are not

expressing any opinion with regard to such order in absence of challenge. However, it will be open to the parties to challenge the same, if it is not in accordance with law or there is a chance of resolution on 'exclusion of certain period' or in view of the amended law. The appeal is allowed with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

[ Kanthi Narahari ]  
Member (Technical)

/ns/gc