

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

**Company Appeal (AT) (Insolvency) No. 253 of 2018**

**IN THE MATTER OF:**

**Sharvan Kumar Vishnoi**

**...Appellant**

**Versus**

**Crown Alba Writing Instrument P. Ltd.**

**...Respondent**

**Present: For Appellant :**

**Mr. Ashok Kriplani, Advocate and  
Mr. Vinod Kr. Chaurasia, PCA**

**O R D E R**

**28.05.2018**— This appeal has been preferred by Sharvan Kumar Vishnoi, whose name was proposed for ‘Interim Resolution Professional’ by ‘Bhansali Engineering Polymers Ltd.’ (‘Operational Creditor’). By the impugned order dated 10<sup>th</sup> May, 2018 the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) appointed one Mr. Anurag Goel as a ‘Resolution Professional’ on the ground that the Appellant –‘Shravan Kumar Vishnoi’ has already been appointed as ‘Resolution Professional’ in the case of ‘M/s. Centenary Polytex Pvt. Ltd. vs. Dhanashree Agro Product Pvt. Ltd.’

2. Learned counsel for the appellant submits that the ‘Operational Creditor’ proposed the name of the ‘Interim Resolution Professional’ in terms of Section 9(4) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’). As per Section 16(3)(b) of the I&B Code, the Adjudicating Authority is required to appoint an ‘Interim Resolution Professional’ as proposed under sub-section (4) of Section 9 subject to non-pendency of a disciplinary proceeding

against such 'Interim Resolution Professional'. Therefore, according to him, except the pendency of disciplinary proceeding, the Adjudicating Authority cannot reject the proposal of the 'Operational Creditor' on any other ground, including the ground that the 'Interim Resolution Professional' is already working as 'Resolution Professional' in another 'Corporate Insolvency Resolution Process'.

3. As per sub-section (5) of Section 9 of the 'I&B Code', the Adjudicating Authority while admitting an application under Section 9 is required to appoint an 'Interim Resolution Professional' as proposed by the 'Operational Creditor' under sub-section (4) of Section 9 of the 'I&B Code'.

4. The term of the 'Interim Resolution Professional' cannot exceed thirty days from the date of his appointment as per sub-section (5) of Section 16, as quoted below:

***"16. Appointment and tenure of interim resolution professional-***

*xxx*

*xxx*

*xxx*

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

5. On completion of term of the 'Interim Resolution Professional', a (Regular) 'Resolution Professional' is required to be appointed in terms of Section 22 of the 'I&B Code', which reads as follows:

**“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*

*sub-section (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.”*

6. From the provisions as discussed above, the following facts emerges:
- i. The Adjudicating Authority is required to appoint the ‘Interim Resolution Professional’ as proposed under sub-section (4) of Section 9 of the ‘I&B Code’.
  - ii. The term of the ‘Interim Resolution Professional’ automatically comes to an end after thirty days.
  - iii. The ‘Committee of Creditors’ by majority vote of not less than seventy-five percent of the voting share of the ‘Financial Creditors’, either resolve to appoint the ‘Interim Resolution Professional’ as the ‘Resolution Professional’ or to replace the ‘Interim Resolution Professional’ by another ‘Resolution Professional’.

7. The (regular) 'Resolution Professional' can be replaced by 'Committee of Creditors' only by vote, which should not be less than seventy-five percent of voting shares in terms of Section 27 of the 'I&B Code'.

8. In the present case, the Appellant was named as 'Interim Resolution Professional' but the Adjudicating Authority for the grounds mentioned in the impugned order appointed one Mr. Anurag Goel as 'Resolution Professional'.

9. We accept the submissions made on behalf of the Appellant that in normal course the person proposed under sub-section (4) of Section 9 as 'Interim Resolution Professional' is required to be appointed if there is no departmental proceeding is pending. However, that does not mean that the Adjudicating Authority has no discretion to name another person to be appointed as 'Interim Resolution Professional', if it comes to its notice that the proposed 'Interim Resolution Professional', named by the 'Operational Creditor' or 'Financial Creditor' is busy in some other 'Resolution Process'.

10. In present case, as one Mr. Anurag Goel has already appointed as 'Interim Resolution Professional' and the Insolvency & Bankruptcy Board of India (IBBI) has approved his name, and if the appeal is allowed then Appellant can continue only for another fifteen-days. For the said reason, we are not inclined to interfere with the impugned order dated 10<sup>th</sup> May, 2018.

11. However, we make it clear that the impugned order dated 10<sup>th</sup> May, 2018 will not affect the career of the Appellant – Shравan Kumar Vishnoi, who may be appointed as the 'Interim Resolution Professional' or 'Resolution Professional' in

any other case. The appeal stands disposed of with the aforesaid observations.

No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/gc