

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

Company Appeal (AT) (Insolvency) No. 1037 of 2022

IN THE MATTER OF:

**Sumat Kumar Gupta
Insolvency Professional,
Formerly Resolution Professional
M/S Vallabh Textiles Company Ltd.**

...Appellant

Versus

**Committee of Creditors of
M/S Vallabh Textiles Company Ltd.
Through Punjab National Bank**

...Respondent

Present:

**For Appellant: Dr. Rajang Thukral and Dr. Surekha Thukral,
Advocates.**

**For Respondent: Mr. Abhishek Anand and Mr. Mohak Sharma,
Advocates.**

ORDER

02.09.2022: Heard learned counsel for the Appellant and Shri Abhishek Anand appearing for the Respondent. This Appeal has been filed against the order dated 11.07.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench in I.A. No. 682 of 2022 in CP(IB) No. 391/Chd/Pb/2018 by which order the application filed by the Punjab National Bank - the Financial Creditor for replacement of the Resolution Professional has been allowed and in place of the Appellant one Mr. Rajiv Khurana has been appointed as Resolution Professional. Aggrieved by the impugned order, the Appellant has come up in this Appeal.

2. Learned counsel for the Resolution Professional submits that the Adjudicating Authority passed the impugned order without giving any opportunity of hearing and within issuing any notice to the Appellant. It is submitted that when the order was being passed by the Adjudicating Authority replacing the Appellant, he was entitled for the opportunity to be heard in the application in consonance with the principles of natural justice. Section 27 of the I&B Code which provides for replacement of the Resolution Professional by the Committee of Creditors (CoC) does not exclude applicability of natural justice and the Appellant was entitled for the opportunity to be heard.

3. Shri Abhishek Anand, learned counsel appearing for the Respondent refuting the submissions of the learned counsel for the Appellant submits that Section 27 does not contemplate any opportunity to be given to the Resolution Professional by the Adjudicating Authority before passing an order approving the resolution of the CoC for replacement of the Resolution Professional. It is submitted that as per the scheme delineated by Section 27 replacement is complete when resolution is passed for replacement with 66% votes of the CoC and Adjudicating Authority is communicated the name of new Resolution Professional for approval. It is submitted that Section 27 does not contemplate opportunity of hearing to the Appellant and decision by the Adjudicating Authority on the allegations or the reasons for removal.

4. We have considered submissions of learned counsel for the parties and perused the record.

5. Section 27 of the I&B Code which provides for replacement of Resolution Professional by the CoC is as follows:-

“27. Replacement of Resolution Professionals by Committee of Creditors.- (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

²[(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.]

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the

appointment of another resolution professional under this section.”

6. When we read Section 27(1), it clearly provides that when the CoC is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under the section. The manner provided under Sub-section (2) of Section 27 is that a resolution be passed at the meeting of the CoC by vote of 66% voting share to replace the Resolution Professional and to appoint another Resolution Professional, subject to a written consent from the proposed resolution professional.

7. In the present case, the CoC in its meeting dated 04.06.2022 with 100% vote has decided to replace the Appellant with another Resolution Professional. When we look into the scheme of Section 27 as delineated by the statute, it does not contemplate any opportunity of hearing to the Resolution Professionals be given by the Adjudicating Authority before approving the proposal of new Resolution Professional. Section 27 requires the CoC to forward the name of proposed Resolution Professional to the Adjudicating Authority and the Adjudicating Authority is required to forward the name of the proposed Resolution Professional to the Board for its confirmation. The scheme of Section 27 does not indicate that Resolution Profession is to be made party and is to be issued notice before taking decision to appoint another Resolution Professional. Looking to the purpose and object of the I&B Code, where timeline is the essential factor to be taken into consideration at all stages, there is no warrant to permit a *Lis* to be

raised by the Resolution Professional challenging his replacement by the CoC. The decision taken by the CoC is a decision by vote of 66% and when the decision is by votes of a collective body, the decision is not easily assailable and replacement is complete as per Scheme of Section 27 when the resolution is passed with requisite 66% voting share.

8. Learned counsel for the Respondent has rightly relied on three decisions of this Appellate Tribunal. Firstly, in **“Company Appeal (AT) (Ins) No. 749 of 2019, Punjab National Bank vs. Kiran Shah, IRP of ORG Informatics Ltd.”** wherein this Tribunal held following:-

*“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'."

9. Further, second judgment relied by learned counsel for the Respondent is judgment of this Tribunal in "**Company Appeal (AT) (Ins.) No. 497 of 2020, Bank of India vs. Nithin Nutritions Pvt. Ltd.**", where after noticing the scheme of Section 27, this Tribunal has made following observations in Para 6 of the judgment:-

"6. In both the above provisions, the law nowhere says that the COC is required to give reasons. This appears to be also right. The reason is that relationship between the IRP/RP and the COC is that of confidence. If there 8 Company Appeals (AT) (Ins) Nos.497, 498, 499, 500 and 501 of 2020 is loss of confidence and combination is continued, the Corporate Debtor would be put to loss because of the bad relationship between IRP/RP with COC."

10. From the decisions of this Tribunal, as noted above, it is clear that replacement of Resolution Professional is complete when required decision is taken by the CoC in its meeting with requisite majority. The submission of learned counsel for the Appellant that Section 27 does not exclude applicability of principles of natural justice does not commend us. When we look into the scheme of Section 27 it by implication exclude the principles of natural justice, it is clear from the scheme of Section 27 that the scheme nowhere provides for any opportunity to the Appellant for hearing.

Therefore, it cannot be said that the erstwhile Resolution Professional is entitled to be heard by the Adjudicating Authority before taking decision.

11. Another judgment of this Tribunal relied by learned counsel for the Respondent is in the matter **“Company Appeal (AT) (Insolvency) No. 1100 of 2020, Committee of Creditors of LEEL Electricals Ltd. Through State Bank of India vs. Leel Electricals Ltd. Through its Interim Resolution Professional, Arvind Mittal”**, where after considering the scheme of Section 27 of the I&B Code regarding requisites under Section 27, following has been observed:-

“Therefore, invoking of Section 27 and adopting a protracted procedure in that regard, as appears to have been done by the Adjudicating Authority, is unwarranted. This only has resulted in wastage of time and prolonging the CIRP Process. In the face of CoC resolution passed with more than the requisite majority, it cannot lie in the mouth of IRP that any of his legal rights have been infringed. It would have been wise on his part to bow to the commercial wisdom of the Committee of Creditors and quit gracefully. Be that as it may, there was no merit in the case set up by IRP before the Adjudicating Authority and the same was required to be dealt with without insisting upon filing of affidavit by the IRP in regard to the provision of law invoked to pass the resolution.”

12. We may also refer to the judgment relied by learned counsel for the Appellant in **“Company Appeal (AT) (Ins.) No. 29 of 2017, MCL Global**

Steel Pvt. Ltd. & Anr. vs. Essar projects India Ltd. & Anr.”. In the above case, observations on which learned counsel for the Appellant has placed reliance are at para 13 of judgment wherein Para 50 of the judgment of Hon’ble Calcutta High Court in Writ Petition 7144(W) of 2017, “*Sree Metaliks Limited & Anr.*” was relied. We may quote the relevant portion, which is as follows:

“A person cannot be condemned unheard. Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in. When the NCLT receives an application under Section 7 of the Code of 2016, therefore, it must afford a reasonable opportunity of hearing to the corporate debtor as Section 424 of the Companies Act, 2013 mandates it to ascertain the existence of default as claimed by the financial creditor in the application.”

13. The observations made in the above judgment, as quoted in Para 50, by the Calcutta High Court, were observations in respect to Section 7 application. It was held by the Hon’ble High Court that when NCLT receives an application it must afford a reasonable opportunity of hearing to the corporate debtor as Section 424 of the Companies Act mandated it to ascertain the existence of default as claimed by the financial creditor. Insofar as hearing under Section 7 and 9 is concerned, Regulations also contemplates notice to the corporate debtor. Hearing under Section 7 and 9 is for entirely different purpose and the said hearing cannot be imported in

WWW.LEGALERAONLINE.COM

the hearing under Section 27. We are of the view that the above Judgment does not help the Appellant in any manner. We do not find any error in the order of the Adjudicating Authority allowing replacement of Resolution Professional. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice M. Satyanarayana Murthy]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

