

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 177 of 2017
**[arising out of Order dated 24th August, 2017 by NCLT, Hyderabad Bench,
Hyderabad in C.A. No. 142 of 2017 in C.P. (IB) No. 12/10/HDB/2017]**

IN THE MATTER OF:

**Mr. Devendra Padamchand Jain,
Resolution Professional,
C/o VNR Infrastructure Limited,
#8-2-310, Road No. 14,
Banjara Hills,
Hyderabad - Telangana**

...Appellant

Versus

- 1. State Bank of India,
Stressed Assets Management
Branch – II, D. No. 3-4-1013/A,
1st Floor, CAC, TSRTC Bus Station,
Kachiguda, Hyderabad – 500 027.**
- 2. State Bank of Hyderabad,
Industrial Finance Branch (IFB),
“Topaz” Building, Amrutha Hills,
Punjagutta, Hyderabad – 500 082**
- 3. Indian Overseas Bank,
4-2-25 to 28 and 32,
1st Floor, R.P. Road, Secunderabad – 500 003.**
- 4. Punjab National Bank,
Large Corporate Branch,
8-2-672, Sufi Chambers Road No. 1,
Banjara Hills, Hyderabad – 500 034.**
- 5. Bank of India,
10-1-1199/2, 1st Floor,
P.T.I. Building,
A C Guards, Hyderabad – 500 004**
- 6. Bank of Baroda,
Corporate Financial Services,
Hyderabad Branch,
3-6-262/2, Tirumala Estates,
1st Floor, Himayathnagar,
Hyderabad – 500 029.**

7. **IFCI Limited,
Financial Institutions,
5-9-13, Taramandal Complex,
8th Floor, Saifabad,
Hyderabad – 500 004.**
8. **IFCI Factors Limited,
IFCI Tower, 10th Floor,
61, Nehru Place,
New Delhi – 110 019.**
9. **VNR Infrastructure Limited,
#8-2-310, Road No. 14,
Banjara Hills,
Hyderabad - Telangana**
10. **Insolvency and Bankruptcy Board of India,
7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi – 110 001.**

...Respondents

Present:

For Appellant : Shri Vivek Sibal and Shri Sahil Mullick, Advocates

For 1st Respondent: Shri Rajendra Beniwal, Advocate

For Respondent-IDBI Ms. Swarupama Chaturvedi with Ms. Sangeeta Das,
Advocates

For New Liquidator Ms. Bimla Shahi, Advocate

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by Mr. Devendra Padamchand Jain, the then Resolution Professional of VNR Infrastructures Limited (Corporate Debtor) against the order dated 24th August, 2017 whereby and whereunder the Adjudicating Authority (National Company Law Tribunal) Hyderabad Bench, Hyderabad passed order under Section 33 (1) and 34(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I & B Code') removed the

appellant and appointed one Mr. T.S.N. Raja, as liquidator with the following observations:

“30. As per Regulation 13 of the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

xxx

xxx

xxx

xxx

(e) The Bench is also of the prima facie view that the existing RP has not assisted the Adjudicating Authority to the satisfaction during various hearings held.

(f) Though 180 days expires on 09-08-2017 to complete the CIRP process, the RP scheduled a last meeting on 07-08-2017. However, in view of the advice of the Bench the last CoC meeting was preponed and held on 25-07-2017 and the current C.A. was filed only on 01-08-2017 praying for liquidation of the corporate debtor.

(g) However, till the appointment of the Liquidator by the Adjudicating Authority, the existing RP will continue till the replacement by the newly appointed liquidator and directed orally, the RP during the hearings held on 04-08-2017 and 11-08-2017 and on 14-08-2017 to maintain status quo.

xxx

xxx

xxx

(i) However, in view of our observations made supra the Adjudicating Authority would like to appoint the liquidator

after obtaining the name of the liquidator from the Board / Insolvency and Bankruptcy Board of India (IBBI) for replacing the existing resolution professional.”

2. The main plea taken by the appellant is that the impugned order passed by the Adjudicating Authority replacing the appellant as resolution professional to liquidator and not appointing him as liquidator is beyond its jurisdiction.

3. The learned counsel appearing on behalf of the appellant submitted that as per sub-section (1) of Section 34 the Adjudicating Authority while passing the order for liquidation of the corporate debtor under Section 33 is required to appoint the resolution professional as the liquidator for the purpose of resolution process under Chapter II. The Adjudicating Authority can only replace the resolution professional, for the reasons mentioned in sub-section (4) of Section 34.

4. It was submitted that resolution plan was not rejected for failure to meet any requirement and in fact the draft resolution was not approved. Therefore, the stage of sub-section (2) of Section 30 never reached.

5. Learned counsel appearing on behalf of the Insolvency and Bankruptcy Board of India (hereinafter referred to as the 'IBBI') submitted that the question raised being a question of law can only be decided by the Tribunal. However, according to her, IBBI is not empowered to propose any name of the Liquidator. The IBBI has already uploaded the list of registered resolution professionals on its website from where the Committee of Creditors can choose the resolution professional following the required procedure and after informing the Adjudicating Authority, whose decision is final.

6. It was informed that IBBI received the copy of the impugned order along with letter dated 29th August, 2017 sent by the Tribunal and by reply dated 12th

September, 2017, the IBBI informed that it was not empowered to propose the name of any person as a liquidator.

7. Learned counsel appearing on behalf of the IBBI submitted that I & B Code being market driven mechanism only the participants can identify their professionals and insolvency resolution professional can be replaced whenever as the creditors or Committee of Creditors or Adjudicating Authority or the regulator (IBBI) notices any problem with him (if conduct is not good). Learned counsel appearing on behalf of the State Bank of India (Financial Creditor) submitted that the State Bank of India has 100% voting power. In the 6th meeting of Committee of Creditors held on 25.07.2017, the resolution plan submitted by the Corporate Debtor was rejected. However, Committee of Creditors not recommended to replace the resolution professional or to appoint another person as liquidator.

8. Learned counsel appearing on behalf of the State Bank of India further submitted that the Adjudicating Authority having come to the *prima facie* view that the existing resolution professional has not assisted the Adjudicating Authority to its satisfaction during the resolution process, and I & B Code being a time bound process, it was open to the Adjudicating Authority to replace the resolution professional and to appoint another person as a liquidator.

9. Learned counsel for the State Bank of India further submitted that the newly appointed liquidator, Mr. T.S.N. Raja liquidator had conducted meeting with all the stakeholders/Corporate Debtor(Under Liquidation) on 29.09.2017 and taken various steps i.e. appointed valuers to assess the assets, getting their valuation reports; collecting claims from various agencies, stake holders, employees etc. and is running the business as on going concern to save Bank Guarantees and Security Deposits worth crores of rupees, the Financial Creditors have no grievances against Mr. T.S.N. Raja and have full faith in him.

10. We have heard the learned counsel for the parties and perused the record.

11. The corporate insolvency resolution process has been initiated at the instant of the corporate applicant who filed the application under Section 10 and propose the name of interim resolution professional. After interim resolution professional, the resolution professional is appointed in accordance with law. The relevant provisions for appointing and removal of resolution professional / liquidator are noticed and discussed below.

12. Section 22 deals with appointment of resolution professional (distinct from interim resolution professional), and 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 subsection (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.”*

13. In terms of the aforesaid provisions, the Committee of Creditors by a majority vote of not less than 75% may allow and resolve to appoint the ‘interim resolution professional’ as the ‘resolution professional’ or to replace the ‘interim resolution professional’ by another ‘resolution professional’.

14. The resolution professional required to conduct corporate insolvency resolution process in terms of Section 23 read with Section 24 etc. However, resolution professional can be replaced by the Committee of Creditors if it is of the opinion to replace it in view of power vested under Section 27, quoted below:

“27. Replacement of resolution professional 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) *The committee of creditors may, at a meeting, by a vote of seventy five per cent. Of voting shares, propose to replace*

the resolution professional appointed under section 22 with another resolution professional.

- (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.”*

15. The resolution professional under sub-section (2) of Section 30, the resolution professional is required to examine each resolution plan received by him to confirm that the resolution plan provides for the requirement as mentioned in clauses (a) to (f) of sub-section (2) of Section 30. For a proper appreciation, it is desirable to quote sub-section (2) of Section 30, as quoted below:

“30. Submission of resolution plan -

- (1) *xxx xxx xxx xxx*
- (2) *The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*
 - (a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
 - (b) *provides for the repayment of the debts of operational creditors in such manner as may be specified*

by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.”

16. In case of non-approval of resolution plan and before expiry of the insolvency resolution period, liquidation proceeding to be initiated under Section 33.

17. Section 34 relates to appointment of liquidator and fee to be paid, which is relevant for the purpose of determination of the case and quoted below:

“34. Appointment of liquidator and fee to be paid -

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

- (3) *The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.*
- (4) *The Adjudicating Authority shall by order replace the resolution professional, if—*
- (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
- (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.*
- (5) *For the purposes of clause (a) of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.*
- (6) *The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority under sub-section (5).*
- (7) *The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.*
- (8) *An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.*

(9) *The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.”*

18. As per sub-section (1) of Section 34 on passing of the order for liquidation under Section 33, normally the resolution professional is to act as liquidator, unless replaced by the Adjudicating Authority for the grounds mentioned in sub-section (4) of Section 34.

19. Thus as per sub-section (4) of Section 34, the Adjudicating Authority may replace the resolution professional, if :

(i) the resolution plan submitted by the resolution professional under Section 30 was rejected for failure to meet the requirement mentioned in sub-section (2) of Section 30;

or

(ii) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.

As per clause (a) of sub-section (4) of Section 34, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

20. From the aforesaid provisions, the following facts emerges:

a) Interim resolution profession can be appointed as a resolution professional;

[Refer sub-section (2) of Section 22]

b) The Committee of Creditors can replace the interim resolution professional by another resolution professional;

[Refer sub-section (2) of Section 22]

- c) The Committee of Creditors can replace resolution professional by requisite board if it is of opinion that the resolution professional appointed under section 22 is required to be replaced is to be made in the manner as prescribed under Section 27;

[Refer : Section 27]

- d) The Adjudicating Authority is also empowered to replace resolution professional in case the resolution plan submitted under Section 13 is rejected for failure to meet the requirement mentioned sub-section (2) of Section 30.

[Refer : sub-section (4) of Section 34]

- e) Normally the resolution professional appointed is to act as liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4) of Section 34.

[Refer : sub-section (1) of Section 34]

21. In view of the aforesaid provisions, we hold that the Adjudicating Authority is also empowered to remove the resolution professional, apart from the Committee of Creditors, but it should be for the reasons and in the manner as provided under the relevant provisions.

22. From the stand taken by the Financial Creditor, we find that the Resolution Plan was filed by the Corporate Debtor itself which was rejected by the Committee of Creditors (Financial Creditor herein having 100% voting power). However, the Committee of Creditors (Financial Creditor – SBI) have not recommend the name of any other person as the liquidator. The Financial Creditors herein having 100% voting right has accepted that the Resolution

Professional (appellant herein) was not assisting the Adjudicating Authority to its satisfaction during hearing. The Resolution Professional (appellant herein) was required to examine the Resolution Plan but had not stated that the plan submitted by him provides for all the requirements as provided under sub-section (2) of Section 30. The Committee of Creditors i.e. Financial Creditor, who has 100% right is also not satisfied with the Resolution Professional and taken plea that they are happy with Mr. T.S.N. Raja, the Liquidator who has been appointed and performing the duty since September, 2017 in accordance with law.

23. In view of the aforesaid stand taken by the parties, we hold that the Adjudicating Authority has jurisdiction to remove the resolution professional if it is not satisfied with its functioning of the resolution professional, which amounts to non-compliance of sub-section (2) of Section 30 of the I & B Code. For the reasons aforesaid no interference is called for. In absence of any merit this appeal is dismissed. For the said reasons recorded above, no order is passed in I.A. No. 784 of 2017 as preferred by Shri T.S.N. Raja, Liquidator. The same stands disposed of. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member(Judicial)

New Delhi

31st January, 2018

/ns/