CIRP proceedings / Resolution Plan stayed by PUNJAB AND HARYANA High Court | Counsel for the Financial Creditor was also the counsel for the RP |RP did not secure 66%votes u/s 22 IBC, and subsequently approached the FCs for increasing his vote share \ appointment per-se was not as per the statutory provisions and would go to the root of the matter.

Division bench of Justice G.S. SANDHAWALIA and Justice HARPREET KAUR JEEWAN, on April 29, 2023, while hearing a Challenge by a Suspender Director to an IBBI order, which had adversely commented upon the Resolution Professional by issuing a warning to be more cautious in handling assignments under the IBC , has granted stay on the CIRP proceedings before the NCLT Chandigarh,

The court was also concerned woth the order apssed by the NCLT, Chandigarh bench which had rejected the objections wherein reliance was placed upon the said report of IBBI.

The pleas raised related to the allegatiosn that the Counsel for the Financial Creditor was also the counsel for the RP , that the RP did not secure 66%votes u/s 22 IBC, and subsequently approached the FCs for increasing his vote share and that his (RP) appointment per-se was not as per the statutory provisions and would go to the root of the matter.

Held,

" It is also further submitted that the counsel now representing the said respondent, Shri Harsh Garg had also, at ***one point of time, appeared for the Bank*** *(Annexure P-1) and t****hereafter also, appeared for the Resolution Professional by filing applications*** *(Annexure P-12) which were eventually dismissed and* ***there is a clash of interests which is not permissible.****"*

The order has further observed ,

*" Counsel for the petitioners has pointed out that the appointment of respondent No.2 was not as per the statutory provisions in as much as he o****nly secured 65.89% of votes*** *while referring to E-voting result dated 18.01.2020 (Annexure P-5) and he* ***wrongly submitted that item No.13 was "carried" whereas the requisite condition was 66% of the votes as per the provisions of Section 22*** *of the Insolvency & Bankruptcy Code, 2016 (for short, the 'Code'). It is submitted that at a* ***subsequent point of time, he had approached the creditors i.e. Punjab National Bank and got a post-facto approval.***

…

It is thus submitted that his ***appointment per-se was not as per the statutory provisions and would go to the root of the matter****. "*

Case details:

NCLT Chandigarh | Central Bank v. KSM Spinning Yarns | IRP/ RP: Nipan Bansal

CWP-8750-2023 | Sarish Mittal v. Insolvency & Bankruptcy Board of India | PUNJAB AND HARYANA High Court

Mr.Sandeep Suri, Advocate with Vijiyesh Malhotra, Karan Gaba, Kartik Goyal, Tushar Arora for the petitioner (s). (as per copy of writ)

Mr.Harsh Garg, Advocate, for respondent No.2/ Resolution Professional.

Mr.Arun Gosain, Advocate, for respondent No.5. (IBBI)

IBBI orderDownload