

**2020 PLRonline 5206 (NCLAT)**

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

[Justice Bansi Lal Bhat] Acting Chairperson [Justice Anant Bijay Singh] Member (Judicial) [Dr. Ashok Kumar Mishra] Member (Technical)

Committee of Creditors of LEEL Electricals Ltd. Through State Bank of India v. Leel Electricals Ltd. Through its Interim Resolution Professional, Arvind Mittal

Company Appeal (AT) (Insolvency) No. 1100 of 2020

21.12.2020

IBC, S. 22

I&B Code, Section 22 - Decision in regard to appointment of IRP as RP or replacement of IRP by another RP falling within the ambit of Section 22 of I&B Code is a decision based on commercial wisdom of CoC which is not amenable to judicial review - In the instant case, it is not in controversy that in the first CoC Meeting appointment of IRP as RP failed to garner any support - Thereafter, the bid made by the IRP offering himself for appointment as RP also did not cut any ice with the CoC - Ultimately, IRP was replaced by Mr. GA in terms of resolution passed in second CoC Meeting with 78% vote share of the Committee of Creditors - It is indisputable that these actions are permissible only within the ambit of Section 22 of I&B Code - 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.

For Appellant : Mr. Ramji Srinivasan, Senior Advocate with Mr. Anil Kumar, Ms. Meera Murali and Mr. Ankur Mittal, Advocates. For Respondent: Mr. Ashish Aggarwal and Mr. Gurcharan Singh.

ORDER

(Through Virtual Mode)

21.12.2020: Order dated 14th December, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, adjourning the matter to 20th January,

2021 while granting an opportunity to the Interim Resolution Professional (IRP) to file an affidavit in regard to passing of resolution by the Committee of Creditors for its replacement by Resolution Professional (RP) under Section 22 of the I&B Code, has been assailed in this appeal on the ground that there was no occasion for the Adjudicating Authority to have granted time to Interim Resolution Professional to file any objection/ reply to the resolution of Committee of Creditors.

2. Shri Ramji Srinivasan, learned senior counsel representing the Appellant submits that it is settled law that the decision to substitute Interim Resolution Professional by Resolution Professional is a commercial decision, not required to be supported by any reasons. Once the Committee of Creditors has passed a resolution to substitute the Interim Resolution Professional by Resolution Professional, the Interim Resolution Professional has no role to play. It is submitted by learned senior counsel that resolution has been passed by the Committee of Creditors under Section 22 of the I&B Code and not under Section 27 of the I&B Code as was sought to be made out by the Respondent. It is further submitted that in the first CoC Meeting of 'LEEL Electricals Ltd.' resolution to confirm IRP as a Resolution Professional failed as the total votes cast in favour of the resolution were 0% (page 45 of the appeal paper book). It is further submitted that Shri Arvind Mittal, IRP had offered himself to be the Resolution Professional of the Corporate Debtor. The resolution, in second COC Meeting was decided to be put to e-voting (page 108-110 of the appeal paper book). With reference to page 70 of the appeal paper book it is submitted that the resolution to confirm IRP as RP failed as slightly over 8% voted in its favour. With reference to page 71 of the appeal paper book, learned counsel for Appellant has demonstrated that the resolution to substitute IRP by RP – Mr. Gangaram Agarwal was voted by CoC with more than 78% vote share. It is further submitted that the CoC had moved application under Section 22(3) of Company Appeal (AT) (Insolvency) No. 1100 of 2020 the I&B Code for appointment of Mr. Gangaram Agarwal as Resolution Professional in terms of the resolution passed by CoC with 78.28% of voting share. Therefore, it is submitted by Mr. Ramji Srinivasan, learned senior counsel representing the Appellant that harping upon application of Section 27 is devoid of reason. Reference is made to email dated 26th November, 2020 emanating from the IRP, which clearly demonstrates that the IRP was misled into believing that Section 22 of I&B Code would apply only if IRP is replaced in first meeting of COC and not otherwise. This is clearly borne out by the email forming page 199 of the appeal paper book.

3. Shri Ashish Aggarwal, learned counsel appearing on behalf of the Respondent upon service of advance notice by Appellant submits that the impugned order came to be passed in the background of the resolution having been passed under Section 27 and not under Section 22 (3) of the I&B Code.

4. The appeal was taken up for final disposal with the consent of learned counsel for the parties. Section 16 (5) of the I&B Code which, in its original form, provided that the term of Interim Resolution Professional shall not exceed 30 days from the date of his appointment came to be amended by Act 26 of 2018 which has been enforced w.e.f 6th June, 2018. In its amended form it provides that the term of IRP shall continue till the date of appointment of RP under Section 22. Appointment of RP is governed by Section 22 which provides that the first meeting of CoC shall be held within 7 days of constitution of CoC Company Appeal (AT)

(Insolvency) No. 1100 of 2020 and the CoC may by a majority vote of not less than 66% of the voting share of Financial Creditors either resolve to appoint the IRP as a Resolution Professional or to replace the IRP by another Resolution Professional. It is now well settled that the decision in regard to appointment of IRP as RP or replacement of IRP by another RP falling within the ambit of Section 22 of I&B Code is a decision based on commercial wisdom of CoC which is not amenable to judicial review. Reference in this regard can be made to decision of this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 882 of 2020, "Naveen Kumar Jain v. Committee of Creditor of K.D.K Enterprises Pvt. Ltd. & Ors." and Company Appeal (AT) (Insolvency) No. 749 of 2019, "Punjab National Bank v. Mr. Kiran Shah, IRP of ORG Informatics Ltd.". In the instant case, it is not in controversy that in the first CoC Meeting appointment of IRP as RP failed to garner any support. Thereafter, the bid made by the IRP offering himself for appointment as RP also did not cut any ice with the CoC. Ultimately, IRP was replaced by Mr. Gangaram Agarwal in terms of resolution passed in second CoC Meeting with 78% vote share of the Committee of Creditors. It is indisputable that these actions are permissible only within the ambit of Section 22 of I&B Code. 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 Company Appeal (AT) (Insolvency) No. 1100 of 2020 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.

5. We are accordingly inclined to allow this appeal and set aside the impugned order. Acting accordingly, we direct the Adjudicating Authority to carry forward the Resolution Process in regard to the Corporate Debtor with Resolution Professional - Mr. Gangaram Agarwal discharging functions as the Resolution Professional in terms of resolution passed by the CoC.

6. Copy of this order be communicated to the Adjudicating Authority.