

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 76 of 2020

(Arising out of Order dated 4th January, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in CP No. (IB)-639(PB)/2018)

IN THE MATTER OF:

State Bank of India

....Appellant

Versus

M/s. Metenere Ltd.

.....Respondent

Present:

For Appellant:

Mr. Ramji Srinivasan, Senior Advocate with Mr. Ankur Mittal, Mr. UC Mittal, Ms. Meera Murali, Ms. Jasveen Kaur and Mr. Rishab Kapoor, Advocates.

For Respondent:

Mr. Arun Kathpalia, Senior Advocate with Mr. Arvind Kumar Gupta, Mr. M.K.Pandey, Mrs. Purti Marwaha Gupta, Mrs. Heena George, Ms. Areela Sanjay Massey, Ms. Adya Shree Dutta, Mr. D.N. Sharma and Mr. T.R.B. Shivakar, Advocates.

J U D G E M E N T

BANSI LAL BHAT, J.

Appellant- 'State Bank of India' is the 'Financial Creditor' who sought initiation of 'Corporate insolvency Resolution Process' by filing an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") before the Adjudicating

Authority (National Company Law Tribunal), New Delhi, Principal Bench which, on taking note of the objection raised by the 'Corporate Debtor'- 'M/s. Metenere Limited' regarding the name of proposed 'Interim Resolution Professional'- Mr. Shailesh Verma passed impugned order dated 4th January, 2020 directing the Appellant- 'Financial Creditor' to perform its statutorily mandatory obligation by substituting the name of the 'Resolution Professional' to act as an 'Interim Resolution Professional' in place of Mr. Shailesh Verma as it was of the view that Mr. Shailesh Verma having worked with the State Bank of India for 39 years before his retirement in 2016, there was an apprehension of bias and Mr. Shailesh Verma was unlikely to act fairly and could not be expected to act as an Independent Umpire. Aggrieved thereof, Appellant- 'Financial Creditor' has preferred instant appeal assailing the impugned order on the ground that the proposed 'Interim Resolution Professional' Mr. Shailesh Verma fulfils the requirement for appointment as 'Interim Resolution Professional'/ 'Resolution Professional' under the 'I&B Code' and admittedly bears no disqualification.

2. It is contended on behalf of the Appellant that the 'I&B Code' and the Regulations framed thereunder do not attach any disqualification to an ex-employee of a 'Financial Creditor' from being appointed as an 'Interim Resolution Professional'. It is further submitted that the 'Interim Resolution Professional' is not required to act as an 'Independent Umpire' between the 'Financial Creditor' and the ex-

management of the 'Corporate Debtor' or decide any conflicting issues between them. It is further submitted that the 'Resolution Professional' has no adjudicatory powers and only acts as a facilitator in the 'Corporate Insolvency Resolution Process' as all major decisions are taken only with the approval of the 'Committee of Creditors'. It is further submitted that the 'Financial Creditor' also plays part only to the extent of its voting share as a member of 'Committee of Creditors' and not beyond that. Therefore, merely because the proposed 'Interim Resolution Professional' happens to be an ex-employee of the 'Financial Creditor' cannot be a ground to allege bias against him. Lastly, it is contended that the proposed 'Interim Resolution Professional' is not on any panel of the Appellant Bank or handling any portfolios and has no role in decision making committee of the Appellant Bank.

3. Per contra, it is submitted on behalf of the Respondent- 'Corporate Debtor' that Mr. Shailesh Verma was in employment with the Appellant for over 39 years and retired as the Chief General Manager in 2016. He is drawing pension from the Appellant- 'Financial Creditor' which falls within the definition of 'salary' under the Income Tax Act, 1961. It is submitted that in view of the same, Mr. Shailesh Verma is an 'interested person' being an ex-employee and on the payroll of 'Financial Creditor', thus rendered ineligible under the 'I&B Code' to act as an 'Interim Resolution Professional'. It is further submitted that mere

apprehension of bias is sufficient ground of apprehension of biasness of the proposed 'Interim Resolution Professional' towards the Appellant.

4. The sole question arising for determination in this appeal is whether an ex-employee of the 'Financial Creditor' having rendered services in the past, should not be permitted to act as 'Interim Resolution Professional' at the instance of such 'Financial Creditor', regard being had to the nature of duties to be performed by the 'Interim Resolution Professional' and the 'Resolution Professional'.

5. It is not in controversy that Mr. Shailesh Verma proposed as 'Interim Resolution Professional' by the 'State Bank of India' is an ex-employee of the 'Financial Creditor' having served the organisation for 39 years in the past and retired as the Chief General Manager in 2016. Merely, because Mr. Shailesh Verma continues to draw pension for services rendered in past does not clothe him with the status of an 'interested person'. The fact that Mr. Shailesh Verma is drawing pension from 'Financial Creditor's' organisation does not clothe him with the status of an employee on the payroll of 'Financial Creditor'. Pension is paid for the services rendered to the employer in the past and it is a benefit earned for such past services under the relevant Service Rules. The pensioner is entitled to such benefit as a privilege under the Service Rules and not as a boon from the ex-employer. It is significant to refer to Regulation 3 (1) of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which reads as under:

“(1) An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.”

6. The Regulation clearly provides that an Insolvency Professional shall be eligible for appointment as a ‘Resolution Professional’ for the ‘Corporate Insolvency Resolution Process’ of a ‘Corporate Debtor’ if he or his partners and directors of the Insolvency Professional Entity are independent of the ‘Corporate Debtor’. Admittedly, Mr. Shailesh Verma is a qualified Insolvency Professional and neither he nor any of his associates is alleged to be connected with the ‘Corporate Debtor’ in a manner rendering him ineligible to act as a ‘Resolution Professional’. Provision engrafted in Section 17(1) of the Income Tax Act, 1961 bringing pension within the ambit of ‘salary’ cannot be interpreted to render a pensioner of a ‘Financial Creditor’ under the statutory framework ineligible as an ‘interested person’ being in employment of the ‘Financial Creditor’ as the definition of ‘salary’ under the Income Tax Act, 1961 is designed only for the purposes of computing of income to determine tax liability. The argument advanced on behalf of the

‘Corporate Debtor’ in this Court to portray Mr. Shailesh Verma as an ‘interested person’ drawing salary within the meaning of Income Tax Act, 1961 defies logic and same has to be repelled.

7. This Appellate Tribunal had an occasion to consider ineligibility or disqualification for appointment as ‘Interim Resolution Professional’ or ‘Resolution Professional’. Taking note of the relevant provisions of law in ***“State Bank of India v. Ram Dev International Ltd. (Through Resolution Professional)– Company Appeal (AT) (Insolvency) No. 302 of 2018”*** decided on 16th July, 2018, this Appellate Tribunal observed that merely because a ‘Resolution Professional’ is empanelled as an Advocate or Company Secretary or Chartered Accountant with the ‘Financial Creditor’ cannot be a ground to reject the proposal of his appointment unless there is any disciplinary proceeding pending against him or it is shown that the person is an interested person being an employee or on the payroll of the ‘Financial Creditor’. Admittedly, no disciplinary proceedings are pending against Mr. Shailesh Verma and he is not on aforesaid panel or engaged as a retainer by the ‘Financial Creditor’. He had a long relationship with the ‘Financial Creditor’, spanning around four decades, before demitting office as the Chief General Manager in 2016 but currently he is merely a pensioner drawing pension as a benefit earned for the past services in terms of the relevant Service Rules which he is getting independent of the benevolence of the ex-employer i.e. the Appellant- ‘Financial Creditor’. But it cannot be

denied that the Appellant restricted its choice to propose Mr. Shailesh Verma as 'Interim Resolution Professional' obviously having regard to past loyalty and the long services rendered by the later. This conclusion is further reinforced by filing of instant appeal by the 'Financial Creditor' who is upset with the impugned order directing the Appellant- 'Financial Creditor' to substitute the name of 'Interim Resolution Professional' in place of Mr. Shailesh Verma. This has to be viewed in the context of apprehension of bias raised by the Respondent- 'Corporate Debtor' for the apprehension of bias necessarily rests on the perception of Respondent- 'Corporate Debtor'. It is profitable to refer to the following observations of the Hon'ble Apex Court in ***"Ranjit Thakur v. Union of India and Ors. – (1987) 4 SCC 611"***:

"17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, "Am I Biased?"; but to look at the mind of the party before him"

8. The fact that the proposed 'Resolution Professional' Mr. Shailesh Verma had a long association of around four decades with the 'Financial Creditor' serving under it and currently drawing pension coupled with the fact that the 'Interim Resolution Professional' is

supposed to collate all the claims submitted by Creditors, though not empowered to determine the claims besides other duties as embedded in Section 18 of the 'I&B Code' raised an apprehension in the mind of Respondent- 'Corporate Debtor' that Mr. Shailesh Verma as the proposed 'Interim Resolution Professional' was unlikely to act fairly justifying the action of the Adjudicating Authority in passing the impugned order to substitute him by another Insolvency Professional. Observations of the Adjudicating Authority in the impugned order with regard to 'Interim Resolution Professional' to act as an Independent Umpire must be understood in the context of the 'Interim Resolution Professional' acting fairly qua the discharge of his statutory duties irrespective of the fact that he is not competent to admit or reject a claim.

9. In the given set of circumstances, we are of the considered opinion that the apprehension of bias expressed by the 'Corporate Debtor' qua the appointment of Mr. Shailesh Verma as proposed 'Interim Resolution Professional' at the instance of the Appellant- 'Financial Creditor' cannot be dismissed offhand and the Adjudicating Authority was perfectly justified in seeking substitution of Mr. Shailesh Verma to ensure that the 'Corporate Insolvency Resolution Process' was conducted in a fair and unbiased manner. This is notwithstanding the fact that Mr. Shailesh Verma was not disqualified or ineligible to act as an 'Interim Resolution Professional'. Viewed thus, we find no legal flaw

in the impugned order which is free from any legal infirmity and has to be upheld. It goes without saying that the Appellant- 'Financial Creditor' should not have been aggrieved of the impugned order as the same did not cause any prejudice to it.

10. There being no merit in the appeal, the same is dismissed. No costs.

[Justice Bansilal Bhat]
Member (Judicial)

[V.P. Singh]
Member (Technical)

[Shreesha Merla]
Member (Technical)

NEW DELHI
22nd May, 2020

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