IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT – II)

Item No. 104
(IB)-791/ND/2022
New IA-220/2023

IN THE MATTER OF:
Canara Bank ... **Applicant/Petitioner**

Versus

Rajneesh Nagar ... **Respondent**

Under Section: 95(1) of IBC, 2016

Order delivered on 16.01.2023

CORAM:
SHRI. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the Applicant : Adv. Akshay Sharma

ORDER

IA-220/2023: The prayer made in the Application filed under Section 98 of the IBC, 2016 reads thus:

a) *"Allow the present application*
b) *Make a reference to the Insolvency and Bankruptcy Board of India under Section 98(2) of the Code;*
c) *Appoint a new Resolution Professional under Section 98(7) of the Code.*
d) *Replace the Respondent No. 2 from conducting the present resolution process.*
e) *Direct the Respondent No. 2 not to file the report under Section 99 during the pendency of this Application."*

In the application filed on behalf of the Guarantor, it has been espoused that the authorisation of RP by Creditor expired on 16.12.2022. It is also the plea put forth in the application that there is no authorisation in favour of Resolution Professional by the Creditor. As can be seen from Section 97 of the IBC 2016, if the application under Section 94 or 95 is filed through a Resolution Professional the Adjudicating Authority seek report from the board within seven days of the date of application to confirm that there are no disciplinary proceedings pending against the Resolution Professional and on

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such confirmation being made, the Adjudicating Authority shall appoint the IP through whom the application is made, as RP in the matter for all purposes.

The Rule 8 of the Insolvency and Bankruptcy (application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules 2019 provides that for the purpose of sub-section 2 of Section 97 and sub-section 5 of Section 98, the board may share the database of the Insolvency Professional including information about the proceedings against them with the Adjudicating Authority from time to time and for the purpose of sub-section 4 of Section 97 and sub-section 3 of Section 98, the board may share a panel of Insolvency Professional who may be appointed RP with the Adjudicating Authority. The Rule 8 of the Insolvency and Bankruptcy (application to Adjudicating Authority for Insolvency of Resolution Process for Personal Guarantor to Corporate Debtor) Rules 2019 reads thus:

> ***"Confirmation or nomination of insolvency professional.***
>
> *(i) For the purposes of sub-section (2) of Section 97 and sub-section (5) of Section 98, the Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time.*
>
> *(ii) For the purposes of sub-section (4) of Section 97 and sub-section (3) of Section 98, the Board may share a panel of insolvency professionals, who may be appointed as resolution professionals, with the Adjudicating Authority."*

Also the relevant regulations in this regard i.e. IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtor Regulations 2019 deal with the eligibility of the Resolution Professional). The Regulation 4 of these regulations reads thus:

> ***"Eligibility of resolution professional.***
>
> *(1) An insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-*
> *(a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;*

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(b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and
(c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.

***Explanation**. - For the purposes of this sub-regulation, -*

(i) a person shall be considered independent of the guarantor, if he-
(a) is not an associate of the guarantor;
(b) is not a related party of the corporate debtor; and
(c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor;
(ii) the expression "related party" shall have the meaning assigned to it in sub-section (24) of section 5.

(2) An insolvency professional, other than who has filed an application under section 94 or 95 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as resolution professional in a resolution process."

None of the in-eligibility mentioned in aforementioned regulation 4 has been alleged by the Applicant in the present IA against the RP. We also see from the IB-791/ND/2022, the same has been filed through the RP. The expression in Section 97 of IBC, 2016(ibid) is limited and clear i.e. if the application is filed through IP/RP, the Adjudicating Authority shall follow the process regarding his appointment as RP. It is nowhere indicated either in the code or the regulations or the rules (ibid) that if the resolution passed by the Board expire either before or after the filing of the Application through RP, this Adjudicating Authority would replace the RP, particularly on the application by the Guarantor. Before parting with, we would also like to observe that in terms of the principles or statutory interpretations as elaborated in judicial precedence, time and again a statute need to be understood with reference to the object and the purpose of the same. The intent of Section 98 of the code may not be such that this Tribunal would simply proceed to replace an RP,

merely because one or the other party objectively think so. There have to be valid and substantive reason to espouse the plea for replacement of RP, besides there being a provision in the law that the RP can be replaced on moving an application, Except in a case where there is resolution by the creditors, as it is their interest which need to be protected in the proceedings, due care need to be exercised in entertaining the request of Guarantor/Debtor in this regard, as the ulterior motive of the affected party to delay the proceedings may not be ruled out. In view of the aforementioned, we do not find any merit in the application and **the same is accordingly dismissed. No cost.**

(RAHUL BHATNAGAR)
MEMBER (T)

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

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