

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

Item No. 201
(IB)-97/ND/2022
IA-2724/2024, IA-2148/2024

IN THE MATTER OF:

Indiabulls Housing Finance Ltd.

... Applicant/Petitioner

Versus

Dr. Subhash Chandra

...

Respondent

Under Section: 95(1) of IBC, 2016

Order delivered on 27.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant/FC : Adv. Sumesh Dhawan, Adv. Sonali Jaitley Bakhshi, Adv. Jaiyesh Bakhshi, Adv. Ravi Tyagi, Adv. Mayank Mishra, Adv. Manmilan Sidhu, Adv. Chirag Sharma, Adv. Sudiksha Saini, Adv. Saksha Jha, Adv. Shikhar Misra, Adv. Shaurya Shyam

For the Respondent : Adv. Vaibhav Gagar, Adv. Ritwika Nanda, Adv. Shruti Gupta, Adv. Shefali Munde, Adv. Dev Karn Singh, Adv. Petal Chandhok with Mr. Subhash Chandra in person

For the RP : Adv. Vinod Kumar Chaurasia, Mr. Raj Kamal Saraogi, RP

Hearing Through: VC and Physical (Hybrid) Mode

REPORTABLE

ORAL ORDER

IA-2724/2024: As can be seen from the averments made in the application, the IA-2148/2024 was listed for hearing before this Bench at Serial No. 206 and time of assembling of Bench mentioned in the cause list was 2 pm. Nevertheless, subsequently, in the wake of the situation that the Judicial Member was to preside over three benches, to rationalize the time of the Benches, on 18.05.2024 itself the time of assembling of this Bench was changed to 11:30 am. Mr. Sumesh Dhawan, the Ld. Counsel appearing for the Creditor appeared before this Bench on 20.05.2024 when the matter was

taken up and requested for an opportunity to file reply to the application within three days. Nevertheless, once initially the time for assembling of Bench was shown as 2 pm., the Counsel appearing for the Applicant in IA bona-fidely believed so and it is justifiable on his part to say that it was only on account of sudden change in the time of assembling of the Bench that he could not remain present in Court on 20.05.2024, when the matter was called for hearing.

In the wake, **the prayer made in the application is allowed**, and the hearing qua IA-2148/2024 is advanced for adjudication.

IA-2148/2024: The prayer made in the captioned application reads thus:

“a. Pass an Order under Section 98(2) for the Replacement of the Resolution Professional namely Mr. Raj Kamal Saraogi and appointment of Mr. Arvind Kumar, IBBI/IPA-001/IP-P00178/2017-18/10357 as the Resolution Professional;

b. Pass any other or further orders as this Hon’ble Tribunal may deem fit.”

2. The application filed by the Personal Guarantor espousing that:

(i) The RP namely Mr. Raj Kamal Saraogi met him on 24.04.2024 and during the course of the meeting he endeavoured to apprise him with the nature of his business and the interest he carried qua the same;

ii. During the course of the meeting, the PG was unable to gain confidence in the RP and the impression what he gathered is that the RP could not aptly comprehend and understand the vastness and intricacies of the complicated affairs of the Respondent as businessman, a philanthropist and as a public servant.

iii. The Personal Guarantor is committed to resolve all the present issues and bring quietus to any and all the dispute, but to meet the

objective it is imperative that he is comfortable his sharing all intricate details of his day to day affairs and interest with the RP.

iv. Since the IBC is a beneficial legislation, it is imperative that the Personal Guarantor is in a position to repose faith and confidence in the RP.

3. The Personal Guarantor has also filed his affidavit, espousing therein;-

(a) On 24.04.2024, the RP met him in Lodhi Hotel with a Lawyer.

(b) There was no need for RP to have the presence of Lawyer at this stage and held the meeting in an expensive hotel, as the expenses incurred in such a meeting ultimately become part of IRP cost and the liability of the Personal Guarantor;

(c) During the course of the meeting held on 24.04.2024, the RP, Mr. Raj Kamal Saraogi could say that the present proceedings would lead to bankruptcy of the Personal Guarantor;

(d) The averments made in para 8 of the affidavit reads thus: (Page 3 of the affidavit)

8. During the meeting dated 24.04.2024 between me, Mr. Saraogi and counsels of Mr. Saraogi, Mr. Saraogi had mentioned "*yeah matter toh bankruptcy mein jayega.*"

4. It is also the plea raised on behalf of the Personal Guarantor in the affidavit that in terms of the provisions of Section 100(2) of IBC, the Resolution Professional might at the time of admission of the matter under Section 100 of IBC request to seek permission from this Tribunal to conduct negotiations between the Debtor and the Creditors, but he did not take any such initiative to seek permission of this Tribunal for conducting the negotiation. In sum and substance the plea raised on behalf of the Applicant is that the Resolution Professional seems to have no desire to streamline the process. The averments

made by him to this effect in para 16 to 30 of the additional affidavit reads thus:

16. From the aforementioned, in my humble submission and view, it appears that the Resolution Professional has no desire to streamline and ease out the process. In the first place, acting as a professional, the Resolution Professional ought to have shared a list of the information / documents as desired by him to make the process smooth, enable me to effectively collate the necessary information and share the same. Instead the Resolution Professional quoted the various provisions of the Code and the Rules / Regulations vide its e-mail dated 27.04.2024. Thereafter, in spite of my providing the Resolution Professional, a list of the liabilities and the on-going cases, yet, the Resolution Professional instead of citing the additional information required, has merely stated to provide the necessary information as per e-mail dated 27.04.2024.

17. I state that in my understanding of the Code, the Resolution Professional is required to guide and aid me in the insolvency resolution process. The role of the Resolution Professional is not to merely act as a post-office for information and documents. The conduct of the Resolution Professional, as shall be evident from the aforementioned e-mails, has been far from collaborative and supportive. The Resolution Professional is already acting in an adversarial manner with me. In such a hostile atmosphere and attitude, as I had already believed at the outset, the Resolution Professional is unable to appreciate and understand his fundamental role and responsibility in this process.

→ *Lack of transparency in my own resolution process*

18. Vide the e-mail dated 17.05.2024, me / my office had inter alia, requested the Resolution Professional to share a list of claims filed against me.

19. To the aforementioned, vide an email dated 18.05.2024, the Resolution Professional merely provided a list of 18 entities. The Resolution Professional did not provide me with the claims filed by any of the 18 entities and also did not provide the necessary documents filed in support of the alleged claims.

20. Yet again I humbly submit, there ought to be transparency and a collaborative approach in my insolvency proceedings. The Resolution Professional is required to share the details of the claims and the documents filed in support thereof, for my inputs and examination. The failure of the Resolution Professional to share the necessary claim details and the documents has unfortunately left me to doubt the bona fide approach of the Resolution Professional.

→ *Lack of transparency and unnecessary information*

21. Vide the e-mail dated 19.05.2024, the Resolution Professional inter alia, stated that – *"I have been shared by one creditors in the claim form with the following details of your spouse, children, parents and siblings as below:-"* along with a list of the names. There is no relevance for asking the details of my family and extended family as they are not party to any of the process.

22. The Resolution Professional, did not disclose the name of the creditor who has shared the said information. The Resolution Professional did not cite the details of the claims and proof filed

by the said creditor. The inactions also show case a lack of transparency in the process.

23. That, I state that the Resolution Professional has exhibited discreetness and vagueness, implying lack of bonafide at his behest. It is prima facie evident from the e-mail exchanges that there is lack of transparency by the Resolution Professional in seeking the relevant information from the Respondent against the alleged claims of the creditors.

24. I state that as per the scheme and intent of the Code, the role of the Resolution Professional in the insolvency proceedings of the Personal Guarantor is that of a negotiator, collaborator, facilitator and an expert in the resolution of issues.

25. The insolvency proceedings is to be aided and facilitated by the Resolution Professional in collaboration and consultation with the Respondent/ Personal Guarantor. However, in the present facts and circumstances the Resolution Professional has failed to attempt any meaningful discourse and collaboration with me.

26. Needless to state, the instant proceedings have grave and rampant ramifications for me. Failure to reach an amicable resolution through an acceptable Resolution Plan shall have the impact of a death knell for me. The intent of the Code in appointing a Resolution professional was to aid, assist and help me and not be at an adversarial position with me. The Resolution Professional is required to act as an alter ego and help in facilitating the best outcome in my interests and also in the interests of the creditors.

27. I have more than 50 years of business experience. My business, political and philanthropic interests are diverse. Likewise the claims of the creditors and also the list of creditors are into thousands of crores.

28. In such a background, I deserve to have the assistance of a Resolution Professional in whose intent and competence I have full faith. I deserve a Resolution Professional who shall act with bona fide and in the best of interests. I deserve a Resolution Professional who will see and appreciate the far reaching impact of the instant proceedings in my life and not merely treat the proceedings as a formality. I deserve a Resolution Professional who has the intention of resolving the issues. I deserve a Resolution Professional who is not already proceeding with a pre conceived notion that the proceedings shall be pushed to bankruptcy.

29. In a nutshell, the instant proceedings have very far-reaching impact on my fundamental rights. I deserve a choice of Resolution Professional. Moreover, my choice of Resolution Professional shall not prejudice the interests of the creditors. The creditors and this Hon'ble Tribunal shall have the final say in respect of the Repayment Plan proposed. Thus, my plea to this Hon'ble Tribunal does not cause harm or prejudice to anyone. However, the failure to allow the same has immense adverse effect on my life.

30. In the Application preferred by me, I refrained from casting any aspersions on the Resolution Professional. I do not have the intention to color any individual's credibility. However, in this case, I know that that the Resolution Professional appointed by the Hon'ble Tribunal is not best suited for me and my proceedings.

5. We heard the Counsels for the parties and perused the record. The allegations made in the additional affidavit that the IP's remark that this matter will go to bankruptcy is denied by the IP/RP present before us as also by Mr. Chaurasia, Ld. Counsel who represented him. Nevertheless, both the RP and Mr. Chaurasia categorically admitted that on 24.04.2024, they met the Personal Guarantor in Lodhi Hotel and Mr. Chaurasia effectively participated in the process. From Sections 102 to 112 of IBC, 2016, it nowhere appears that the RP could carry with him any lawyer to meet PG, while seeking to discharge his function in terms of the provisions of Section 105 of IBC, 2016 i.e. the stage when PG has to prepare his repayment plan.

6. We could also peruse the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Regulations 2019. Even these regulations do not indicate anywhere that the RP appointed by this Tribunal in terms of the provisions of Section 97 of IBC, 2016 is entitled to take the assistance of a lawyer while discharging his function as RP at the stage, when the PG was yet to prepare his repayment plan. We are unable to appreciate why and how the RP felt the need to conduct the meeting in an expensive hotel, when the responsibility given to him was to conduct process for Insolvency Resolution of Personal Guarantor.

7. Section 100(2) of IBC, specifically provides that where the Adjudicating Authority admits an application under sub-section (1) of Section 100 it may on the request of the RP issue instructions for the purpose of conducting negotiations between the debtor and the creditors and for arriving at a repayment plan. Apparently, no such request was made by the RP. When we heard the matter for admission of the application filed under Section 95 of IBC, 2016.

8. While discharging function in terms of the provisions of Section 105 of IBC, 2016 read with Regulation 17, role of the RP is only to extend the service as consultant to the Personal Guarantor. When in terms of the

provisions of Section 105 read with Regulation 17 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Regulations, 2019, the role assigned to RP himself is that of consultant and re-payment plans has to be prepared only by the debtor, it is difficult for us to appreciate that the RP whose presence itself is recognized and acknowledged as that of consultant can have the services of another lawyer, while discharging the function as consultant only. The provisions of Section 105 of IBC, 2016 and Regulations 17 of the aforementioned regulations are very clear that the repayment plan has to be prepared by the Debtor and it is for him to consult the RP. A reading of Section 105(2) of the Code, further makes it clear that it is only in terms of the repayment plan that the Resolution Professional may be required or authorized to carry on the debtor's business or trade on his behalf or in his name or realise the assets of the debtor or administer or dispose of any funds of the debtor. Thus, when there was no such authorization in favour of RP, we are unable to appreciate and comprehend that how the Ld. Counsel for the RP could rely upon Regulation 18 of the aforementioned regulation. Such arguments could be appreciated only if the Personal Guarantor would have made authorization in favour of the RP, in terms of the provisions of Section 105(2) of IBC, 2016. [At this stage Mr. Chaurasia interjected and submitted that when Regulation 18 of the aforementioned regulations provide that the Professional appointed by the RP for the resolution process shall not purchase and acquire any interest in the property of Guarantor without permission of the Adjudicating Authority, apparently the RP was entitled to carry with him a lawyer while meeting the Personal Guarantor. He also made reference to Regulation 3(i) of the aforementioned regulations to espouse that when resolution process costs include the fees payable to the professionals engaged, if any, the RP was justified in taking him to the Lodhi Hotel, while meeting the Personal Guarantor.]

9. Of course when the Ld. RP could deny that he ever made the comment that the matter will go to Bankruptcy, we ignore to adjudicate upon the plea espoused in additional affidavit filed by the PG.

10. Indubitably, the object and intent of chapter 3 of IBC, 2016 is to ensure that the Insolvency of the Personal Guarantor is resolved. The RP is assigned the role in terms of the provisions of Regulations 102 to 112 of the Code, read with Regulations 4,5,6,7,8,9,10,11,12,14 and 15 of the IBBI (IRP for PG to CD) Regulations, 2019. Maybe while discharging function under Section 107 of the Code, read with Regulation 10 of IBBI (Insolvency resolution process for Personal Guarantor to Corporate Debtor), Regulations 2019, the RP may need the services of some cost Accountant/Chartered Accountants etc. But we are unable to appreciate that how before preparation of plan under Section 105 of IBC, 2016, he could feel need to meet Personal Guarantor along with lawyer in Lodhi Hotel.

11. It would not be out of context to note that during the course of hearing the Personal Guarantor could suggest a couple of names for being as RP in place of Mr. Raj Kamal Saraogi as RP. The plea was opposed by Mr. Sumesh Dhawan, Ld. Counsel appearing for the Financial Creditor. Even otherwise also we do not see any such provision in the Code that when the application is preferred by the Creditor in terms of the provisions of Section 95 of IBC, 2016, this Tribunal may appoint an IP suggested by the Personal Guarantor as RP qua the insolvency resolution process in progress in respect of his insolvency.

12. Considering his experience, **we appoint Mr. Shiv Nandan Sharma, IP as RP in place of Mr. Raj Kamal Saraogi, IP.** It is made clear that nothing observed hereinabove should be held against Mr. Chaurasia or Mr. Raj Kamal Saraogi in any manner. We have ordered the replacement of Mr. Raj Kamal Saraogi only because the procedure given in chapter 3 of the Code is beneficial procedure and the role of RP is only that of facilitator between PG and Creditors. The present order would not be relied against them for

any purpose and in manner, the only ramification of the order is replacement of RP.

13. Mr. Raj Kamal Saraogi, the RP, would be entitled to claim his professional fees and other expenses incurred by him as CIRP cost. It goes without saying that the newly appointed RP would discharge his function in terms of our order dated 22.04.2024, afresh.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

