

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1891 of 2024

(Arising out of Order dated 10.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in IA-1904/2024 in IB-775(ND)/2022)

IN THE MATTER OF:

Mr. Vinay Rai
(Personal Guarantor)
C/o Shri Anand Singh,
A-16/10 Vasant Vihar,
South West Delhi, Delhi-110057.

...Appellant

Versus

1. Technology Development Board
Having its office at Wing 'A',
Ground Floor, Vishwakarma Bhawan,
Shahid Jeet Singh Marg, New Delhi-110016.

2. Mr. Prabhat Ranjan Singh
Insolvency Professional
Chamber No. 119, CK Daphtary Block,
Tilak Lane, Supreme Court of India,
New Delhi-110001.

...Respondents

Present:

For Appellant : Mr. Rakesh Kumar, Ms. Ramya Aggarwal, Ms. Preeti Kashyap, Mr. Ankit Sharma, Mr. Yash Tewari, Mr. Varun Pandit and Mr. Yash Dhawan, Advocates.

For Respondents : Mr. Kaushik Sinha, Ms. Surbhi Mehta and Mr. Abhishek Sinha, Advocates for R-1.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by Personal Guarantor of the Corporate Debtor challenging order dated 10.09.2024 passed by National Company Law Tribunal, New Delhi, Court-III in IA No.1904 of 2024 in IB-

775(ND)/2022. The Adjudicating Authority while passing order on application under Section 98 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) has partly allowed application – IA No.1904 of 2024 filed by the Financial Creditor for replacement of Resolution Professional (“**RP**”) – Mr. Prabhat Ranjan Singh. Prayer (B) made in the application was rejected. The Appellant aggrieved by the said order has come up in this Appeal.

2. Brief facts of the case necessary to be noticed are:

- (i) The Appellant through Mr. Prabhat Ranjan Singh herein filed an application under Section 94 (1) of the IBC for insolvency resolution process of the Appellant. The NCLT issued notice to IBBI and after obtaining confirmation from the IBBI, the Adjudicating Authority appointed Prabhat Ranjan Singh as RP and by order dated 06.12.2023, directed the RP to submit a Report in terms of Section 99 of IBC. A Report was submitted by the RP on 14.02.2024.
- (ii) IA No.1904 of 2024 was filed by the Financial Creditor on 28.02.2024 in which following prayers were made:

- A. Allow the present application and remove Mr. Prabhat Ranjan Singh as a Resolution Professional.
- B. Enquire whether any disclosure was furnished by Mr. Prabhat Ranjan Singh before this Hon'ble Tribunal at the time of his appointment as Resolution Professional and initiate the

disciplinary action against him if the same was not furnished; and

C. Pass any such further orders as this Hon'ble Court may deem fit.

(iii) In the application, which was filed by the Financial Creditor, following was pleaded for replacement of the RP – Prabhat Ranjan Singh in paragraphs 6 to 9, which are as follows:

“6. It is respectfully submitted that Mr. Prabhat Ranjan Singh is not a competent and independent individual for performing his duties as a Resolution Professional. as previously he has represented and appeared as a counsel of Usha India Ltd. and Petitioner in the execution petition bearing Ex. P. 32/2014 titled as Technology Development Board Vs. Mis Usha India Ltd. & Anr. before the Hon'ble High Court of Delhi. The Copy of the Order passed by the Hon'ble High Court of Delhi wherein Mr. Prabhat Ranjan Singh appeared as a counsel of Usha India Ltd in which the Petitioner is the director is attached herewith as ANNEXURE- R/3.

7. It is further respectfully submitted that Mr. Prabhat Ranjan Singh as Counsel of Usha India Ltd. also wrote a letter dated 20.12.2017 to the Retd. Justice Y.K. Singhal, Sole Arbitrator, New Delhi wherein Mr. Prabhat Ranjan Singh informed the Ld. Arbitrator that the Technology Development Board (Financial Creditor) had waived its right to file present arbitration proceedings as the creditor had already filed the suit before the Hon'ble Delhi High Court for the adjudication of its dispute and the present

arbitration proceedings is also barred by the principle of res-judicata. The copy of the letter dated 20.12.2017 is attached herewith as ANNEXURER/4.

8. It is respectfully is submitted that the Ld. Arbitrator also during the arbitration proceedings observed the fact that the Respondents i.e. the Usha India Ltd. and the Petitioner had engaged Mr. Prabhat Ranjan Singh as counsel before the Hon'ble Delhi High Court and District Court (Sale.et) in relation to the execution proceedings. The Copy the Order passed by the . Ld. Retd. Justice Y.K. Singhal, Sole Arbitrator is attached herewith as ANNEXURE- R/5.
9. Therefore, the appointment of Mr. Prabhat Ranjan Singh as a Resolution Professional would impair a fair and unbiased insolvency process.”

(iv) The Adjudicating Authority allowed the application for replacement of the RP by the impugned order. Challenging the order passed by the Adjudicating Authority, this Appeal has been filed by the Personal Guarantor.

3. Heard learned Counsel for the parties and perused the records.
4. Learned Counsel for the Appellant challenging the impugned order submits that Personal Guarantor has been granted a vested right to file a Section 94 petition through a RP. It is submitted that there is no material to indicate that RP is not an independent or a biased. The RP, who was proposed by the Appellant and appointed by the NCLT is fully eligible in terms of Regulation 4 of IBBI (Insolvency Resolution Process for Personal

Guarantors of Corporate Debtors) Regulations, 2019. The RP is not an associate of the guarantor, nor related party. Hence, no eligibility is attached to Respondent No.2. It is submitted that RP has only extended legal services to the Personal Guarantor and there is no material to indicate that RP has given advice, direction or instruction to Personal Guarantor, who is accustomed to act accordingly.

5. Learned Counsel for the Respondent No.1 refuting the submissions of the Appellant submits that the RP, has been representing the Corporate Debtor of which the Appellant is a Personal Guarantor in arbitration arising out of the same debt and is not an independent person to be entrusted with insolvency resolution process of the Appellant. The Adjudicating Authority in the impugned order, after noticing the order dated 25.01.2017 of High Court of Delhi, which indicated that Prabhat Ranjan Singh has appeared for judgment debtor, which reason was found to be valid for change or to replace the RP. In paragraph 5 (iv) and (vi), following was observed by the Adjudicating Authority:

- “iv. Further, RP is an officer of the Court who is expected to act in an unbiased manner for the benefit of all stakeholders, in furtherance of the provisions of the Code and on whom the Adjudicating Authority can rely upon. Thus, the Independence of RP with reference to the Personal Guarantor and the Company thereon needs to be maintained. However, in the present case, the Personal Guarantor filed the Present Application under Section 94 of the Code through the Resolution Professional namely Mr. Prabhat Ranjan Singh. Further, the RP was confirmed by this

Adjudicating Authority vide order dated 06.12.2023 and directed him to file a report under Section 99 of the Code.

- vi. We have perused the order dated 25.01.2017 passed by the Hon'ble High Court of Delhi very carefully and found that Mr. Prabhat Ranjan Singh has appeared on behalf of the Judgment Debtor (JD) No. 1 & 2 as reflected in the appearance column of the order dated 25.01.2017. Thus, if the Resolution Professional was having some professional engagement earlier, the same can be the reason of the RP being biased and having influence of the Personal Guarantor in the Personal Insolvency Resolution Process. Hence, in our considered view it can be a valid and reasonable ground to change or to replace the RP in the present matter.”

6. The order impugned has been passed by the Adjudicating Authority under Section 98 of the IBC. Section 98 entitles both, debtor and creditor to apply to the Adjudicating Authority for replacement of RP appointed under Section 97. Section 98 of the IBC is as follows:

“98. Replacement of resolution professional. - (1) Where the debtor or the creditor is of the opinion that the resolution professional appointed under section 97 is required to be replaced, he may apply to the Adjudicating Authority for the replacement of the such resolution professional.

(2) The Adjudicating Authority shall, within seven days of the receipt of the application under sub-section (1) make a reference to the Board for replacement of the resolution professional.

(3) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to

the Adjudicating Authority against whom no disciplinary proceedings are pending.

(4) Without prejudice to the provisions contained in sub-section (1), the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.

(5) Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that there are no disciplinary proceedings pending against the proposed resolution professional.

(6) The Board shall send a communication within ten days of receipt of the direction under sub-section (5) either-

- (a) confirming appointment of the nominated resolution professional; or
- (b) rejecting appointment of the nominated resolution professional and recommend a new resolution professional.

(7) On the basis of the communication of the Board under sub-section (3) or subsection (6), the Adjudicating Authority shall pass an order appointing a new resolution professional.

(8) The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (7) –

- (a) to share all information with the new resolution professional in respect of the insolvency resolution process; and
- (b) to co-operate with the new resolution professional in such matters as may be required”

7. Application - IA No.1904 of 2024 was filed by the Financial Creditor under Section 98 for replacement of the RP. Section 98, sub-section (1) entitles both the debtor or the creditor to apply to the Adjudicating Authority for the replacement of such RP, where the debtor or creditor is of the opinion that RP appointed under Section 97 is required to be replaced. Section 98, sub-section (1) does not contain or enumerate grounds, on which replacement can be asked for. The statutory provision only requires “*Where the debtor or the creditor is of the opinion...*”. Although, the opinion to be formed under Section 98, sub-section (1) is subjective opinion of the debtor or the creditor, which may entitle them to make an application for replacement of RP, it goes without saying that opinion should be founded on rational basis and objective consideration.

8. In the present case, from the facts which have been brought on the record, it is clear that the RP prior to filing of Section 94 application, has been representing the Corporate Debtor and the Personal Guarantor, before the Delhi High Court as a Counsel for the Corporate Debtor and the Personal Guarantor. Formation of opinion by the Financial Creditor on the ground that RP, who has represented the Corporate Debtor and the Personal Guarantor in the dispute between parties arising out of the same debt, cannot be said to be an irrational ground, to form an opinion under Section 98. Hence, the Financial Creditor filed an application for replacement of the RP. The scheme of Section 98, does not require that a particular ground has to be proved by debtor or creditor seeking replacement of the RP. The submission of the learned Counsel for the

Appellant that Section 94 gives a vested right to the debtor to initiate insolvency resolution process either personally or through RP, hence, the said vested right cannot be taken away. Section 94, sub-section (1) of the IBC is as follows:

“94. Application by debtor to initiate insolvency resolution process. - (1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.”

9. Section 94, sub-section (1) is a provision, which permits a debtor to initiate insolvency resolution process. Thus, the debtor is fully entitled to initiate the insolvency resolution process, either personally or through RP. The Appellant, thus, was fully entitled to initiate the insolvency resolution process through RP, as was done in the present case. But, the stage under Section 98 sub-section (1) is subsequent to appointment of RP under Section 97. Hence, Prabhat Ranjan Singh, was appointed by the Adjudicating Authority by order dated 06.12.2023 as per Section 97 of the IBC. The fact that application was filed by the Appellant through RP under Section 94, does not give any indefensible right to the Appellant to claim that said RP cannot be replaced. Under the scheme of the IBC, replacement of RP is at a different stage, which comes subsequent to appointment of RP under Section 97. Hence, the fact that application was filed by the Appellant through RP is immaterial for the purpose of Section 98(1)

10. In view of the statutory scheme as delineated by Section 94 to 98, we are of the view that Adjudicating Authority did not commit any error in

allowing the application filed by the Financial Creditor for replacement of the RP. We do not find any error in the order impugned. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

8th November, 2024

Ashwani