

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.442 /2024

(IA No.1212/2024)

IN THE MATTER OF:

**Renuka Devi Rangaswamy,
Resolution Professional of
Regen Powertech Private Limited (RPPL) &
Regen Infrastructure And Services Private Limited (RISPL),
IBBI Reg. No: IBBI/IPA-001/IP-P-01863/2019-2020/12871
Office At Arthi Illam, #9., Jothi Nagar,
3rd St., Upplilipalayam (Post), Coimbatore-641 015.
Email: Jrassociatescbe@gmail.com**

...Appellant

V

**State Bank of India,
Stressed Asset Management Branch (SAMB),
Red Cross Building, Montieth Road,
Egmore, Chennai-600 008
Represented by its Assistant General Manager
Sbi.05710@sbi.co.in**

... Respondent

Present:

For Appellant : Mr. TK Bhaskar for Mayan H Jain, Advocates.

**For Respondents : Mr. ML. Ganesh, Advocate
Mr. Pranava Charan, Advocate for CoC**

O R D E R

(Hybrid Mode)

09.12.2024:

A very interesting issue, which will be dealt with by us, in the instant Company appeal which emanates from the challenge given to the Impugned Order, which has been rendered by the Ld. Adjudicating Authority. While exercising its powers under Section 60 (5) of the I & B Code, to be read with Rule 11 of the NCLT Rules, being the Impugned Order dated 14.10.2024, as rendered in IA (IBC)/2329/2023, in CP. (IBA)/1099/CHE/2019. Precisely, the Appellant is aggrieved against, the directions which have been issued by the Ld. Adjudicating Authority, particularly, that as contained in para 4.15 of the Impugned Order, which is extracted hereunder: -

“4.15 We find that the appointed RP Ms. Renuka Devi has not followed and complied the order of Hon'ble NCLAT and this Tribunal and violated the extant Orders. We therefore order that the matter be referred to IBBI against RP Renuka Devi for appropriate and necessary action.”

2. The basic argument of the Ld. Counsel for the appellant would be confined to the directives, which have been given by the Ld. Adjudicating Authority by referring the matter to the Insolvency and Bankruptcy Board of India, (IBBI) as against the present appellant for seeking an appropriate and necessary action.

3. One of the issues which will be involved consideration and would be answered by us too is, *“whether it is a conclusive direction containing a positive direction, or not as it has been portrayed by the Ld. Counsel for the Appellant”*. To be precise, the Resolution Professional has been defined under Section 5(27) of I & B Code, 2016 which is extracted hereunder: -

“5(27) "resolution professional", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process [or the pre-packaged insolvency resolution process, [or the pre-packaged insolvency resolution process, as the case may be,] and includes an interim resolution professional;”

4. If the dichotomy of the definition of the resolution professional given under the code is concerned, it means that it is to conduct of the corporate insolvency resolution processes, which is to be performed by a person who is appointed by a body which has been constituted by Insolvency and Bankruptcy Board of India Regulations, 2016 (IBBI) and its powers to regulate the functioning of the Resolution Professional. Thus, appointment has been envisaged under Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Having reference to that, the said body happens to be the registered body of the resolution professionals, granting them the authority to exercise their powers for the purposes of conducting the resolution process, only upon the grant of the certificate of registration as provided under the Regulations of 2016, as contained in its Regulation 7.

5. When a body is statutorily created, and particularly when the powers of formulating its regulation are being derived from powers given under Sections 196, 208, and 207 of the I & B Code, a reference to the aforesaid sections are relevant for the purposes of answering the argument extended by the Ld. Counsel for the Appellant, while putting a challenge to the Impugned Order. Section 196 of the I & B Code, provides for the powers and functions of the board and the

bifurcation of the powers which has been contained therein in Part IV Chapter 2 of the I & B Code, it is inclusive within itself for holding of an action against the erring registered resolution professional or any authority has registered under Regulation 7 of the IBBI (IP) Regulations of 2016.

6. Coupled with the fact, that it also deals with the areas covered by Section 207 of I & B Code, which provides for the registration of the Insolvency Resolution Professional and that of, Section 208 of the I & B Code which provides to the functions and obligations of the insolvency professionals. Section 207 and 208 of the I & B Code, becomes relevant at this stage, which is extracted hereunder: -

“207. Registration of insolvency professionals.- (1)

Every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register himself with the Board within such time, in such manner and on payment of such fee, as may be specified by regulations.

(2) The Board may specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit.”

“208. Functions and obligations of insolvency professionals. -(1) *Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely: -*

- (a) a fresh start order process under Chapter II of Part III;*
- (b) individual insolvency resolution process under Chapter III of Part III;*

- (c) corporate insolvency resolution process under Chapter II of Part II; [(ca) pre-packaged insolvency resolution process under Chapter III-A
- (d) individual bankruptcy process under Chapter IV of Part III; and
- (e) liquidation of a corporate debtor firm under Chapter III of Part II.

[(1-A) Where the name of the insolvency professional proposed to be appointed as a resolution professional, is approved under clause (e) of sub-section (2) of section 54-A, it shall be the function of such insolvency professional to take such actions as may be necessary to perform his functions and duties prior to the initiation of the pre-packaged insolvency resolution process under Chapter III-A of Part II.]

(2) Every insolvency professional shall abide by the following code of conduct: -

- (a) to take reasonable care and diligence while performing his duties;
- (b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- (c) to allow the insolvency professional agency to inspect his records;
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and
- (e) to perform his functions in such manner and subject to such conditions as may be specified.”

7. In fact, when the regulations are deriving their powers, for formulation of regulations from Sections 196, 207 & 208, the reference of Section 208 has to be a power derived for the purposes of formulation of a regulation that will be inclusive of taking disciplinary action against the resolution professional by the

body which has registered the resolution professional, if there is any complaint which is brought to the notice of the registering body, that is Insolvency and Bankruptcy Board of India.

8. The action which has been complained of, by the Ld. Adjudicating Authority, while adjudicating upon the IA (IBC)/2329/2023, as preferred in the company petition primarily, after recording various findings, which have been opposed by the Ld. Counsel for the Appellant, that it would amount to be a conclusive determination of an allegation which has been made against the resolution professional, which would be the ultimate direction, which has been issued as contained in Para of 4.15 for referring the matter to the Insolvency and Bankruptcy Board of India (IBBI) for taking of an action in accordance with the IBBI regulations.

9. The Ld. Counsel for the Appellant, has submitted that, in fact, the order happens to be perverse, for the reason being that, the Ld. Adjudicating Authority while rendering a judgment on 14.10.2024, has traversed into acting as the fact-finding authority into the allegation and has recorded a finding on merits with regards to the conduct of the Appellant and in that eventuality where the positive finding has been arrived at by the Ld. Adjudicating Authority, the Ld. Counsel appearing for the Appellant contended that there is a conclusive analysis which has already been made by the Ld. Adjudicating Authority, which will ultimately amount to be supporting the consequential action to be taken by the registering

body, of the Resolution Professional and hence referring of the dispute to be decided, by the IBBI, will be only a farce exercise, which has been taken, rather it would amount to that, since the determination has already been referred made and then to be considered after a pre-conceived mind by the Ld. Adjudicating Authority, while deciding the issue and referring the matter, to the IBBI. With all due reverence at command, we disagree with the argument extended by the Ld. Counsel for the Appellant, in fact, the findings, which have been recorded therein in the Impugned Order under challenge has got no relevance so far as the conclusion which has been given in para 4.15 is concerned. Because, the rest of the findings which has been recorded in the Impugned Order will be only a reflection of mind by the Ld. Adjudicating Authority to reflect application of mind, to justify the necessity of taking an action against the resolution profession for non-compliance of the directions issued by this Appellate Tribunal on 31.08.2023 and the order 10.10.2023, rendered by Ld. NCLT in IBA/1099/2019 and the logic recorded therein will not lead to be a conclusive decision taken by the Ld. Adjudicating Authority, as if, it is conclusive in nature and the consequential action is bound to be followed as against the present appellant.

10. The controversy could be looked into from another perspective. If the Ld. Adjudicating Authority had not considered the circumstances under which the reference was required to be made to the IBBI, it would have been argued otherwise that the Ld. Adjudicating Authority without application of mind has

referred the matter to be adjudicated, upon by on a disciplinary side against the present appellant, without itself prima facie venturing into the set of allegations and its justification to refer the matter to the IBBI. Though at this stage, the apprehension expressed by the Ld. Counsel for the Appellant, qua the findings, which has been recorded for arriving at a conclusion by the Ld. Adjudicating Authority by referring the dispute to the IBBI is not acceptable and the bias for the reason being that, when the Ld. Adjudicating Authority or a court is judicially dealing with an issue, has had to assign its logic as to why a particular conclusion has been arrived at and as to how opinion has been drawn. The conclusion arrived at herein looking into the nature of order, which has been passed, where the reference has been made to the registering body of the Appellant to take an appropriate action against the present appellant, that may not be taken as to be any positive opinion expressed by the Ld. Adjudicating Authority, but rather an opinion expressed only limited to the extent and purpose to justify the necessity of making a reference to the IBBI against the Appellant, for taking an appropriate and necessary action.

11. Let us clarify that, if para 4.15 of the Impugned Order, as extracted above is taken into consideration, the Ld. Adjudicating Authority has particularly made an observation that, **“referred to IBBI against RP Renuka Devi Rangaswamy for appropriate and necessary action”**, meaning thereby the Ld. Adjudicating Authority at the stage of passing the Impugned Order, had not determined any allegation against the present appellant on merits nor any conclusion has been

recorded, and all the issues which were forming to be part of the basis of referring the issue before the IBBI, are not conclusively determinative in nature, but rather the issues are yet to be ventured into merits after conducting an inquiry by the IBBI in accordance with the regulations prescribed under the IBBI regulations of 2016, which would be only, when the registering body is satisfied for taking of any action under the given set of circumstances. The registering body has been completely left open to take an appropriate and necessary action, that may not be determined as to be conclusive in nature, as if, the action has already been decided by the Ld. Adjudicating Authority.

12. There is another aspect, and which will be more relevant to be considered by us is as, to whether at all the appeal against such type of an order where the Ld. Adjudicating Authority, has referred the disciplinary action to be taken against the resolution professional could at all be ventured into by this Appellate Tribunal in the exercise of its appellate powers under Section 61 of the I & B Code. Section 61 of the I & B Code, reads as under: -

“61. Appeals and Appellate Authority. - (1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:-

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts;
or

(v) the resolution plan does not comply with any other criteria specified by the Board.

[(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54-L, or sub-section (4) of 54-N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order.]”

13. The appeals against the orders which are passed by the Ld. Adjudicating Authority, as exclusively confined with regards to any of the aspects or an order, which is having a blend of falling to be in relation to the issues within the ambit of any action or order contemplated under Part II of the I & B Code. Section 61 is quite explicitly clear in its terms, when it uses the language that orders, which should fall within the domain of an Appellate Jurisdiction under Section 61, would only be appealable, when it falls under any of the actions contemplated under the part i.e. Part II of I & B Code, of which the Appellate provision is a part of it and not otherwise. Since, the Impugned Order under question, as it only refers to the exercise of the powers by the IBBI, which is the registering body of the Appellant under the Regulations of 2016. The action contemplated, by the Impugned Order, will not amount to be falling within the ambit of any of the actions under Part II, of an Appellate Jurisdiction, may be that it is an order passed by the Ld. Adjudicating Authority on an application, which was preferred before it, which finds the reference in the Impugned Order itself.

14. From that viewpoint, as far as the instant appeal is concerned, since the Impugned Order does not fall to be a part of any of the orders contemplated under part II of the I & B Code, it will not be appealable under Section 61 of the I & B Code. Though the respective counsels have tried to address this Appellate Tribunal, on the various issues pertaining to touching the vitalities, as to whether the set of action complete against the present appellant falls to be a set of

allegations, which at all requires the reference to be made to the IBBI for taking of an appropriate action.

15. As far as the analysis of the allegations and counter-allegations made by the respective counsels against the present appellant, for action or inaction taken by the Appellant during the conduct of the CIRP proceedings and with regard to the implications of the consolidation of the CoC process, is concerned that is exclusively an issue, which is to be determined by the registering body if the IBBI, as to whether at all, the Appellant has erred in non-compliance of the order rendered by the Id. Adjudicating Authority on 10.10.2023, and the earlier judgment of this Appellate Tribunal dated 31.08.2023. The earlier bench of this Appellate Tribunal has already observed that, the consolidation of the CIRP proceedings would be permissible, though the subject matter is already pending consideration before the Hon'ble Apex Court. But at this stage, we are not going to make any observation with regards to the powers to consolidate the matter because the Hon'ble Apex Court has already seized with the matter and the answer to the question on the said aspect is still awaited. But it is admitted by the Counsel for the parties that, though the matter is pending consideration before the Hon'ble Apex Court, but there operates no Interim Order. And as such, the preposition as settled by the earlier judgment of this Appellate Tribunal for permitting the consolidation of the CIRP proceedings, still holds good and covers the field. Thus direction issued by the Ld. Adjudicating Authority by the order of 10.10.2023, which is shown to be apparently not-complied and which has been

taken as to be the basis for referring the matter to the IBBI for taking appropriate action, does not call for any interference by this Appellate Tribunal, because we are of the view that, as far as the specific mandate of the law, the appeal under Section 61 will not lie as against the order and the nature of the order, which is under challenge in the absence of the same being falling under Part II of the I & B Code, where reference of disciplinary action against the resolution professional is directed to be taken by the IBBI itself, since not being an order falling under Part II of the I & B Code, the same would not be appealable.

16. Hence, the appeal lacks merit and is not maintainable, hence the same is accordingly ‘dismissed’.

17. It is needed to be clarified, that whatsoever we have observed, in the Judgment today, it is exclusive for the purposes of dealing with an issue of sustainability of an appeal against the Impugned Order. No finding, recorded by us or the Adjudicating Authority would be taken as to be conclusive, qua the individual action against the Resolution Professional, qua the action of the Resolution Professional which is yet enquired and determined by IBBI on the basis of the Regulation of 2016.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SN/TM/MS