



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.12

IA-2403/2023

In

IB-1018(ND)/2020

IN THE MATTER OF:

Amit Goel

.....**Applicant/Financial Creditor**

Vs.

CMYK Printech Ltd.

..... **Respondent/Corporate Debtor**

AND IN THE MATTER OF:

Mr. Navin Upadhyay

..... Applicant

Versus

Mr. Mukesh Kumar Jain,

RP of CMYK Printech Ltd

... Non-Applicant

SECTION

U/s 7 IBC code 2016

Order pronounced on 30.05.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-2403/2023 is **allowed.**

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. III)**

(Under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

I A No. 2403/2023
In
IB-1018/ND/2020

IN THE MATTER :-

Amit Goel

..... **Applicant/Financial Creditor**

Versus

CMYK Printech Ltd.

..... **Respondent/Corporate Debtor**

AND IN THE MATTER OF:

Mr. Navin Upadhyay

..... Applicant

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Mr. Mukesh Kumar Jain,

RP of CMYK Printech Ltd

... Non-Applicant

Pronounced on 30.05.2023

CORAM:-

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:-

For the Applicant : Mr. Saurabh Kalia, Mr. Chaitanya Bansal,
Mr. Sarvik Singhai, Advocates

For the CoC Members : Mr. Anish Jaipurkar, Mr. Suhel Qureshi,
Advocates

ORDER

{Per: Bachu Venkat Balaram Das, Member (Judicial)}

1. The present application has been filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking directions from this Tribunal against the Resolution Professional who has alleged to



have illegally removed the Applicant from the company vide email/letter dated 31 January 2023, despite the fact that the CIRP and the impugned order passed by the Hon'ble NCLAT have been stayed by the Hon'ble Supreme Court of India.

Brief background of the case:-

2. One Mr Amit Goel, filed an application under section 7 of the Code before this Tribunal seeking to initiate Corporate Insolvency Resolution Process against CMYK Printech Ltd. This Tribunal vide order dated 19.01.2021 admitted Section 7 Application and initiated CIRP against CMYK Printech Ltd. One Mr Ranjit Kumar Verma was appointed as the Interim Resolution Professional.
3. The Applicant has stated that he has been associated with the Corporate Debtor for the last 27 years and has been working as Executive Editor for the last two and half years. He is the senior most employee on the editorial side in the company and therefore was appointed as Executive Editor of the Company by the erstwhile Interim Resolution Professional, Mr. Ranjit Kumar Verma on 22 April 2021 for a term till the completion of CIRP.
4. The order dated 19th January 2021 passed by this Tribunal initiating Corporate Insolvency Resolution Process was challenged before the Hon'ble NCLAT by filing an appeal. The Hon'ble NCLAT vide order dated 16.12.2021, dismissed the appeal and confirmed the order initiating CIRP. The Applicant and one Ms. Shobori Ganguly, who was the Director and the Chief Executive Officer of the Corporate Debtor - Company, filed appeals bearing Civil Appeal No. 2661 of 2022 and 2662 of 2022 before the Hon'ble Supreme Court of India against the order dated 16 December 2021 passed by the Hon'ble NCLAT. The Hon'ble Supreme Court by its order dated 25 February 2022, passed the following order-

“There shall be a stay of the following:

A. Corporate Insolvency Resolution Process of the Respondent No. 2;



B. Judgement and final order dated 16.12.2021 passed by the NCLAT in Company Appeal (AT)(Insolvency) no.128/2021.”

5. It is submitted by the Applicant that despite the fact that the Hon'ble Supreme Court has passed interim orders staying the Corporate Insolvency Resolution Process of the Respondent No.2 and the operation of the judgement and final order dated 16 December 2021 passed by the Hon'ble NCLAT in Company Appeal No. 128/2021, the Resolution Professional has not handed over the management of the Company to the directors of the corporate company and still continuing to manage the day-to-day affairs of the Company. The Resolution Professional has removed the applicant from the Company illegally and has appointed Mr. Vishal Bakshi as President in CMYK Printech Limited in connivance with Amit Goel. It is alleged that Amit Goel and Vishal Bakshi worked together for several years in the Economic Times and the Resolution Professional is trying to pass on the control of the company illegally to a suspended director by appointing Mr. Vishal Bakshi as the President, without inviting applications and issuing any advertisement for the said post. It is further submitted that the Resolution Professional engaged 5 security guards on 2 February 2023 to stop the Applicant from entering the office. The Applicant has filed a complaint against the Resolution Professional before the Insolvency and Bankruptcy Board of India on 8 February 2023.

6. It is therefore submitted that the RP has been acting unilaterally and taking decisions unilaterally without taking the permission and approval of the Committee of Creditors as required under section 28(1) of the IBC Code and IBBI guidelines and also disobeying the orders passed by the Hon'ble Supreme Court of India.

7. Hence this application.

8. The Applicant has relied upon a judgement passed by the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi wherein while considering the same question regarding the effect of stay



order effect of stay of CIRP, the Hon'ble Appellate Tribunal in Company Appeal No.1323 of 2022 has held as follows:

“However, in view of the stay of the Order dated 28.10.2022, the IRP cannot carry on any functions since the IRP was appointed by the same order and by stay of the Order, no further action can be taken by the IRP in pursuance of the Order dated 28.10.2022. The Order dated 28.10.2022 has become inoperative in view of the Interim Order of this Tribunal dated 07.11.2022. Hence the Appellant is right in his submission that IRP cannot discharge any function after the Impugned Order dated 07.11.2022.”

9. On the contrary, the Resolution Professional in his reply affidavit has contended that the applicant himself had entered into a service contract on 22.06.2020 for a period of 2 years which ended on 21.06.2022. After CIRP was initiated, the Respondent Resolution Professional allowed the Applicant to serve on month-to-month basis with the objective to keep the status of the Corporate Debtor as going concern. The month-to-month services of the Applicant were not renewed from 01.02.2023 by the Resolution Professional because of misconduct on the part of the Applicant. It is submitted that the Resolution Professional has filed an application bearing IA No. 964 of 2023 seeking certain directions against the present Applicant who is Respondent No.1 in IA No. 964 of 2023, not to enter into the office premises of the Corporate Debtor and not to obstruct the working of the Corporate Debtor which are being carried out by the Resolution Professional. Since, allegations and counter allegations have been made by the parties against each other, these two IA's were heard together.

10. It is contended by the Resolution Professional that consequent upon the Stay Order passed by the Hon'ble Supreme Court of India staying the CIRP, the Resolution Professional called a meeting of the suspended director of the Corporate Debtor on 13.05.2022 with a view to hand over the charge of the Corporate Debtor to the suspended director however there was no consensus amongst the Board for handing over the charge back to Ms. Shobori Ganguli, as the majority was of the opinion that CIRP is stayed and



not terminated. It is contended that the Resolution Professional is continuing to hold and operate the affairs of the Corporate Debtor in order to keep the status of the Corporate Debtor as a going concern. Further, the Resolution Professional has filed an application in IA No. 81868 of 2022 before the Hon'ble Supreme Court of India seeking clarification of order and /or direction on order of stay passed by the Hon'ble Supreme Court of India. which is pending adjudication. The Resolution Professional has further stated in the reply affidavit that he has no vested interest to continue as the Resolution Professional and in case this Tribunal is of the view that the Resolution Professional should not continue in view of the stay order passed by the Hon'ble Supreme Court, then the Resolution Professional be directed to hand over the management to the suspended board. The Resolution Professional has further stated in the reply affidavit that in order to keep the Corporate Debtor as a going concern and to enable the Resolution Professional to operate the Corporate Debtor, the Resolution Professional appointed Mr. Vishal Bakshi after conducting an interview.

11. From the above facts, the only issue which emanates for consideration and determination by this Tribunal is as to whether the Resolution Professional ought to have handed over the affairs of the Corporate Debtor to the directors in view of the stay order passed by the Hon'ble Supreme Court of India on 25 February 2022.

12. We have heard the submissions of Mr. Saurabh Kalia, Learned Advocate appearing on behalf of the Applicant and Mr. RK Gupta, Learned Counsel appearing on behalf of the Resolution Professional.

13. We have perused the order dated 25.02.2022 passed by the Hon'ble Supreme Court of India which has already been extracted above. The only question to be answered in this case is the consequence and effect of the said order. Mr. Saurabh Kalia has relied upon a judgement dated 21.11.2022 passed by the Hon'ble NCLAT in ***Company Appeal (AT) (Insolvency) No. 1323 of 2022, in the matter of Ashok Kumar Tyagi versus UCO Bank***. The Hon'ble Appellate Tribunal while dealing with a similar issue has considered the judgement passed by the Hon'ble Supreme



Court of India in the case of "**Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association [1992 (3) SCC 1]**,, A judgement passed in (Civil Appeal No. 2417 of 2022) "**State of U.P. through Secretary and Ors. Vs. Prem Chopra**" and another judgement passed in the case of "B.P.T Ltd. & Ors. Vs. R. Sudhakar & Ors." [2004 7 SCC 2019].

The Hon'ble Appellate Tribunal after discussing and considering the ratio laid down by the Hon'ble Supreme Court of India in the above mentioned judgements has given a finding that "IRP cannot discharge any function after the impugned order dated 07.11.2022". "Para-19 of the said judgement has already been reproduced above in paragraph 8)"

14. Mr. Saurabh Kalia therefore submitted that in view of the judgement passed by the Hon'ble Appellate Tribunal (*supra*) the position of the petition is very clear and the Resolution Professional could not have taken any action after passing of the interim order of stay by the Hon'ble Supreme Court of India and interim Resolution Professional cannot discharge any functions.

15. Mr. Gupta, on the other hand has very fairly submitted that in case this Tribunal passes any order in the light of the judgement passed by the Hon'ble Appellate Authority (*supra*), then the Resolution Professional may be directed to hand over the management of the day-to-day affairs of the corporate debtor to the CEO/management board immediately in view of the order dated 25 to 22 passed by the Hon'ble Supreme Court.

16. After considering the rival contentions and perusing the order passed by the Hon'ble Supreme Court of India on 25.02.2022, we are of the considered view that the Resolution Professional has committed an error in not handing over the management of the affairs of the Corporate Debtor to the directors/only management. The actions of the Resolution Professional after the order dated 25.02.2022 passed by the Hon'ble Supreme Court of India are without any authority since once the CIRP has been stayed the Resolution Professional could not have taken any further action. We, therefore, feel it appropriate to direct that all actions taken by the Resolution Professional



after the stay order passed by Supreme Court of India on 25.02.2022 are without any authority and unsustainable and therefore, we pass the following directions:-

1. The Resolution Professional shall immediately hand over the management of the Corporate Debtor to the CEO/Management of the CD.
2. All actions taken by the Resolution professional after the order dated 25.02.2022 passed by the Hon'ble Supreme Court of India including the removal of the Applicant and appointment of Mr. Vishal Bakshi are declared to be null and void.
3. Status, public position of the Corporate Debtor as it was before passing of the order dated 25.02.2022 by Hon'ble Supreme Court of India shall be restored back.

17. The present application is **allowed** in the above terms.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)