MR. MUKESH KUMAR JAIN V. NAVIN KUMAR UPADHYAY & ANR.

Mr. Mukesh Kumar Jain

…Appellant

Vs.

Navin Kumar Upadhyay & Anr.

…Respondents

Case No: Company Appeal (AT) (Insolvency) No. 930-931 of 2023

Date of Judgement: 19th December, 2023

Judges:

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

For Appellant: Mr. Gautam Singhal, Mr. Rajat Chaudhary, Advocates.

For Respondents: Mr. Saurav Agrawal, Mr. Asav Rajan, Mr. Ajay Sharma, Advocates for R-1

WITH

Amit Goel

…Appellant

Vs.

Navin Kumar Upadhyay & Ors.

…Respondents

Case No: Company Appeal (AT) (Insolvency) No. 943-944 of 2023

For Appellant: Mr. Manish Kaushik, Mr. Ajit Singh Joher, Ms. Anshita Agarwal, Advocates.

For Respondents: Mr. Saurav Agrawal, Mr. Asav Rajan, Mr. Ajay Sharma, Advocates for R-1.
Mr. Gautam Singhal, Advocate for RP/R-2.

Facts:

Corporate Insolvency Resolution Process (CIRP) was initiated against corporate debtor CMYK Printech Ltd. on 19th January 2021. Mr. Ranjeet Kumar Verma was appointed as Interim Resolution Professional (IRP). On 22nd April 2021, IRP appointed Mr. Navin Kumar Upadhyay (Respondent 1) as Executive Editor of The Pioneer newspaper run by the corporate debtor. Appeal challenging CIRP admission order was dismissed by NCLAT on 16th December 2021. Civil Appeals were filed against this order in Supreme Court by Mr. Shoboroi Ganguli and Mr. Narender Kumar & Mr. Navin Kumar Upadhyay. Supreme Court passed interim order on 25th February 2022 staying CIRP and NCLAT's order. Mr. Mukesh Kumar Jain (Appellant) replaced Mr. Verma as Resolution Professional (RP). On 31st January 2023, RP informed Mr. Upadhyay that his contract expired on 31st May 2022 and he was relieved from his post w.e.f 1st February 2023. Mr. Upadhyay filed IA in Supreme Court seeking contempt proceedings against RP. A defect was reported in this application. RP filed IA 964/2023 before NCLT to restrain Mr. Upadhyay from entering corporate debtor's premises. Mr. Upadhyay filed IA 2403/2023 before NCLT challenging his removal. NCLT allowed IA 2403/2023 filed by Mr. Upadhyay and dismissed IA 964/2023 filed by RP. Against NCLT's order, two appeals were filed in NCLAT – one by RP (CA 930-931/2023) and another by suspended director Mr. Amit Goel (CA 943-944/2023).

Court's Opinions:

Order admitting CIRP has only been stayed and not quashed. Corporate debtor cannot be permitted to function as it was functioning prior to admission of CIRP. There is a difference between stay of an order and quashing of an order. If on stay of admission order, corporate debtor is restored to earlier position as was before admission, there will be no difference between staying an order and quashing it. Stay of CIRP would have disastrous effect if management against whom CIRP was admitted is handed back control. Assets could be diminished affecting creditors' rights. Merely because CIRP is stayed, RP cannot be denuded of power to continue day to day operations to run corporate debtor as going concern. NCLT ought not to have entertained Mr. Upadhyay's application when related appeal was pending in Supreme Court. Prayer seeking reinstatement made in IA 4138-4139/2023 is clearly not maintainable and is rejected outright.

Arguments:

Appellant RP:

Appeal against NCLAT order admitting CIRP is pending in Supreme Court where interim stay continues. After letter dated 31.01.2023 terminating his services, Mr. Upadhyay has filed contempt application in Supreme Court. NCLT could not have entertained IA 2403/2023 filed by Mr. Upadhyay when related matter was sub judice before Supreme Court. NCLT erroneously relied on NCLAT's decision in Ashok Tyagi case to hold that stay of CIRP warrants handing over operations to directors. No such proposition laid down in that case. RP is statutorily obligated to continue day to day operations of corporate debtor during CIRP. He has not been discharged as RP. Mr. Upadhyay has no locus standi to claim continuation as Executive Editor or receipt of salary. His reinstatement prayer in IA 4138-4139/2023 has already been rejected.

Respondent 1, Mr. Navin Kumar Upadhyay:

Pendency of appeal in Supreme Court does not strip NCLT of jurisdiction to decide other related matters arising during CIRP. Order removing Mr. Upadhyay has not been challenged in Supreme Court. Only contempt application filed which is pending. Mr. Upadhyay continues to function as Executive Editor even after 01.02.2023. This is evident from Pioneer newspaper where he is still mentioned. RP had no authority to remove him as Executive Editor or appoint replacement during continuance of interim stay by Supreme Court. NCLT has rightly passed impugned order in line with directions of Supreme Court in its interim order.

Sections:

Insolvency and Bankruptcy Code, 2016; Sections 7, 12 and 14

Cases Referred/Cited:

Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association (1992); Ashok Kumar Tyagi v. UCO Bank (Company Appeal (AT) Ins. No. 1323 of 2023)

Relevant Laws:

Interim Order dated 25.02.2022 passed by Supreme Court in Civil Appeal staying CIRP; Powers, duties and functions of Interim Resolution Professional (IRP) and Resolution Professional (RP) under IBC

In summary, the court set aside NCLT's order directing RP to handover operations to directors in light of stay of CIRP by Supreme Court in related appeal. All ancillary prayers seeking reinstatement or payment of salary to respondent Mr. Upadhyay were also rejected outright given pendency of said appeal in Apex Court. RP was permitted to continue day-to-day functioning without taking steps under actual CIRP process.

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Full Text of Judgment:

1. These two Appeals have been filed against the two orders passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No.III) in IA No. 2403/2023 filed by Mr. Navin Kumar Upadhyay- Respondent No.1 herein and IA No. 964 of 2023 filed by Mr. Mukesh Kr. Jain, the Appellant in Company Appeal (AT) (Insolvency) No. 930-931 of 2023. Company Appeal (AT) (Insolvency) No. 930-931 of 2023 has been filed by Mr. Mukesh Kr. Jain, Resolution Professional of the Corporate Debtor- 'CMYK Printech Ltd.' and Company Appeal (AT) (Insolvency) No. 943-944 of 2023 has been filed by Mr. Amit Goel, Suspended Director of the Corporate Debtor.

   2. Brief facts of the case have already been noted in our order dated 06.11.2023 passed in these Appeals while deciding IA No.4138-4139 of 2023 filed by Respondent No.1- Mr. Navin Kumar Upadhyay. For sake of brevity, it shall be suffice to notice paragraphs 3, 4 and 5 of the said order which noticed the background facts, which are as follows:-

   "3. The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor-CMYK Printech Ltd. vide Order dated 19th January, 2021. One Mr. Ranjeet Kumar Verma was appointed as IRP. On 22nd April, 2021, IRP appointed Respondent No. 1 Mr. Navin Kumar Upadhyay as Executive Editor of The Pioneer Newspaper run by the Corporate Debtor. Company Appeal (AT) Ins. No. 128 of 2021 was filed challenging the Order admitting CIRP by a Suspended Director of the Corporate Debtor which Appeal came to be dismissed by this Tribunal vide its Order dated 16.12.2021. Against the Order dated 16.12.2021, two Civil Appeals were filed in

the Hon’ble Supreme Court one by Shoboroi Ganguli and another by Narendra Kumar & Navin Kumar Upadhyay (Respondent No. 1). In the civil Appeals filed against the Order dated 16.12.2021, Hon’ble Supreme Court passed following interim Order on 25th February, 2022:

“UPON hearing the counsel the Court made the following

O R D E R

Issue notice.

There shall be stay of the following in the meanwhile:

1. Corporate Insolvency Resolution Process of the Respondent No.2; and

2. judgment and final order dated 16.12.2021 passed by the NCLAT in company Appeal (AT) (insolvency) No. 128/2021”

4. The IRP Mr. Ranjeet Kumar Verma was removed and in his place Mr. Mukesh Kumar Jain (The Appellant herein) was appointed as RP. RP filed an I.A. No. 142419/2022 in Civil Appeal No. 2661 of 2022 seeking certain directions from the Hon’ble Supreme Court. On 31st January, 2023, Resolution Professional issued a letter to Respondent No. 1 informing that contract of Respondent No. 1 expired on 31st May, 2022 and after taking over charge by the RP, RP has continued month to month upon expiry of contract on 31st May, 2022 it was further communicated that Respondent No. 1 has already attained the age of 60 years, the RP relieved the Respondent No. 1 from his post of Executive Editor with effect from 01st February, 2023. The Respondent No. 1 after receipt of Letter dated 31st January, 2023 filed I.A. in the Hon’ble Supreme Court being I.A. vide Diary No. 65621 of 2023 bringing on record the letter dated 31st January, 2023 terminating service of Respondent No. 1 and seeking direction from the Hon’ble Supreme Court to initiate contempt proceedings for disobedience of the Interim Order dated 25th February, 2022 passed by the Hon’ble

Supreme Court in the Civil Appeals. A defect was reported in the said application by the Registry. RP has filed I.A. No. 964 of 2023 before the NCLT restraining the Respondent No. 1 from entering into the office of the Corporate Debtor. Respondent No. 1 filed I.A. No. 2403 of 2023 before NCLT challenging his removal, the Adjudicating Authority vide order dated 30th May, 2023 allowed the I.A. No. 2403 of 2023 and dismissed the I.A. No. 964 of 2023 as infructuous. Two appeals were filed challenging the Order dated 30th May, 2023 in this Tribunal being Company Appeal (AT) Ins. No. 930- 931 of 2023 by Resolution Professional and another Company Appeal (AT) Ins. No. 943-944 of 2023 on behalf of Mr. Amit Goel, the suspended director.

5. Both the appeals were heard by this Tribunal and this Tribunal passed an Interim Order on 24th July, 2023. The Adjudicating Authority vide Order dated 30th May, 2023 has issued three directions which have been noticed in paragraph 1 of the Interim Order dated 24th July, 2023 which is to the following effect:

"24.07.2023: These two appeals have been filed against the same order dated 30.05.2023 on an I.A. No. 2403 of 2023 filed by Respondent No. 1. Adjudicating Authority has allowed the I.A. and issued direction in paragraph16 to the following effect: ….

"16. After considering the rival contentions and perusing the order passed by the Hon'ble Supreme Court on 25.02.2022, we are of the considered view that the Resolution Professional Company Appeal (AT)(Insolvency) No. 930-931 & 943-944 of 2023 Page 2 of 8 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 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 the 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." …"

3. In IA No.2043 of 2023 which was filed by the Respondent No.1, following prayers have been made:-

"(I) Allow the application of the Applicant and Quash the decisions of removal of the Applicant being illegal and void as done by RP without any authority and against the provisions of IBC.
(II) Quash the decisions of the appointment of Mr. Vishal Bakshi, being illegal and void as done by RP without any authority and against the provisions of IBC.
(III) Direct the RP to hand over the management of day-to-day affairs of the Corporate Debtor to the CEO/Management Board immediately in view of the order dated 25.02.2022 passed by the Hon'ble Supreme Court
(IV) Suspend the RP for his illegal acts immediately and direct him to refund the salary to the Company derived by him illegally during this stay period.
(V) Pass an ad-interim order in terms of the above prayers.

(VI) Pass any other necessary orders or directions as this Hon'ble Tribunal may deem fit and proper in view of the above- mentioned facts and circumstances."

4. In application filed by the Resolution Professional being IA No.964 of 2023, Resolution Professional prayed for following prayers:-

"Pass interim/final directions to the Non-Applicant No. 1 to not to enter into the office premises of the Corporate Debtor and/or to obstruct the working of the Corporate Debtor carried out under the control of the Applicant Resolution Professional:

Pass interim/final directions to the Non-Applicant No. 2 to provide necessary assistance and support to undersigned Resolution Professional in discharge of his duties as per Code;
Pass necessary further order/ directions to the applicant Resolution Professional about this status as questioned by the Non-Applicant No. 1 herein;
Issue such necessary orders as may be deemed fit in the matter by Hon'ble Tribunal."

5. The Adjudicating Authority by Order dated 30.05.2023 allowed the IA No.2403 of 2023 and issued directions in paragraph 16 which we have already extracted above. The Adjudicating Authority disposed of the IA No.964 of 2023 filed by the Resolution Professional observing that in view of the order passed in IA No.2403 of 2023, no further directions are needed in the matter.

6. Learned Counsel appearing in both the above sets of Appeal have challenged the order dated 30.05.2023 passed in IA. No. 2403 of 2023 and IA No.964 of 2023. The submissions advanced in both set of Appeals being common, we proceed to notice the said submissions.

7. Learned Counsel for the Appellant submits that

against the order passed by this Appellate Tribunal dated 16.11.2023, Mr. Navin Kumar Upadhyay, the Respondent No.1 in both the Appeals has already filed Civil Appeal being Civil Appeal No.2662 of 2022 where interim order was passed by the Hon'ble Supreme Court on 25.02.2022 which order is still continuing and after issuing the letter dated 31.01.2023 by Resolution Professional informing that his contract has expired on 31.05.2022 he having attained 60 years of age, he has been relieved w.e.f. 01.02.2023. Respondent No.1- Mr. Navin Kumar Upadhyay filed an application vide Diary No.6561 of 2023 bringing before the Hon'ble Supreme Court the order dated 31.01.2023 regarding termination of service which application is still pending, hence, it is not open for the Respondent No.1 to file IA No.2403 of 2023 before the Tribunal. It is submitted that the Adjudicating Authority committed error in observing that in view of the stay of the CIRP, the Suspended Directors have to be reinstated relying on the law laid down by this Appellate Tribunal in Company Appeal (AT) (Insolvency) No.1323 of 2023- "Ashok Kumar Tyagi vs. UCO Bank" whereas no such proposition is laid down by this Tribunal. The Adjudicating Authority misread the legal position as clarified by this Tribunal in 'Ashok Kumar Tyagi' (supra) and has wrongly directed for handing over charge by the Resolution Professional to the management of the Corporate Debtor. It is submitted that the matter being pending in the Hon'ble Supreme Court, it is open for the Respondent No.1 to make any such other application as may be advised but approaching the Adjudicating Authority and obtaining an order was uncalled for. It is submitted that it was the Resolution Professional who is carrying out day-to-day business since the Resolution Professional has not yet been discharged. Resolution Professional having taken a decision not to continue Respondent No.1 w.e.f. 01.02.2023, the Respondent No.1 has no right to claim

continuance. It is submitted that the Respondent No.1 is wrongly claiming that he is entitled to continue as Executive Editor of the Corporate Debtor and receive salaries whereas the Corporate Debtor is running in losses and it is the Resolution Professional who is running the Corporate Debtor for day-to-day function and it is for the Resolution Professional to take a decision regarding continuance of staff of the Corporate Debtor and to engage any staff during currency of CIRP.

8. Learned Counsel appearing for the Respondent No.1 refuted the submissions of the Appellant and submits that the mere fact that the Hon'ble Supreme Court has stayed the CIRP does not denude the Adjudicating Authority from exercising jurisdiction with all other matters which arise during CIRP. It is submitted that the Respondent No.1 has not challenged the order dated 31.01.2023 in Civil Appeal. It has only filed an IA to initiate Contempt Proceeding against the Resolution Professional who has violated the order dated 25.02.2022, on which application, no order has yet been passed. It is submitted that the Respondent No.1 has been continuing as Executive Editor and even after 01.02.2023, he has continued as Executive Editor which is apparent from the publication of the newspaper where name of the Respondent No.1- Mr. Navin Kumar Upadhyay has been mentioned as Executive Editor. It is submitted that the Resolution Professional has no jurisdiction to remove the Respondent No.1 as Executive Editor and appoint another person in his place. The Adjudicating Authority has rightly passed an order relying on the interim order passed by the Hon'ble Supreme Court dated 25.02.2022. An interim order was passed by this Appellate Tribunal in the present Appeals on 24.07.2023 wherein in paragraph 8 of the interim order following was observed:-

"8. We are of further view that Adjudicating Authority ought not to have entertained the application when the matter is pending before the Hon'ble Supreme Court and was extensively heard by the Hon'ble Supreme Court on several dates. We are thus of the view that the direction issued by the Adjudicating Authority in paragraph 16(1) & (3) deserves to be stayed and we direct that the directions in (1) (3) of paragraph-16 be remain stayed."

9. The Respondent No.1 has filed another application being IA No.4138- 4139 of 2023 in Company Appeal (AT) (Insolvency) No.930-931 of 2023 where following prayers have been made:-

"A. Set aside/quash the communication contained in the email dated 20.08.2023 issued by the Resolution Professional effectively removing the Applicant as the Executive Editor of the newspaper and appointing Ms. Shobori Ganguli as Executive Editor (Editor in chief) of newspaper run by Corporate Debtor vide email dated 20.08.2023; and B. Reinstate the Applicant, Mr. Navin Kumar Upadhyay as the Executive Editor of the newspaper of Corporate Debtor in accordance with Paragraph No. 16 (2) of Order dated 30.05.2023 passed by the Adjudicating Authority read with Order Dated 24.07.2023 and Order Dated 10.08.2023 passed by this Hon'ble Tribunal and also direct the payment of contractual dues/arrears of the Applicant since January 2023 onwards; C. Remove and direct the Insolvency and Bankruptcy Board of India to investigate and initiate disciplinary proceedings against the Resolution Professional, Mr Mukesh Jain, and direct the new Resolution Professional to initiate proceedings in accordance with law based on the Forensic Report submitted by the Appellant Mr. Amit Goel; D. Pass any other ex-parte ad interim reliefs in terms of prayers above, as this Hon'ble Tribunal may deem fit and

proper in the facts and circumstances of the present case in the interest of justice, equity and good conscience."

10. The said application was considered by this Tribunal and after hearing both the parties this Tribunal took the view that the prayers made in the application by the Respondent No.1 cannot be allowed. In order dated 06.11.2023 from paragraphs 16 to 22, following has been observed:-

"16. The email which has been challenged by means of Application was issued by the Resolution Professional for carrying out and running the Corporate Debtor. Mr. Narender Kumar the Printer and Publisher has died hence the arrangement was to be made with the RP. By our order dated 10th August, 2023, we have already directed that "for day to day function Resolution Professional can carry its duty and ensure that the Corporate Debtor runs as a going concern for which he may take steps expeditiously."
17. The CIRP having been stayed by Hon'ble Supreme Court, no further steps in the CIRP can be taken by the RP or CoC. We have already stayed the Order of the Adjudicating Authority by which direction was issued for ex-management to be reinstated on an application filed by Respondent No.
1. There being no management in place RP has to carry out and run the Corporate Debtor as a going concern and the email dated 20th August, 2023 which has been issued by the RP was for purpose and object of running the corporate debtor as a going concern. According to own case of the Applicant, Applicant has not been allowed to function after 31st January, 2023. Applicant has also approached the Hon'ble Supreme Court by filing I.A. vide diary No. 65621 of 2023 bringing on record the letter dated 31st January, 2023 terminating his services and

praying for initiating contempt proceedings against the RP in which no orders have been passed.

18. Learned Counsel for the Applicant has relied on the Order dated 24th July, 2023 passed by this Tribunal in the present Appeals and submits that this Tribunal has not stayed the direction No. 2 of the Adjudicating Authority dated 30th May, 2023 where all actions taken by the RP after Order dated 25.02.2022 including the removal of the Applicant were declared null and void. It is true that direction No. 2 was not stayed by this Tribunal in its Interim Order dated 24th July, 2023 but the Order passed by Adjudicating Authority dated 30th May, 2023 is under consideration in the Appeals and we have already observed in paragraph 8 of the Interim Order dated 24th July, 2023 that the Adjudicating Authority ought not to have entertained the Application (filed by Respondent No. 1) when the matter is pending before the Hon'ble Supreme Court.

19. From the prayers made in the Application I.A. No. 4138-4139 it is clear that Applicant wants his reinstatement on the post of Executive Editor of the Newspaper on which post he is not functioning after 31st January, 2023. The Corporate Debtor being in CIRP, and the Corporate Debtor is being run by the RP, it is for the RP to take a decision as to how the Corporate Debtor is run.

20. Through an email, it is informed that Company is incurring big losses in every month due to which assets of the Corporate Debtor is depleting.

21. From the facts it is clear that RP has not permitted the Applicant to work as Executive Editor after 31st January, 2023. According to own case of the Applicant he was appointed by IRP on 22nd April, 2021 on the post of Executive Editor, which IRP was subsequently removed and replaced by present RP Shree Mukesh Kumar Jain. The entire matter being pending before the Hon'ble Supreme Court in the Appeals whereas one of the Appeal has been

filed by the Applicant Navin Kumar Upadhyay, we are of the view that prayers made in the Application 4138- 4139 of 2023 cannot be allowed looking to the sequence of the facts and pleadings of the parties on record.
22. However, looking to the fact that present Appeals have been filed against the Order passed by the Adjudicating Authority dated 30th May, 2023 we are of the view that both these Appeals need to be finally decided more so when challenge to the order of this Tribunal affirming the CIRP are pending before the Hon'ble Supreme Court. We direct that both these Appeals being C.A.(AT) Ins. No. 930-931 and 943- 944 of 2023 be listed for 'Final Hearing' on 16th November, 2023 at 02:00 PM."

11. The Adjudicating Authority by the impugned order has issued direction to the Resolution Professional to immediately handover the management of the Corporate Debtor to the CEO/Management of the Corporate Debtor. In the order impugned, the only issue which was noted by the Adjudicating Authority for consideration was the issue as noted in paragraph 11 of the order, which reads as follows:-

"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. The Adjudicating Authority took the view that in view of the stay of the CIRP of the Corporate Debtor by order dated 25.02.2022 passed by the Hon'ble Supreme Court, the Resolution Professional cannot continue and his all actions are without jurisdiction. Direction was issued to the Resolution Professional to handover the management of the Corporate Debtor to the CEO/Management

of the Corporate Debtor, which has been impugned in the present Appeals. The judgment of this Tribunal in 'Ashok Kumar Tyagi' (supra) on which reliance has been placed by the Adjudicating Authority does not lay down any proposition that when order of initiating CIRP has been stayed, the result would be to handover the Corporate Debtor to the ex- management by Resolution Professional. In 'Ashok Kumar Tyagi' (supra), this Tribunal noticed the difference between stay of an order and quashing of an order. In 'Ashok Kumar Tyagi' (supra) this Tribunal placed reliance on the judgment of the Hon'ble Supreme Court in "Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association- [1992 (3) SCC 1]". In 'Ashok Kumar Tyagi' (supra), in paragraph 18, following proposition has been laid down:-

"18. The difference between stay of an Order and quashing of any Order are well settled as noticed above. In event on the stay of the admission of Section 7 Application, the Corporate Debtor is allowed to function and position as was existing prior to 28.10.2022 is restored, there shall be no difference in staying an Order and quashing of an Order. What the Appellants are asking/praying is restoration of the position as was prior to admission of Section 7 Application. We can not accept such request made by the Appellant. The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor can not be permitted to function as it was functioning prior to 28.10.2022."

13. The judgment of 'Ashok Kumar Tyagi' (supra) of this Tribunal does not support the order of the Adjudicating Authority that in view of the stay of CIRP, Resolution Professional has to handover charge of the Corporate Debtor. Any such result of stay of the CIRP shall be disastrous since if the management against whom the CIRP

has been initiated is handed over the charge, it is prone to misuse the assets and the assets shall be diminished, which may adversely affect the creditors of the Corporate Debtor. In view of the stay of the CIRP, it is true that the Resolution Professional cannot take any further steps in the CIRP of the Corporate Debtor and has to stay his hand from proceeding any further in the CIRP and await the order of the Appellate Court. The direction to the Resolution Professional in the impugned order to handover the Corporate Debtor to the ex-management is wholly unjustified and has to be set aside.

14. Much emphasis has been given by the Learned Counsel for the Respondent No.1 that one of the directions issued by the Adjudicating Authority's impugned order was to declare all actions taken by the Resolution Professional after the order dated 25.02.2022 as null and void. It is submitted that since the Respondent No.1 was not permitted to function w.e.f. 01.02.2023 by the Resolution Professional, the said order also has to go and Respondent No.1 should be allowed to function as Executive Editor. We have already noticed that a separate IA being IA No.4138-4139 of 2023 has been filed by the Respondent No.1 praying the relief of reinstatement of the Respondent No.1 as Executive Editor which prayer has already been refused by detailed order of this Tribunal dated 06.11.2023. We see no reason to issue any direction to permit Respondent No.1 to work as Executive Editor. We have already noticed that the Appeal filed by Mr. Navin Kumar Upadhyay- Respondent No.1 before the Hon'ble Supreme Court challenging the order dated 16.12.2021 of this Tribunal is already pending. It is open for the Respondent No.1 herein who is Appellant before the Hon'ble Supreme Court to pray such order as may be advised. We have also noticed that after the order of the Hon'ble Supreme Court dated

25.02.2022 staying the CIRP, Resolution Professional has also filed an application before the Hon'ble Supreme Court seeking certain directions and clarifications which application was directed by the Hon'ble Supreme Court to be heard along with the hearing of the appeal which application is still pending and no order has been passed by the Hon'ble Supreme Court. When the Appeal before the Hon'ble Supreme Court filed by the Respondent No.1 is still pending, the Adjudicating Authority ought to have stayed his hands to issue any direction to hand over the management of the Corporate Debtor to the ex-management and the Adjudicating Authority ought to have relegated to parties to approach the Hon'ble Supreme Court for any further order or direction. It is further to be noticed that the Resolution Professional has not been discharged from the CIRP and even though Resolution Professional cannot take any steps in the CIRP, day-to-day affairs of the Corporate Debtor has to be looked after by the Resolution Professional, ex-management being not in place. Not allowing the Resolution Professional to look after day-to-day affairs of the Corporate Debtor will create a situation where all chances to revive the Corporate Debtor shall be diminished it being not a functioning unit.

15. Insofar as submission of the Respondent No.1 that even after 01.02.2023 his name is shown in the newspaper as Executive Editor, suffice it to say that it is not necessary for us to give any finding whether Respondent No.1 has been actually functioning as Executive Editor. As observed above, it is for the Resolution Professional to take decision in its wisdom as to how the Corporate Debtor should be allowed to continue as a going concern without taking any steps in the CIRP, in view of the interim order passed by the Hon'ble Supreme Court dated 25.02.2022. Respondent No.1 virtually seeks his reinstatement of the post which is clear from the prayer

made in IA No.4138-4139 of 2023 which has not been entertained in this Appeal and the Adjudicating Authority also ought to have stayed his hands from passing any order on the application filed by the parties which relates to CIRP of the Corporate Debtor

16. In view of the foregoing discussions, we are of the view that the Adjudicating Authority committed error in passing the order dated 30.05.2023. Application IA No.2403 of 2023 filed by Respondent No.1 as well as Application IA No.964 of 2023 filed by Resolution Professional before the Adjudicating Authority ought not to have entertained due to pendency of the Civil Appeal No.2662 of 2022 filed by the Respondent No.1 before the Hon’ble Supreme Court.

17. In view of the foregoing discussions, we allow these Appeals, set aside the order dated 30.05.2023 passed in IA No.2403 of 2023 and IA No.964 of 2023. Both the parties are at liberty to make appropriate application before the Hon’ble Supreme Court in pending Civil Appeal No.2662 of 2022.

18. Both the parties shall bear their own cost.