

PARTHA SARATHY SARKAR V. SPECIFIED UNDERTAKING OF UNIT TRUST OF INDIA LTD.

Partha Sarathy Sarkar,

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...Appellant

Versus

1. Specified Undertaking of Unit Trust of India Ltd
(SUUTI)

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400051

Mail Id.: administrator.suuti@uti.co.in

2. Unit Trust of India (UTI)

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3. Industrial Investment Bank of India Ltd. (IIBL)

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4. Ms. Vasantha Govindan,

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5. Ms. Kavita Srivastava

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6. Rajendra Prasad Agrawal,

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7. Moulesh Bhatt

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8. Karjan Police Station In-charge

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9. Ankit Goyal,

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New Delhi 110048 Mail – ankitgoel@aaainsolvency.in

...Respondents

Case No: Company Appeal (AT) (Insolvency) No. 1340 of 2023

Date of Judgement: 12th December, 2023

Judges:

[Justice Ashok Bhushan]

Chairperson

[Barun Mitra]

Member (Technical)

For Appellant: Mr. Adish Agarwalla, Sr. Advocate with Mr. Kairav

Anil Trivedi, Mr. Hargun Singh Kalra, Advocates.

For Respondents: Mr. Amar Vivek, Ms. Ritika Gaur, Advocates for RP. Mr. Deeptakirti Verma, Advocate.

Facts

CIRP was initiated against Modern Syntex India Limited on 28.02.2022. Appellant Partha Sarkar was appointed as IRP and later confirmed as RP. SUUTI has 74.64% voting share in CoC consisting of SUUTI, UTI and IIBL. On 19.07.2023, SUUTI emailed RP to reduce fee and costs. RP declined on same day. 18th CoC meeting was held on 26.07.2023 with agenda for change of RP. RP said request will be considered in 19th Meeting. RP

expressed inability to continue at reduced fee. Joint Lenders Meeting of CoC members held on 28.08.2023 where minimum bidder Ankit Goel was selected to replace RP. 19th CoC meeting held on 01.09.2023 where resolution passed to replace appellant with Anil Goel with 100% vote. NCLT allowed application for RP replacement on 27.09.2023. Appellant filed appeal against this order.

Elaborate Opinions of Court

The scheme of Section 27 IBC does not require giving hearing to RP before his replacement or need for RP to justify reasons for replacement. (Para 19) When resolution is passed by CoC with over 66% vote for replacement as per Section 27, RP cannot question reasons for his replacement before NCLT/NCLAT. (Paras 11, 12, 18, 19) Appointment of Ankit Goel in Joint Lenders Meeting instead of Anil Goel mentioned in 01.09.2023 resolution is not material since registration number was same. Minor errors in resolution do not invalidate replacement process. (Paras 21, 22) Grounds regarding SUUTI's failure to lodge FIR in 2018 for asset stripping, 4 years before CIRP, are not relevant to examine validity of RP's replacement in 2023. (Para 16)

Arguments by Parties

Arguments by Appellant:

RP was replaced as he declined to reduce fee, not other reasons mentioned. (Para 6) Replacement happened as RP insisted on FIR for asset stripping in 2018 which SUUTI refused. (Paras 6, 15) Appellant should have got opportunity to present full facts before NCLT but only Joint Lenders Meeting considered. (Para 6) There is discrepancy in NCLT order as Ankit Goel approved though resolution mentioned Anil Goel. (Para 6)

Arguments by Respondents:

Parties filed along with I.A. No. 5629 of 2023 is taken on record and the array of parties are permitted to be amended as prayed.

3. An I.A. No. 5665 of 2023 has also been filed by the Appellant for carrying out consequential amendment in pursuance of the liberty granted on 01st November, 2023 which I.A. is also allowed.

4. Brief facts, sequence and events of the case necessary to be noticed for deciding this Appeal are:-

i. By order dated 28th February, 2022, CIRP commenced against the Corporate Debtor-M/s. Modern Syntex India Limited. The Appellant was appointed as the IRP who was also confirmed as Resolution Professional. The CoC consist of Respondent Nos 1 to 3 (newly impleaded) in which Specified Undertaking of Unit Trust of India Ltd. (SUUTI in short) have 74.64% vote share.

ii. On 19th July, 2023, an Email was sent by SUUTI asking the Resolution Professional to reduce his fee as well as CIRP Cost. Appellant by its email informed the SUUTI on same date i.e. 19th July, 2023 that he shall not be able to reduce his fee. The CoC made a request to Resolution Professional to convene a meeting of the CoC for 25th July, 2023. A meeting of CoC was convened for 25th July, 2023 which was held on 26th July, 2023 (18th CoC Meeting). One of the Agenda Item No. 7 was "to consider, approve and vote on agenda of Resolution Professional".

iii. The meeting dated 26th July, 2023 was held as 18th CoC Meeting in which Agenda Item No. 7 was taken. On the said agenda, the Resolution Professional recorded in the minutes that Agenda Item No. 7 shall be taken in the next CoC Meeting i.e. 19th CoC Meeting since the emails were received after circulation of the notice. Chairman also expressed his inability to continue rendering the service. Subsequent to 18th CoC Meeting, a Lenders Meeting was held on 28th August, 2023 which was attended by all the three members of the CoC where Resolution was passed to replace the Appellant by Mr. Ankit Goel who quoted minimum fee of Rs. 2 Lakh per month. After the aforesaid Joint Lenders Meeting, a request was made

by Members of the CoC to convene the meeting on 30th August, 2023 however meeting could be convened on 01st September, 2023 in which resolution to replace the Appellant with Mr. Ankit Goel was passed with 100% vote share.

iv. Application was filed before the Adjudicating Authority being I.A. No. 510/JPR/2023 for approving replacement of Appellant with Mr. Ankit Goel which application has been allowed by the Impugned Order dated 27th September, 2023. Aggrieved by the said order, this Appeal has been filed.

5. We have heard Mr. Adish Agarwalla, Sr. Advocate appearing for the Appellant as well as Learned Counsel appearing for the Respondents.

6. Learned Sr. Counsel for the Appellant in support of the Appeal submits that Resolution Professional has been replaced due to reason that Appellant refused to reduce his fee. It is further submitted that Appellant has written to the SUUTI to lodge an FIR with regard to stripping off of the assets of the Corporate Debtor in June, 2018 which request was not accepted by the Member of the CoC hence the SUUTI decided to replace the Appellant. The Appellant visited the factory premises and found stripping off of the assets in June, 2018 for which Appellant requested to take appropriate action including lodging an FIR which was not acceded to by the CoC which was reason for replacement of the Appellant. It is further submitted that Appellant was not given an opportunity to place all relevant facts before the Adjudicating Authority when the Order was passed. It is further submitted

that the Adjudicating Authority has relied on Joint Lenders Meeting dated 28th August, 2023 whereas it has not taken note of minutes of the COC Meeting dated 01st September, 2023 where the agenda for replacement was considered along with all other relevant materials. It is submitted that in the agenda for replacement of the Appellant by substituting another Insolvency Resolution Professional name of Anil Goel was mentioned whereas the Adjudicating Authority approved the name of Ankit Goel.

7. Learned Counsel for the Respondents refuting the

submissions of Learned Sr. Counsel for the Appellant submits that Appellant has rightly been replaced in accordance with provisions of the Code. There was proposal for replacement by Ankit Goel whose registration number was mentioned whereas it was the Appellant who in the minutes of the meeting mentioned the name of Ankit Goel as Anil Goel. It is submitted that Appellant's replacement being in accordance with the provisions of the IBC, appellant has no right to challenge the order of the Adjudicating Authority.

8. We have considered the submissions of Learned Counsel for the parties and have perused the record.

9. As noted above, on 19th July, 2023, Member of CoC, SUUTI has written an email to the Appellant to reduce his fee and CIRP Cost which was declined by the Appellant thereafter there was request made to convene a meeting including agenda for replacement of the Resolution Professional. Notice for agenda was issued for 18th CoC meeting to be held on 25th July, 2023 which actually was held on 26th July, 2023 in which meeting one of the agenda which was Agenda Item No. 7 was to the following effect:

“Item No. 7. To consider, approve and vote on change of resolution professional”

10. The Agenda and other materials have been brought on record by the Appellant itself along with I.A. No. 5665 of 2023. In the meeting dated 26th July, 2023 of the CoC, Agenda Item No. 7 came for consideration and the Appellant being Chairman informed that since the emails were received after circulation of the notice of the 18th CoC meeting, request for replacement shall be considered in the next CoC Meeting i.e. 19th CoC meeting. Chairman further expressed his inability to continue rendering his services as Resolution Professional. It is useful to extract following from the minutes of the Agenda No. 7:

“Chairman informed that since such emails was received after circulation of notice of 18th CoC meeting therefore such

request will be considered by the RP in subsequent CoC meeting whilst issuance of fresh notice of 19th CoC meeting. Chairman again expressed his inability to continue rendering the services as resolution professional in the matter at the reduced remuneration as per the proposition by the lead CoC member. Accordingly, the only option left in the matter is changing the present resolution professional. The following resolutions are proposed:"

11. After the aforesaid 18th CoC meeting when Agenda for Replacement was not considered, Joint Lenders Meeting took place on 28th August, 2023 which was attended by all the three members of the CoC where following resolution was passed:

"MODERN SYNTEX (INDIA) LTD. (MSIL)

NCLT Case no. (IB)-39(PB)/2018-CIRP as per NCLT Order

dated 28.03.2022

Minutes of the Joint Lenders Meeting held on 28.08.2023

28.08.2023

Modern Syntex (India) Ltd. (MSIL) is in NCLT. The present RP Shri Partha Sarthy Sarkar in the Agenda of the CoC meeting held on 26.07.2023 requested for change in Resolution Professionals. Therefore, it is decided in the Joint Lenders meeting of SUUTI, UTI (MF) and IIBI held on 28.08.2023 at 2:30 p.m. that the present Resolution Professional (RP) Mr. Partha Sarthy Sarkar is to be replaced by a new RP.

We have asked quotations from four RPs. And we have received quotations from following four RPs.

1. Mr. Mohinder Singh, Stellar Insolvency Professionals LLP
2. Mr. Ankit Goel, AAA Insolvency Professionals LLP
3. Mr. Divyesh Desai, Moore Singhi Advisors LLP
4. Mr. Chirag Shah, C.R. Shah & Associates.

Sr. No.	Name of the Insolvency Professionals	Amount quoted for RP Fees
1	Stellar Insolvency Professionals LLP	Rs. 3.25 Lakhs per month
2	AAA Insolvency Professionals LLP	Rs. 2 lakhs per month
3	Moore Singhi Advisors LLP	Rs. 5 lakhs per month
4	C.R. Shah & Associates.	Rs. 4 lakhs per month

It was noted that AAA Insolvency Professionals LLP with the RP as Mr. Ankit Goel had quoted the minimum of Rs. 2 lakhs per month and hence the members of the Joint Lenders Meeting selected Shri Ankit Goel as the new RP of M/s. Modern Syntex (India) Ltd. The meeting concluded with a vote of thanks”

12. It was after the Joint Lenders Meeting that the CoC requested the Appellant to convene the meeting of the 19th CoC meeting on 30th August, 2023. Resolution Professional issued notice for agenda for 01st September, 2023 where agenda was issued where Item No. 7 was following:

“7. To consider, approve and vote on change of Resolution Professional”

13. The meeting of CoC was held on 01st September, 2023 in which Resolution to replace the Appellant with Anil Goel was passed. The Appellant himself has in the Appeal pleaded that in the meeting held on 01st September, 2023, the CoC resolved to appoint Mr. Anil Goel. The Appellant has brought on record the CoC minutes of 01st September, 2023 which according to the Appellant were circulated on 04th September, 2023. As per the appellant, apart from Resolution to replace the Appellant with Anil Goel, two other Resolutions were passed i.e. Appellant will continue to function as RP and will receive his monthly

remuneration till the confirmation of appointment of another Resolution Professional. The CoC has issued an email informing that on the said date only one Agenda was passed that is replacement of the Appellant with another Resolution Professional. For the purposes of the present case it is not in dispute, according to the Appellant himself one of the Resolution was passed on 01st September, 2023 which is to the following effect:

"Madam/Sir'

Following Resolutions were passed and voted 100%; in terms of the said resolutions request the release of funds, budget of which is already a matter of record with you COC Members.

Resolution(s)

"RESOLVED THAT pursuant to the communication of the CoC members to reduce RP fees and other related CIRP expenses to which the RP has expressed his inability, the CoC will proceed to replace the present RP with a new resolution professional of M/s Modern Syntex (India) Limited, Mr. Anil Goel having Registration No. IBBI/IPA- 001/IP-P-02671/2022-2023/14088 as proposed by the COC members prospectively, subject to compliance of section 27 of the Insolvency and Bankruptcy Code, 2016."

14. It is not necessary for us to enter into as to whether there were any other resolutions were passed regarding payment of remuneration and fee to the Appellant till confirmation of the other Resolution Professional or not. It is undisputed on 01st September, 2023 CoC with 100% vote it was decided to replace the Appellant.

15. Mr. Adish Agarwalla, Learned Sr. Counsel has made much emphasis on the submission that it was the Appellant who wrote several emails to SUUTI for taking legal action for stripping off of the assets of the Corporate Debtor in June, 2018. It is submitted that on June, 2018 illegal auctioning of the assets took place and the Appellant requested to take legal action

including lodging FIR which was not acceded to by the SUUTI which resulted in replacement of the Appellant.

16. It is relevant to notice that illegal auctioning which is alleged by the Appellant is of August, 2018 that is four years before the commencement of the CIRP which commenced on 28th February, 2022. It was for the SUUTI, to whom assets were hypothecated, as per the Appellant to take appropriate action. The fact that SUUTI decided not to lodge FIR cannot be a reason for the Appellant to contend that the decision taken for replacement of the RP cannot be approved.

17. We have further noticed that on 19th July, 2023, an email was sent by the SUUTI to the Appellant to reduce his fee and CIRP Cost which was immediately declined and in 18th CoC Meeting it was Appellant who himself has expressed, and it was noted in the minutes that he is not interested to continue any further. He has expressed his inability to continue rendering his services. In the above background, sequence and events, we see no reason to find any fault with the Resolution of the CoC replacing the Appellant with another Resolution Professional under Section 27. It is the CoC who is empowered to pass a Resolution to replace the RP. Section 27, sub-section 1,2 and 3 is as follows:

“Section 27: Replacement of resolution professional by committee of creditors. (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority."

18. The submission of the Appellant that Appellant was not given opportunity to place all relevant facts before the Adjudicating Authority especially details as contained in the minutes of 01st September, 2023 for illegal refusal of SUUTI to lodge FIR with regard to hypothecated assets of the Corporate Debtor in June, 2018, we are of the view that when Resolution was passed by the CoC resolving to replace the Resolution Professional, it is not open for the Resolution Professional to question the reasons and ask Adjudicating Authority to adjudicate upon the reasons which persuaded the CoC to pass the Resolution.

19. This Tribunal in a recent Judgment delivered on 05th December, 2023 in Company Appeal (AT) Ins. No. 1439 & 1440 of 2023, Kairav Anil Trivedi, IRP of Parenteral Drugs India Ltd. Vs. State Bank of India & Anr. has examined the similar contentions raised on behalf of the Resolution Professional/IRP which was replaced by the CoC. In the said case, Resolution was passed by CoC on 06.10.2023 to replace the IRP with another RP which was approved by the Adjudicating Authority on 17.10.2023 which order was challenged by the IRP in this Tribunal. This tribunal after noticing the contention of the parties after referring to Section 27 laid down following in Paragraph 11 and 12:

"11. Learned Counsel for the Respondents has placed reliance on the judgment of this Tribunal in Company Appeal (AT) (Insolvency) No.1037 of 2022- "Sumant Kumar Gupta vs. Committee of Creditors of M/s. Vallabh Textiles Company Ltd." where challenge made by the Resolution Professional who was replaced, on the ground that he was entitled for the opportunity to be heard after issuing notice was considered. This Tribunal after noticing Section 27 of the IBC laid down

following in paragraphs 6 and 7:-

“6. When we read Section 27(1), it clearly provides that when the CoC is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under the section. The manner provided under Subsection (2) of Section 27 is that a resolution be passed at the meeting of the CoC by vote of 66% voting share to replace the Resolution Professional and to appoint another Resolution Professional, subject to a written consent from the proposed resolution professional.

7. In the present case, the CoC in its meeting dated 04.06.2022 with 100% vote has decided to replace the Appellant with another Resolution Professional. When we look into the scheme of Section 27 as delineated by the statute, it does not contemplate any opportunity of hearing to the Resolution Professionals be given by the Adjudicating Authority before approving the proposal of new Resolution Professional. Section 27 requires the CoC to forward the name of proposed Resolution Professional to the Adjudicating Authority and the Adjudicating Authority is required to forward the name of the proposed Resolution Professional to the Board for its confirmation. The scheme of Section 27 does not indicate that Resolution Profession is to be made party and is to be issued notice before taking decision to appoint another Resolution Professional. Looking to the purpose and object of the I&B Code, where timeline is the essential factor to be taken into consideration at all stages, there is no warrant to permit a Lis to be raised by the Resolution Professional challenging his replacement by the CoC. The decision taken by the CoC is a decision by vote of 66% and when the decision is by votes of a collective body, the decision is not easily assailable and replacement is complete as per Scheme of Section 27 when the resolution is passed with requisite 66% voting share.”

12. The above judgment fully supports the submissions of the Counsel for the Respondents. When the Resolution has been passed by the CoC in accordance with the provisions of the IBC

deciding to replace the IRP, IRP cannot be heard in questioning the resolution on the ground that present was not a case where IRP could have been replaced by another Resolution Professional. The submission of the Appellant is that since the applications filed by the Appellant being Contempt Application No.7 of 2023 and IA No.2594 of 2023 for CIRP cost of Rs.76 lacs and odd are still pending, Adjudicating Authority ought not to have been decided IA Nos.1874 of 2023 and IA No.2860 of 2023. The Adjudicating Authority itself in the order has indicated that the Applications IA No.2591 of 2023 and Contempt Case No.07 of 2023 which are pending adjudication were to be heard on 26.10.2023 on which date Applications were adjourned. It has been submitted by the Counsel for the Respondents that IA No.2591 of 2023 and Contempt Case No.7 of 2023 also been heard by the Adjudicating Authority and order has been reserved on 26.10.2023."

20. This Tribunal upheld the order dated 17.10.2023 approving the replacement of the Appellant and dismissed the Appeal.

21. Now we come to the submission of the Appellant that in the Resolution dated 01st September, 2023 name of Anil Goel was mentioned whereas the Adjudicating Authority has approved the replacement with Resolution Professional- Ankit Goel.

22. Suffice it to say that name of Ankit Goel was clearly mentioned in the Joint Lenders Meeting dated 28th August, 2023 when Joint Lenders Meeting decided to replace the Appellant with Ankit Goel. Further it was the Appellant who in the minutes dated 01st September, 2023 has mentioned Anil Goel. Registration No. of Ankit Goel and that of Anil Goel mentioned in the minutes

is same as submitted by Learned Counsel for the Respondent. The mere fact that the name of RP who is to be appointed after replacement is spelled as Anil Goel instead of Ankit Goel in the minutes which was produced by the Appellant shall have no effect on the resolution for replacement and we do not find any merit in the above submission of the Appellant that

although

Appellant was decided to be replaced by Anil Goel but ultimate order is of Ankit Goel. Appellant himself has brought on record materials in I.A. No. 5665 of 2023 that written consent and affidavit of Ankit Goel which was obtained by the CoC which is at page 201 and 202 of the Application where affidavit and written consent given by the Ankit Goel has been filed. We thus

are of the view that there is no error in replacement of the Appellant by Ankit Goel as RP.

23. The Appellant in his grounds has also contended that the Adjudicating Authority has not adverted to the resolution dated 01st September, 2023 and has only relied on Joint Lenders Meeting dated 28th August, 2023. There is no dispute between the Appellant and CoC that resolution was passed on 01st September, 2023 in the 19th CoC Meeting to replace the Appellant with

another RP. The provisions of the Code has been fully complied with and the CoC having decided to replace the Appellant by CoC Meeting held on 01st September, 2023, we do not find any ground to interfere with the Order of the Adjudicating Authority approving the replacement of the Appellant with another Resolution Professional Ankit Goel.

24. We thus do not find any error in the order passed by the Adjudicating Authority approving the Replacement of the Resolution Professional, there is no merit in the Appeal, the Appeal is dismissed.