

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1624 of 2024**

[Arising out of Order dated 25.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IA- 3148 of 2024 in CP (IB)- 446(PB)2021]

**In the matter of:**

**Sandeep Kumar Bhatt**

**....Appellant**

**Vs.**

**State Bank of India & Ors.**

**...Respondents**

**For Appellant:**

**Mr. Karan Gandhi, Mr. Sikhar Tiwari and CMA  
Kamal Deep Tyagi, Advocates**

**For Respondents:**

**Mr. Manish Jha, Ms. Vishrutyi Sahni, Ms. Muskaan  
Gupta and Mr. Dheeraj Nair, Advocates for R-1  
(SBI)**

**JUDGMENT**  
**(29<sup>th</sup> August, 2024)**

**Ashok Bhushan, J.**

This Appeal has been filed by the Appellant challenging the order dated 25.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court II by which order IA No. 3148 of 2024 filed by the State Bank of India for replacing the Appellant as Resolution Professional has been allowed. Appellant aggrieved by the said order has filed this Appeal.

**2.** Brief facts of the case necessary to be noticed for deciding this Appeal are:-

2.1. An application under Section 95 was filed by the State Bank of India against a personal guarantor- Shantanu Jagdish Prakash praying for initiation of CIRP against the personal guarantor in which the Appellant was appointed a Resolution Professional. Report was also submitted by the Appellant under Section 99 of the IBC and by order dated 31.05.2024. Section 95 Application was admitted. Against the Appellant/ Resolution Professional, a show-cause notice was issued by the IBBI on 25.08.2023 and an order dated 01.11.2023 was passed by the IBBI suspending the Appellant for two years. The SBI filed an IA No. 3148 of 2024 dated 11.06.2024 praying for replacement of Appellant which application came for consideration before the Adjudicating Authority and the Adjudicating Authority by order dated 25.07.2024 replaced the Appellant.

**3.** Counsel for the Appellant challenging the order submits that the Adjudicating Authority committed error in replacing the Appellant. It was submitted that as per the order of the IBBI dated 01.11.2023, Appellant could not have been replaced and it was for the CoC of the personal guarantor to take a decision as to whether Appellant is to continue as Resolution Professional or not. It is further submitted that the CoC having not taken a decision to discontinue the Appellant, SBI who was only one Financial Creditor has no jurisdiction to file an application to replace the Appellant.

**4.** Counsel appearing for the SBI submits that the Appellant having been suspended by the IBBI for two years, he cannot be allowed to continue as Resolution Professional and the SBI who has initiated the proceeding under Section 95 has rightly filed the application to replace. Counsel for the

Respondent has also relied on judgment of this Tribunal, Chennai Bench in Company Appeal (AT) (CH) (Ins.) No. 115 of 2024- ***“Mr. S. Muthuraju vs. Mr. Arunachalam Tenzing”***.

**5.** We have considered the submissions of the Counsel for the parties and perused the record.

**6.** The Adjudicating Authority admitted the application under Section 95 filed by the SBI by order dated 31.05.2024. Copy of the order has been filed as Annexure-5 to the Appeal. In paragraph 23, the Adjudicating Authority has directed as follows:-

*“23. In view of the aforementioned, we are left with no option but to admit the petition filed under Section 95 of the Code. Ordered accordingly. Nevertheless, the creditor/applicant bank is directed to verify from IBBI as to whether any disciplinary proceeding is pending against the RP. If the current RP is facing disciplinary proceeding, the Applicant Bank will move an appropriate application, either suggesting the name of some other IP to replace the current RP or for appointment of an IP from the panel provided by IBBI to this Tribunal, as RP.*

**7.** The SBI filed the application on 11.06.2024 being IA No. 3148 of 2024 consequent to the liberty granted by the Adjudicating Authority which is pleaded by the SBI in his application. Paragraph 4 of the application is as follows:-

*“4. By Para 23 of the Admission Order, the Hon'ble Tribunal granted the Applicant the liberty to move an appropriate application to replace the RP appointed by the Tribunal. The Applicant has filed the present application in exercise of this liberty granted by this Hon'ble Tribunal.”*

**8.** The SBI, thus, has filed the application on the basis of liberty granted by the Adjudicating Authority. SBI was clearly directed to verify from IBBI as to whether any disciplinary proceeding is pending against the Resolution Professional which order was passed on 31.05.2024. Admittedly, against the Appellant, an order dated 01.11.2023 has been passed by the IBBI suspending the Appellant for two years. No exception can be taken for filing of the application by the SBI for replacement of the Resolution Professional which was consequent to the liberty granted by the Adjudicating Authority itself. The submission of the Counsel for the Appellant is that the CoC could have continued the Appellant as Resolution Professional of the personal guarantor by virtue of the order passed by the IBBI on 01.11.2023, paragraph 4.5, also does not commend us. Paragraph 4.5 of the order is as follows:-

*“4.5. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Sandeep Bhatt is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Sandeep Bhatt.”*

**9.** In the present case, Appellant was appointed as Resolution Professional in the proceeding under Chapter III of Part III- ‘Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms’. In the present case, the

Appellant/ Resolution Professional was appointed under Section 97 of the IBC. Section 98(1) entitles the debtor or the creditor to file an application before the Adjudicating Authority for replacement of the Resolution Professional. Section 98(1) 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 such resolution professional.”*

**10.** Thus, the present is a case where replacement has been directed under Section 98(1). We do not find any infirmity in the application filed by the SBI praying for replacement of the Appellant by virtue of liberty granted by the Adjudicating Authority in paragraph 23 of the order dated 31.05.2024. We, thus, do not find any error in the order of the Adjudicating Authority directing for replacement of the Appellant as Resolution Professional. There is not merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**[Arun Baroka]  
Member (Technical)**

**New Delhi**  
Anjali