

2. Brief facts of the case necessary to be noticed for deciding these Appeals are:-

2.1. CIRP against the Corporate Debtor- 'Parenteral Drugs India Ltd.' was initiated by order dated 09.02.2023. The Adjudicating Authority appointed the Appellant as IRP. After the order dated 09.02.2023, publication in the newspaper was made by the IRP on 13.02.2023. Appellant thereafter sent intimation to the Financial Creditors- State Bank of India, Punjab National Bank and IBBI. IRP received claims from SBI and PNB on 24.02.2023 and 28.02.2023 respectively. CoC was constituted by the IRP on 03.03.2023. Notice and agenda for convening first CoC meeting was issued on 03.03.2023. IRP even without any meeting of the CoC visited the plants of the Corporate Debtor on 12.02.2023 and entered into MoU dated 13.02.2023 with a new investor. On 16.02.2023, IRP visited another plant situated at Baddi in Himachal Pradesh. An IA No.1874 of 2023 was filed by the State Bank of India seeking direction to Resolution Professional to convene the meeting with agenda of voting on replacement of the IRP. The application was filed on 29.04.2023 where following prayers were made:-

"PRAYERS:

34. In view of the facts and circumstances and the foregoing submissions, the Applicant most humbly prays that this Hon'ble Tribunal be pleased to:

a. Allow the present Application;

b. Direct the IRP to convene a meeting of the CoC, with the agenda on 'voting on the replacement of the IRP, as requested by the Applicant, and as mandated by Section 22 of the IBC;

c. Direct the IRP to conclude the 1st meeting of the CoC and carry out the voting on the agendas, including the agenda of 'voting on replacement of the IRP, as proposed by the Applicant, and as mandated by Section 22 of the IBC;

d. Keep the present application pending till the time the next CoC meeting, with the agenda of voting on the replacement of the IRP', is concluded including the voting process,

e. Ad-interim reliefs in terms of prayers (b) and (c) may be granted;

f. Permit the change in the IRP/RP of the Corporate Debtor once the necessary resolution of the CoC to that effect is brought on record, as per Section 22(2)(b) of the IBC;

g. Pass such other order and / or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case which are necessary.”

2.2. The Adjudicating Authority on the said application passed an order on 12.05.2023 directing the IRP to convene the CoC meeting within one week from the date of communication of the order with the specific agenda for replacement of the IRP in the next meeting. It appears that the IRP did not convene meeting, hence, another application IA No.2860 of 2023 was filed by the State Bank of India for removal of the IRP with immediate effect in exercise of power under Section 11 of the NCLAT Rules. IRP also filed a Contempt Application No.7 of 2023 and IA No.2591 of 2023 praying for initiating Contempt Proceeding for non-deposit of Rs.5 Lakhs as per order of the Adjudicating Authority and further seeking direction to pay CIRP expenses to the tune of Rs.76,81,327/- on which application on 07.09.2023, Adjudicating

Authority issued notice to the Managing Director of the PNB to ensure compliance. 27.09.2023 was fixed for further consideration. On 27.09.2023, Adjudicating Authority passed following order on IA No.1874 of 2023 & IA No.2860 of 2023:-

“ORDER

Adv. Amir Arsiwala appeared for the Resolution Professional.

Mr. Kairav Trived, Resolution Professional present.

Adv. Rohan Agarwal a/w Adv. Shriraj Khambete i/b Saraf & Partners appeared for the SBI, PNB and CoC.

IA No. 4081/2023-

The present IA is filed for urgent hearing. Since, matter has already been fixed for hearing, the present IA No. 4081/2023 becomes infructuous.

**IA 1874/2023 IA 2461/2023 IA 2860/2023
IA 2591/2023 IA 2591/2023 CONT.A 7/2023
in C.P. (IB)/690(MB)2020**

This Bench directs CoC of Corporate Debtor to hold meeting within one week and CoC shall consider the following items-

a) Replacement of the Resolution Professional and if such Resolution is proposed, then name the proposed IRP.

b) The fees and costs claimed by the incumbent RP.

Personal presence of the bank was sought however, they are not present and they are represented by the Counsel.

List this matter along with all IAs' on 26.10.2023 for hearing/further consideration.”

2.3. In pursuance of the direction of the Adjudicating Authority, meeting of the CoC was convened on 06.10.2023 in which Resolutions were placed including the Resolution for CIRP expenses as well as the Resolution for replacement of the IRP/RP. The CoC in meeting dated 06.10.2023 dissented the Resolution for payment of CIRP costs and passed a resolution for replacement of Appellant with Mr. Prawincharan Prafulcharan Dwary. The Resolutions were approved by 100% votes of the CoC approving the resolution for replacement of Appellant. After passing of the resolution dated 06.10.2023, Applications IA No.1874 of 2023 & IA No.2860 of 2023 were listed before the Adjudicating Authority on 17.10.2023 on which date after hearing Counsel for the Financial Creditor as well as Counsel for the Appellant, allowed IA No.1874 of 2023 accepting the replacement of the Appellant. Aggrieved by the aforesaid order dated 17.10.2023, this Appeal has been filed.

3. We have heard Appellant who appeared in person and Shri Abhishek Anand, Learned Counsel appearing for the Financial Creditors.

4. The Appellant in support of the Appeal submits that the order dated 17.10.2023 has been passed in violation of natural justice. It is submitted that the order did not consider the submission of the Appellant. It is submitted that the order is non-speaking order and has been hastily passed.

It is submitted that the order for replacement of the Appellant as per Sections 22 and 27 of the IBC could have been passed only after hearing the submissions of the Appellant and adjudicating the issue raised. It is submitted that the Appellant has already filed the application for payment of CIRP fees and expenses of Rs.76,81,327/- and filed a Contempt Application for non-compliance of the order of the Adjudicating Authority, hence, till the aforesaid applications remain pending removal ought not to have been directed. The Application has already been filed by the Appellant alleging non-cooperation by the CoC. It is further submitted that the debt of both State Bank of India and Punjab National Bank has been assigned on 12.10.2023, hence, CoC has no *locus standi* to pursue IA No.1874 of 2023 & IA No.2860 of 2023 and Adjudicating Authority committed error in relying on the judgment of this Tribunal in **“*Surender Singh vs. Yes Bank Limited- (2023) ibclaw.in 131 NCLAT*”**.

5. Learned Counsel for the Respondents refuting the submissions of the Appellant submits that the Appellant has been removed by the resolution passed by the CoC with 100% vote which is in accordance with the provisions of IBC. It is submitted that the Appellant has no right to challenge the order of the Adjudicating Authority dated 17.10.2023 which order gives effect to the resolution dated 06.10.2023 of the CoC. It is submitted that the Appellant was only an IRP and had no right to challenge the resolution of the CoC passed on 06.10.2023. The Appeal filed by the Appellant is not maintainable nor Appellant has any cause of action to challenge the impugned order. It is submitted that the first meeting of the CoC was conducted on 13.03.2023

which was not concluded by the Appellant despite several requests by the CoC. Appellant has not completed the first CoC meeting and SBI filed IA No.1874 of 2023 and IA No.2860 of 2023 seeking direction against the Appellant for holding the meeting of the CoC with specific agenda for replacement of IRP. It is submitted that the Appellant did not convene the meeting of the CoC. It is submitted that the Appellant filed an Appeal against the order dated 12.05.2023 which Appeal was not entertained by this Tribunal by order dated 01.06.2023. It is submitted that the Appellant has been avoiding to appear before the Adjudicating Authority leading to passing the order dated 27.09.2023 for convening the meeting. In pursuance of the order dated 27.09.2023, meeting was convened and e-voting was held till 07.10.2023 and the resolution for replacement of the IRP was passed with 100% vote of CoC. It is further submitted that the Appellant without informing the CoC started visiting the plants of the Corporate Debtor right from 12.02.2023 and entered into MoU without any information and approval of the CoC. Appellant has thoroughly misconducted himself and has been making allegation on the CoC. It is submitted that the Appeal filed by the Appellant deserves to be dismissed.

6. We have considered the submissions of both the parties and perused the record.

7. From the facts brought on the record, it is clear that the Appellant was appointed as IRP by order of the Adjudicating Authority dated 09.02.2023 which appointment was not even confirmed by the CoC since no resolution could be passed by the CoC confirming the Appellant as Resolution

Professional. From the facts it is clear that the first agenda for 1st CoC meeting was issued only on 03.03.2023 which meeting could not be concluded by Appellant till April 2023. CoC was left with no remedy except to file an IA No.1874 of 2023 seeking a direction for convening a meeting with agenda of replacement of the IRP on which order was passed on 12.05.2023 directing the Appellant to hold the meeting within one week from receipt of the order. In spite of the order dated 12.05.2023, no meeting was convened by the Appellant with the agenda of the replacement of the IRP and ultimately the Adjudicating Authority had to pass another order on 27.09.2023 issuing direction to convene the meeting.

8. The meeting of the CoC was convened on 06.10.2023 in which agenda was included for the resolution to replace the current Interim Resolution Professional. The proposed resolution for meeting dated 06.10.2023 which is part of the record of the appeal reads as follows:-

“Accordingly the following resolution proposed Resolved to replace the current interim resolution professional Mr. Kairav Anil Trivedi, with Mr. Prawincharan Prafulcharan Dwary (Reg No.:IBBI/IPA-002/IP-N00331/2017-18/10937) as the resolution professional of Parenteral Drugs India Limited under Section 22 of the Insolvency and Bankruptcy Code, 2016, on the minimum fees as specified by the IBBI and as Der Section 34B of the Insolvency and Bankruptcy Code, 2016”,

OR

"Resolved to replace the current resolution professional Mr. Kairav Anil Trivedi, with Mr. Prawincharan Prafulcharan Dwary (Reg No.:IBBI/IPA-002/IP-N00331/2017-18/10937) as the resolution professional of Parenteral Drugs India Limited under Section 27 of the Insolvency and Bankruptcy Code, 2016, on the minimum fees as specified by the IBBI and as per Section 34B of the Insolvency and Bankruptcy Code, 2016"

9. Learned Counsel has also brought on record the result of e-voting at Page 91 of the Appeal which indicate that Resolution was assented by 100% vote of the CoC and there was no dissenting vote. In view of the resolution of the CoC passed on 06.10.2023, Appellant lost its right to continue as IRP/RP. The Appellant challenging the order contends that the CoC is not clear as to whether Resolution is passed under Section 22 or Section 27. Sections 22 and 27 which are relevant for the present case are as follows:-

"22. Appointment of resolution professional. -

(1) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than 1 [sixty-six] per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)-

(a) to continue the interim resolution professional as resolution professional [subject to a written consent from the interim resolution professional in the specified form], it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional [along with a written consent from the proposed resolution professional in the specified form].....”

“27. Replacement of resolution professional by committee of creditors. - (1) Where, at any

time during the corporate insolvency resolution process, the committee or 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.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.”

10. From the facts which have been brought on the record, it is clear that the appointment of the Appellant as IRP was never confirmed by the CoC nor any material has been brought on record to indicate that the appointment of IRP was confirmed by the CoC by majority of not less than 66% of the vote. When Appellant’s appointment as IRP has not been confirmed, the Appellant could have been replaced by the CoC under Section 22. The mere fact that in the Resolution which was placed before e-voting as extracted above, there was alternate resolution both under Sections 22 and 27 cannot be read to mean that there is any infirmity in the resolution passed for replacement with 100% vote. The submission of the Appellant that Appellant has not been heard before passing of the order and there is violation of principle of natural justice also cannot be accepted. When we look into paragraph 1 of the order, the Adjudicating Authority itself recorded that both the counsel for the Appellant and the IRP were present. The arguments raised by the Counsel for the IRP

were also noticed in paragraph 3 of the judgment where it was contended that the Applicant has no locus to file IA No.2860 of 2023. When order was passed after hearing Counsel for the Applicant as well as the IRP, we cannot accept the submission of the Appellant that the order was passed in violation of principle of natural justice. The objection which was raised before the Adjudicating Authority that the State Bank of India has assigned its debt, hence, it has no locus to file the application has been dealt with by the Adjudicating Authority in paragraph 3. It has been noticed in paragraph 3 that assignment was made on 12.10.2023 whereas the application IA No.1874 of 2023 was filed in May 2023 and the resolution to replace the IRP was passed on 06.10.2023 i.e. much before the assignment of debt. We, thus, do not find any infirmity in the resolution dated 06.10.2023 on the ground urged by the Appellant before the Adjudicating Authority.

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 Sub-section (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.

13. Learned Counsel for the Appellant has further made allegation on CoC for non-cooperation. From the facts brought on record, it does appear that Appellant even could not complete the first CoC meeting till April, 2023 and in spite of the order dated 12.05.2023 did not convene the meeting including the agenda of replacement of the IRP which meeting could be convened only after the order dated 27.09.2023. We fail to see that how the CoC can be

charged with non-cooperation. As per the scheme of the IBC, the CIRP has to be under control and supervision of the CoC and various actions of the IRP/RP require approval of the CoC. In the said facts of the present case, IRP is making allegation against the CoC and not acting in accordance with the order of the Adjudicating Authority. We are of the view that no exception can be taken to the resolution of the CoC resolving to replace the Appellant.

14. Learned Counsel for the Appellant has submitted that the judgment relied by the Adjudicatory Tribunal in **“Surender Singh vs. Yes Bank Limited”** (supra) is not applicable. The Adjudicating Authority has relied on the observations made in **“Surender Singh vs. Yes Bank Limited”** case that on account of failure of assignee to file application to continue the proceedings, the application could not have been dismissed, the original Financial Creditor could have continued the proceeding for the benefit of assignee. As noted in the facts of the present case, the application IA No. 1874 of 2023 was filed on 02.05.2023 on which orders were passed on 12.05.2023 and 27.09.2023 directing the IRP to convene the meeting of the CoC with agenda of replacement. The meeting of the CoC was held on 06.10.2023 and the assignment as claimed by the Appellant was only on 12.10.2023 which thus have no effect on the proceedings undertaken under the order of the Adjudicating Authority and the meeting convened on 06.10.2023.

15. Learned Counsel for the Appellant has also placed reliance on the judgment of the Hon’ble Supreme Court in **“Economic Transport Organization, Delhi vs. Charan Spinion Mills Private Limited and Anr.-**

(2010) 4 SCC 114” where following has been laid down in paragraphs 23 and

35:-

“23. An assignment' on the other hand, refers to a transfer of a right by an instrument for consideration. When there is an absolute assignment, the assignor is left with no title or interest in the property or right, which is the subject matter of the assignment...

35. The principles relation to subrogation can therefore be summarized thus:

.....

(iii) Where the assured executes a Letter of Subrogation, reducing the terms of subrogation, the rights of the insurer vis-vis the assured will be governed by the terms of the Letter of Subrogation:

(iv) A subrogation enables the insurer to exercise the rights of the assured against third parties in the name of the assured. Consequently, any plaint, complaint or petition for recovery of compensation can be filed in the name of the assured, or by the assured represented by the insurer as subrogee- cum-attorney, or by the assured and the insurer as co-plaintiffs or co-complainants.

(v) Where the assured executed a subrogation-cum- assignment in favour of the insurer (as contrasted from a subrogation), the assured is left with no right or interest. Consequently, the assured will no longer be entitled to sue the wrongdoer on its own account and for its own benefit. But as the instrument is a subrogation-cum-assignment, and not a mere assignment. the insurer has the choice of suing in its own name, or in the name of the assured, if the instrument so provides. The insured becomes entitled to the entire amount recovered from the wrong-doer, that is, not only the amount that the insured had paid to the assured, but also any amount received in excess of what was paid by it to the assured, if the instrument so provides”

16. The above judgment relied was a case where the Hon'ble Supreme Court was considering the issue of *locus standi* of subrogee to file complaint. The Hon'ble Supreme Court in the above case has laid down the principle relating to subrogation in paragraph 35 as noted above. The Hon'ble Supreme Court in paragraph 51 has answered the question raised in the Appeal. The complaint filed was held to be maintainable. The above judgment was not on the issue which have arisen in the present Appeal and does not support the submissions of the Appellant in the present Appeal.

17. In view of the foregoing discussions, we are of the view that there is no error in the order passed by the Adjudicating Authority dated 17.10.2023. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

New Delhi
Anjali