

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 341 of 2018

IN THE MATTER OF:

AAA Landmark Pvt. Ltd. & Anr.

...Appellants

Vs

Hari Kishan Sharma & Ors.

....Respondents

Present:

For Appellants: Mr. Ronit R. Nagpal, Advocate.

**For Respondents: Mr. Anurag Sharma, Resolution Professional with
Mr. Gunjan Mittal, Advocate for R-2 (RP).**

**Mr. Suresh Dobhal & Mr. Yugank Goel, Advocates
for R-3.**

**Mr. Neeraj Yadav and Mr. Davesh Bhatia,
Advocates for R-5 (YES Bank).**

Mr. Anirudh Wadhwa, Advocate for R-7.

Mr. Vijay Shankar, Advocate for R-8.

**Mr. Amit Prasad, Mr. Kunal Seth and Mr. Apoorv
Gupta, Advocates for R-10.**

O R D E R

25.07.2018: The Appellants (Financial Creditors) members of the Committee of Creditors are unhappy with the impugned order dated 12th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench in CA No.228 of 2018 in (IB)-55(ND) 2018, whereby and whereunder Mr. Anurag Sharma, Interim Resolution Professional have been allowed to continue as Resolution Professional and collate the claims before convening the meeting of Committee of Creditors. He has also been asked to file report on progress made.

2. The grievance of the Appellants is that Mr. Anurag Sharma, Interim Resolution Professional was replaced by another person as a Resolution Professional. However, the said order has not been given effect by the Adjudicating Authority and the Interim Resolution Professional has been allowed to continue.

3. Mr. Neeraj Yadav, learned counsel appearing on behalf of 'YES Bank', one of the member of Committee of Creditor submits that Appellants are related party to the Corporate Debtor. However, such submission is disputed by the learned counsel for the Appellant. Further, as we find that no specific finding having given by the Adjudicating Authority with regard to such allegation, we refrain from giving any finding on the same.

4. As per Section 16(5), of I&B Code the term of Interim Resolution Professional cannot exceed 30 days from the date of his appointment. The Resolution Professional required to be appointed under Section 22 of the I&B Code in the 1st meeting of Committee of Creditors, which by majority vote of not less than 75% (now amended) of voting share of Financial Creditors who may either resolve to appoint the Interim Resolution Professional as Resolution Professional or to replace the Interim Resolution Professional by another Resolution Professional. The Adjudicating Authority thereafter required to forwarded name of the proposed Resolution Professional to IBBI in terms of Section 22(4) of I&B Code.

5. From the impugned order it is not clear as to whether the Committee of Creditors by its majority decision has decided to continue the Interim Resolution Professional or to replace him by another Resolution Professional. Such issue has not been decided by the Adjudicating Authority in the impugned order dated 12th June, 2018.

6. In the present case, we find that in view of 'Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018', which has come into effect since 6th June, 2018, as allottees of real estate property have been treated to be a 'Financial Creditor', the Adjudicating Authority has asked the Interim Resolution Professional to constitute a proper Committee of Creditors as without consulting

the full member of the Committee of Creditors, which will include representative of allottees of real estate, no decision can be taken under Section 22, to decide whether the Committee will continue with or replace the Interim Resolution Professional.

7. At this stage, it is relevant to notice that Section 16(5) stands amended since 6th June, 2018 and in terms of which the Interim Resolution Professional can continue till the date of appointment of the Resolution Professional under Section 22. The sealing of 30 days, which was earlier prescribed, has been lifted. In that view of the matter any decision earlier taken by the Committee of Creditors prior to 6th June, 2018 relating to appointment of Resolution cannot be given effect.

8. In view of the development aforesaid and amendment made in the I&B Code, we find no reason to interfere with the impugned order dated 12th June, 2018. However, we give liberty to the Committee of Creditors to take a call for appointment of Resolution Professional under Section 22 after full constitution of the Committee of Creditors including the representatives of the allottees of real estate.

9. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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