

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 687 of 2020**

**IN THE MATTER OF:**

**Kanakabha Ray**

**...Appellant**

**Versus**

**Narayan Chandra Saha & Ors.**

**...Respondents**

**Present:**

**For Appellant :**

**Mr. Krishna Raj Thaker, Mr. Abhinav Choudhary and  
Mr. Jai Narayan Gupta, Advocates**

**For Respondents :**

**Mr. Abhijit Sinha and Mr. Jishnu Chawdhury, Mr.  
Kuldip Mallick and Mr. Santosh Kumar, Advocates  
for Caveator**

**ORDER**

**(Through Virtual Mode)**

**18.08.2020** Mr. Kanakabha Ray is in appeal against the order dated 3<sup>rd</sup> July, 2020 formulated by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by virtue whereof 'Committee of Creditors' was directed to replace the Appellant – Mr. Kanakabha Ray (Resolution Professional) with a new 'Insolvency Resolution Professional' within one week on the ground that the Appellant had been in gainful employment of the 'Financial Creditor'/'Union Bank of India' for 34 years and had been dealing with the accounts of the 'Corporate Debtor' which facts were unknown to the 'Corporate Debtor' previously. The impugned order is assailed on the ground that the removal of the 'Interim Resolution Professional' who had been appointed and confirmed can be carried out only with concurrence of 'Committee of Creditors'.

After hearing the learned counsel for the Appellant, we find that admittedly the Appellant had been in gainful employment of the 'Financial Creditor' for 34 years and had been dealing with the accounts of the 'Corporate Debtor' – a fact

which the 'Corporate Debtor' claims not to be in know-of previously. The Appellant may not be currently in employment of the 'Financial Creditor' or drawing salary under it but the fact remains that on account of services rendered in past an element of loyalty is there which cannot be ignored. In view of this fact appreciation on the part of the 'Corporate Debtor' that the Appellant would not be fair in his working as 'Resolution Professional' cannot be dismissed off-hand more so when an instance of deviation was pointed out which the Appellant, when confronted, admitted as a mistake. This factual position emanates from the impugned order. This is independent of any prejudice caused actually and factually as the bias has to be viewed from the perspective of the 'Corporate Debtor' on the mere basis of apprehension on account of past services rendered by the Appellant with the 'Financial Creditor'. In such circumstances, no exception can be taken to the powers of the Adjudicating Authority acting independent of the opinion of the 'Committee of Creditors' in this regard. This case is squarely covered by the judgment rendered by this Appellate Tribunal in **'State Bank of India vs. M/s. Metenere Ltd. – Company Appeal (AT) (Insolvency) No. 76 of 2020'** decided on 22<sup>nd</sup> May, 2020. Paragraphs 7 and 8 which are relevant and germane to the disposal of instant appeal are reproduced herein below:

“7. This Appellate Tribunal had an occasion to consider ineligibility or disqualification for appointment as 'Interim Resolution Professional' or 'Resolution Professional'. Taking note of the relevant provisions of law in **“State Bank of India v. Ram Dev International Ltd. (Through Resolution Professional)– Company Appeal (AT) (Insolvency) No. 302 of 2018”** decided on

*16<sup>th</sup> July, 2018, this Appellate Tribunal observed that merely because a 'Resolution Professional' is empanelled as an Advocate or Company Secretary or Chartered Accountant with the 'Financial Creditor' cannot be a ground to reject the proposal of his appointment unless there is any disciplinary proceeding pending against him or it is shown that the person is an interested person being an employee or on the payroll of the 'Financial Creditor'. Admittedly, no disciplinary proceedings are pending against Mr. Shailesh Verma and he is not on aforesaid panel or engaged as a retainer by the 'Financial Creditor'. He had a long relationship with the 'Financial Creditor', spanning around four decades, before demitting office as the Chief General Manager in 2016 but currently he is merely a pensioner drawing pension as a benefit earned for the past services in terms of the relevant Service Rules which he is getting independent of the benevolence of the ex-employer i.e. the Appellant- 'Financial Creditor'. But it cannot be denied that the Appellant restricted its choice to propose Mr. Shailesh Verma as 'Interim Resolution Professional' obviously having regard to past loyalty and the long services rendered by the later. This conclusion is further reinforced by filing of instant appeal by the 'Financial Creditor' who is upset with the impugned order directing the Appellant- 'Financial Creditor' to substitute the name of 'Interim Resolution Professional' in place of Mr. Shailesh Verma. This has to be viewed in the context of apprehension of bias raised by the Respondent- 'Corporate Debtor' for the*

*apprehension of bias necessarily rests on the perception of Respondent- 'Corporate Debtor'. It is profitable to refer to the following observations of the Hon'ble Apex Court in **"Ranjit Thakur v. Union of India and Ors. - (1987) 4 SCC 611"**:*

*"17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, "Am I Biased?"; but to look at the mind of the party before him"*

8. *The fact that the proposed 'Resolution Professional' Mr. Shailesh Verma had a long association of around four decades with the 'Financial Creditor' serving under it and currently drawing pension coupled with the fact that the 'Interim Resolution Professional' is supposed to collate all the claims submitted by Creditors, though not empowered to determine the claims besides other duties as embedded in Section 18 of the 'I&B Code' raised an apprehension in the mind of Respondent- 'Corporate Debtor' that Mr. Shailesh Verma as the proposed 'Interim Resolution Professional' was unlikely to act fairly justifying the action of the Adjudicating Authority in passing the impugned order to substitute him by another Insolvency Professional. Observations of the Adjudicating Authority in the impugned order with regard to 'Interim Resolution Professional' to act as an Independent Umpire*

*must be understood in the context of the 'Interim Resolution Professional' acting fairly qua the discharge of his statutory duties irrespective of the fact that he is not competent to admit or reject a claim."*

We find no infirmity in the impugned order. The appeal is accordingly dismissed.

**[ Justice Bansi Lal Bhat ]  
Acting Chairperson**

**[Justice Jarat Kumar Jain]  
Member (Judicial)**

**[ Shreesha Merla ]  
Member (Technical)**

/ns/gc/