

3. The Adjudicating Authority by impugned order dated 13th March, 2019 rejected the application for change of 'Interim Resolution Professional' and for appointment of 'Mr. Santanu T. Ray' as 'Resolution Professional' though the decision was taken with 100% voting share of 'Committee of Creditors'. It was rejected on the ground that 'Committee of Creditors' failed to put forth any tenable or valid or genuine reasons for the same. The matter relating to extension of time is pending.

4. Learned counsel appearing on behalf of the Appellant submitted that during 180 days, no progress was made by the 'Interim Resolution Professional' - 'Mr. S. Gopalakrishnan', who was subsequently appointed as 'Resolution Professional'. For the said reason, it was decided to appoint another 'Resolution Professional' with 100% voting share of 'Committee of Creditors'.

5. Ms. Udit Singh, learned counsel appears on behalf of 'Mr. S. Gopalakrishnan', IRP, who is still continuing as 'Resolution Professional' and 'Mr. S. Gopalakrishnan' is also present in person. It is submitted that the 'Committee of Creditors' have now made various allegations against the Resolution Professional - 'Mr. S. Gopalakrishnan', which are not based on record and will affect the career of the 'Resolution Professional'. She further submits that 'Information-Memorandum' was not prepared because of non-cooperation of the Directors/Partners of the 'Corporate Debtor'. However, we find that the aforesaid fact was not brought to the notice of the Adjudicating Authority by the IRP - 'Mr. S. Gopalakrishnan' within 30 days during which the IRP was supposed to take possession of the record and the 'Corporate Debtor'. In fact, for one or other reason, the matter could not progress. In this background, the 'Committee of Creditors', by 100% voting share decided to replace the 'Resolution

Professional’ - ‘Mr. S. Gopalakrishnan’ and proposed another Resolution Professional – ‘Mr. Santanu T. Ray’. As we find that the Adjudicating Authority rejected application on the basis that no specific ground has been given for replacement of ‘Mr. S. Gopalakrishnan’, but we are of the opinion that if any ground is given against the ‘Resolution Professional’ - ‘Mr. S. Gopalakrishnan’ for removal, it would require first decision on the correctness of the ground and would delay ‘IRP’ and such procedure is not in interest of the process. Sections 22 and 27 of the I&B Code do not require giving reasons for replacement and Adjudicating Authority is not required to decide on such reasons. The ‘Committee of Creditors’, therefore, did not reflect any allegation or any proceeding against ‘Mr. S. Gopalakrishnan’ and simply decided to replace him. Further in the facts and circumstances, we are of the view that the Adjudicating Authority though decided the matter relating to the ‘Resolution Professional’ should have also decided the extension of period. We make it clear that the ‘Committee of Creditors’ having not recorded any allegation against ‘Mr. S. Gopalakrishnan’, IRP/ RP, should not be taken into consideration for any action against ‘Mr. S. Gopalakrishnan’.

In view of the aforesaid observations above, we set aside the order dated 13th March, 2019 and allow the ‘Committee of Creditors’ to engage ‘Mr. Santanu T. Ray’ as ‘Resolution Professional’ if there is no proceeding pending against him.

Insofar as the fee and cost incurred by ‘Mr. S. Gopalakrishnan’ is concerned, he will place the evidence in support of the fee and cost incurred by him and ‘Committee of Creditors’ will decide the same and admitted dues to be released in his favour by the ‘Committee of Creditors’, which may be adjusted

from the resolution cost. 'Mr. S. Gopalakrishnan' will hand over the charge to 'Mr. Santanu T. Ray'.

Further in the interest of the 'resolution process', we extend the period for 90 days in addition to 180 days, which have already lapsed. The extension of period is from prospective date from the date of receipt of certified copy of this order. In case the application has filed by the 'Committee of Creditors' for extension of time before the Adjudicating Authority, that application shall also stands disposed of.

The appeal is allowed with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/ns/sk