

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

11.05.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.1407 of 2022

Sh. Sanjeev Kumar Arora

...Appellant

Vs

1. Deepak Thukral

...Respondent No.1

2. M/s Lakshmi Precision Screws Limited

...Respondent No.2

3. M/s Hind Tradex Limited

...Respondent No.3

(Arising out of Order dated 21.10.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) in CA No. 69/2019 and in Company Petition No. IB 155/Chd/Hry/2018.)

For Appellant: Mr. Arun Saxena, Mr. Rahul Kr. Singh, Mr. Amit Verma,
Advocates

For Respondent: Mr. Vishal Bhatnagar and Mr. Veer Pratap Singh,
Advocates for RP

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

This Appeal is preferred by the erstwhile statutory auditor of the CD challenging an Order passed in I.A. 69 of 2019 in CP (IB) No.155/Chd/Hry/2018 dated 21.10.2022, which the RP had taken out under Section 19, IBC, 2016.

2. The uncontroverted facts are:

- a) On 27.02.2018, the appellant was appointed as the statutory auditor of the CD by its Board for the year 2017 – 2018. On 15.05.2018, the EOGM of the CD approved the appointment of the appellant as the statutory auditor.
- b) While so, barely two months thereafter, on 24.07.2018, CIRP was initiated against the CD.
- c) Pursuant to its appointment on 10.09.2018, the appellant sent an e-mail to the RP seeking certain particulars and repeated his efforts vide another e-mail dated 27.09.2018. On receipt of the second e-mail, on the same date, the RP had sent a written e-mail to the appellant wherein he had indicated that he was not obtaining any support from the staff of the CD.
- d) It is in these circumstances the 5th meeting of the COC was convened. On 16.11.2018, the COC met and it *inter alia* resolved to change the statutory auditor owing to certain issues connected with the appellant's remuneration which the Board of the CD had originally agreed to pay him. The COC had also sought appellant's resignation along with a NOC for appointing a new statutory auditor. In deference to the said resolution and request, on 21.02.2019, the appellant had tendered his resignation.

3. Shortly before the appellant tendering the resignation, the RP/respondent herein had filed IA 69 of 2019, the Order passed in which is the subject matter of the present appeal for a direction to the appellant to furnish

certain information. In the affidavit filed in support of this application, the RP would allege that he has been asking for a detailed inventory list relating to the third quarter of the CD ending 31.12.2017, for which the Appellant had prepared a Limited Review Report. Further the Appellant was also requested to provide the documents such as management certificate/ representations or any other working documents which must be in his possession on the basis of which, he had given his Limited Review Report for the third quarter ended on 31.12.2017. Curiously enough, the RP has *inter alia* prayed for a direction to the appellant herein to conduct the statutory audit for the financial year 2017-2018 in spite of the fact that he had been removed by the COC when the only formality of appellant's resignation remained to be completed.

4. The appellant herein in its reply before the Adjudicating Authority has contended the following:
 - a) The Appellant is a Chartered Accountant (FCA) and partner of M/s Arora & Choudhary Associates, duly appointed as Statutory Auditor of the Corporate Debtor for FY 2017-18, and had only conducted a limited review for the third quarter (Oct-Dec 2017) based on records produced by management. The statutory audit could not be undertaken due to non-availability of complete books of accounts.
 - b) After commencement of CIRP on 18.07.2018, management vested with the RP, who failed to provide necessary records despite repeated requests from the Appellant. The appellant continuously requested financial records via emails to initiate the audit but delays were solely

attributable to non-cooperation and non-availability of records with the RP and staff. The RP himself admitted, including in email dated 27.09.2018, that records were incomplete due to lack of staff support.

- c) All documents and information available with the appellant have already been shared with the RP and no material has been withheld and allegations of non-cooperation are false and baseless. The appellant never retained extracts or working papers beyond the limited review, as no statutory audit was conducted and documents were returned to management.
- d) The RP has acknowledged in emails (including 12.01.2019) and CoC minutes that the appellant has been cooperating and the present application under Sections 19(2) and 19(3) of the IBC is malafide, frivolous, and filed without any substantive allegation or proof.
- e) The real dispute pertains to audit fees, where the RP arbitrarily reduced the fee to ₹5,00,000 without basis as against ₹18,00,000 approved by shareholders and the appellant had offered a voluntary reduction of 20% in fees, which was suppressed by the RP before the CoC. The RP misled the CoC by not disclosing the Appellant's willingness to reduce fees and obtained approval for change of auditor based on incomplete and misleading facts. The issue of fee reduction was never placed before or approved by the CoC only change of auditor was discussed.
- f) The CoC meeting dated 16.11.2018 was conducted in violation of IBBI Regulations, as no proper agenda, supporting documents or voting process (as required under Regulation 21(3)) was followed. No valid voting with the requisite 66% majority under Section 28(3) of the IBC

was conducted. Hence, any approval to change the auditor is void ab initio.

- g) The RP has exceeded his authority and misused powers under the IBC by attempting to alter the appointment and remuneration of the statutory auditor. The appointment and removal of a statutory auditor are governed by Sections 139 and 140 of the Companies Act, 2013, requiring shareholder approval and where applicable, Central Government approval. The RP and CoC cannot override shareholder decisions or statutory provisions under the Companies Act, 2013.
- h) IBBI Circular dated 03.01.2018 mandates compliance with all applicable laws, including the Companies Act, during CIRP and auditor-related changes must follow due legal procedure. The MCA Circular dated 25.10.2017 only limits shareholder rights in specific contexts such as resolution plans and does not override general requirements under company law.
- i) The RP has no locus to seek directions under Section 19(2) read with Section 28 for compelling audit at reduced fees or forcing resignation. The prayer seeking direction to compel the Appellant to resign and issue a No Objection Certificate is illegal, arbitrary and contrary to law and constitutional principles.
- j) No tribunal has the authority to compel resignation of a duly appointed professional and removal can only occur in accordance with statutory procedure and on grounds of misconduct. The Appellant has always been willing to cooperate and continue audit services subject to mutually agreed or shareholder-approved fees.

- k) The audit fee, if undertaken during CIRP would form part of CIRP costs and can be paid in accordance with the resolution plan or liquidation process. The delays in statutory filings (Income Tax, ROC, SEBI) are attributable to non-availability of records and actions of the RP, not due to any fault or non-cooperation of the Appellant.
- l) The RP has acted arbitrarily, suppressed material facts and misused statutory provisions rendering the application liable to be dismissed with costs.
5. When this petition was pending, the Adjudicating Authority had passed an interim Order dated 16.10.2019 wherein it has observed that the appellant is under an obligation to furnish the required information as referred to by the RP and that the record placed before the Adjudicating Authority did not indicate that the appellant had discharged its duty to that extent. Eventually, the Adjudicating Authority had passed the following Order:
- 5) From the perusal of the facts narrated above, it is evident that the respondents have failed to discharge the responsibility under the Code with regard to sharing of information with the Resolution Professional. As per Section 19(1) of the Code, the Respondent is under obligation to extend all assistance and cooperation to the RP as required in managing the affairs of the company. By not responding to the notices issued during the present proceedings, the respondents have only lent strength to the contention of the Resolution Professional that such non-compliant behaviour is intentional and premeditated.*
- 6) In view of the above discussion, we direct Mr. Sanjeev Kumar Arora-Respondent, Statutory Auditor, to cooperate and give access to all documents/details as sought by the applicant. They are*

further directed to assist the applicant-RP in completing the statutory compliances as required to complete the audit. The respondent is further directed to provide pending information required by IRP. All the aforementioned compliances be made within two weeks from the date of this order, failing which the applicant-Resolution Professional is at liberty to approach local police on the basis of this order and local police to render all necessary assistance to Resolution Professional. In view of the above discussion, the respondent Statutory Auditor is hereby directed to share all the information, documents etc., with the Resolution Professional within 10 days of this order and take forward the pending audit work and complete the same within a period of 45 days. In case of a lack of willingness to act as Statutory Auditor on the part of the respondent, he is directed to file his resignation along with his No Objection Certificate only immediately after handing over all the required information and pending documents to the Resolution Professional.

Arguments

6. The learned Counsel for the appellant submitted:
 - a) the RP requires the appellant to furnish particulars of the latter's limited review, its worksheets etc. but the appellant had already handed over the same to the auditor appointed by the RP and this was acknowledged him could be seen from the appellant's e-mail dated 10.01.2019 and the reply mail dated 12.01.2019.
 - b) Secondly, the appellant is a statutory auditor, an external agency and was not the custodian of the records of the CD.

- c) Thirdly, the appellant had resigned and has no access to any of the records of the CD nor is he in possession of any such documents.
- d) Fourthly and significantly, today the CIRP stands concluded with the Adjudicating Authority rejecting the plan and ordering liquidation of the CD.

7. Per contra, the learned counsel for the respondent argued:

- a) the appellant, in his capacity as the Statutory Auditor, is required to furnish the particulars relating to the limited review including inventory details and supporting working papers, which he has failed to provide despite repeated requests made through various email communications dated 12.01.2019, 19.01.2019 and 23.01.2019.
- b) Secondly, it was submitted that the appellant cannot evade his statutory obligation of cooperation under Section 19 of the IBC, 2016 and contend that he does not possess the documents sought, as the same is contrary to established auditing standards including SRE 2410, which mandate due diligence and maintenance of working papers.
- c) Thirdly, despite approval of the CoC for replacing the appellant as the statutory auditor of the CD, the RP was unable to appoint a new auditor due to the failure of the appellant to timely resign and furnish a No Objection Certificate. It has to be seen in the context of serious discrepancies discovered in inventory during the CIRP, necessitating production of records relied upon by the appellant in his limited review report, which the appellant had failed to provide.

Discussion and decision

8. Principally, we are not impressed why the respondent is harping on his resistance to this appeal, on the merit of his defense apart. Today, the fact remains that a resolution plan of a certain resolution applicant had been approved by the CoC. That might have been rejected by the Adjudicating Authority and liquidation was ordered is a different issue, but so far as the COC – RP combination goes, they apparently had done what is required to be done for a successful insolvency resolution process, and there its responsibility stops. What purpose has the RP in seeking the information now? At least it has not deterred the same RP from preparing its information memorandum and the CoC approving a plan based on it.

9.1 If Sec. 19 of IBC is turned to, it only mandates the corporate debtor, its promoters or any other person associated with the management of the CD to extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor. Sec.19(1) which is relevant now, reads as below:

“Section 19: Personnel to extend cooperation to interim resolution professional.

1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.”

If this provision is keenly observed, Sec.19 does not on its face state anything specifically about any need to deliver information, but broadly state, (a) who are required to assist or cooperate with the RP; and (b) the purpose for which such assistance or cooperation may be insisted by the IRP or the RP.

- 9.2 Turning to the first aspect, what is the nature of assistance or cooperation which are required to be rendered to the IRP? Sec.19(1) does not specify them, but indicate that such assistance or cooperation as may be necessary for the IRP/RP for *managing the affairs of the corporate debtor*. If Sec.20(1) is turned to, it states that the “*interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operation of the corporate debtor as a going concern.*” This idea is further reinforced in sec.23(1) where the Code says, “*..the resolution professional shall conduct the entire corporate insolvency resolution process and manage the affairs of the corporate debtor during the corporate insolvency resolution period.*” The only apparent difference between Sec.20(1) and 23(1) is that the former is associated with the duty of the IRP whereas the latter relates to that of the RP. But the objective is identical: to run the affairs of the CD as a going concern and to protect its properties. Therefore, the assistance which the RP may insist within the meaning of Sec.19(1) can relate only to such information which may be considered necessary by the RP for running the CD as a going concern and for the protection of its properties.

- 9.3 The next aspect is, whom an IRP or the RP may insist to assist him or cooperate with him? Here, Sec.19(1) thoughtfully employs the phrase, “*..the personnel of the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor shall extend all assistance ..*” This would imply that unless a person is associated with the management of the CD prior to the admission of the CD to CIRP, it might be difficult to hold that such person would be under an obligation to assist the RP under Sec.19 IBC.
- 9.4 To sum up this idea, under Sec.19(1), an IRP or a RP, as the case may be, may insist only those personnel of the CD which includes its directors, and/or any other person who were associated with the management of the corporate debtor to assist or to cooperate with the him in his effort in managing the CD for running it as a going concern and for the protection of CD’s properties. There cannot be any other way of constructing the ambit of Sec.19(1) IBC.
- 9.5 Turning to sharing of information which an IRP or the RP often seeks under Sec.19, it is surely an aspect of assistance or cooperation which Sec.19(1) underscores, but then it is qualified by three aspects: (a) such information can relate only to those which are required for managing the affairs of the CD as a going concern or for protection of its properties; (b) the person from such information is sought must have been associated with the management of the CD before the CD was admitted to CIRP; and (c) most critically, such information as sought must be in the custody of such person from who it is sought, or it should have at least been shown

that the person concerned had access to those information. After all, no person can part with something that he does not possess.

10. Turning to the present case, we observe the following aspects in the context of the law as we have stated in the previous paragraphs:

a) Does the appellant, a former statutory auditor of the CD, can be considered as a person who was associated with the management of the CD before the CD was admitted to CIRP, no matter whether the information so sought was necessary to manage the CD as a going concern? A statutory auditor is a professional who by the very nature of the audit to be undertaken cannot be associated with the company whose affairs he is to audit. On the contrary, a statutory auditor is only required to hold a mirror vis-à-vis the performance of a company, more particularly its financial health to the stakeholders of the Company. How then to term a statutory auditor as one who is associated with the management of the CD, or to equate him or her to the one who were actually in the management of the company? It is plainly difficult to hold that the appellant, who was appointed as a statutory audit only couple of months before the CD was admitted to CIRP and was also removed soon thereafter, be termed as one who is associated with the management of the CD. The RP appeared to have a faulty start to his endeavour to gather information.

b) Irrespective of the same, has the appellant any of the information required by the RP? In the instant case, admittedly the appellant vide its e-mail dated 10.01.2019 has informed the RP that the records are

with the CD. And, in another WhatsApp communication dated 23.02.2019, the RP has shared the file pertaining to the CD with the auditor of the RP, the receipt whereof was duly acknowledged. When the appellant has denied the availability of the documents with him, unless it is established beyond doubt that the appellant, it will be futile to issue a direction to the appellant to part with the documents or information that he may not possess. The RP herein quotes certain procedure which the ICAI has evolved for statutory auditors to follow. It does not imply that the appellant necessarily possesses the information/documents which the RP requires. It requires separate proof.

- c) Thirdly, how the information now required is relevant for keeping the CD as a going concern. In this case, without the information required, Information Memorandum has been prepared, EOI issued, plans received, and indeed the CoC of the CD had approved a plan. That it was not later not approved by the Adjudicating Authority is a different matter, but it does inform us that a plan could be approved by the CoC without the information sought from the appellant. And, today, the CD is ordered to be liquidated. Where then is the need for managing the CD by the RP? The RP appears to pointlessly litigating.

11. To conclude, we consider that the Order passed by the learned Adjudicating Authority cannot be sustained for, (a) it has not taken note of the role of the Statutory auditor and his role in the management of the CD; (b) without ascertaining whether the information sought was available

with the appellant; (c) without examining the statement of the RP's auditor acknowledging the receipt of the documents from the appellant. And today, the whole exercise appears as an utter waste of judicial time as the liquidation has been ordered but only after the Adjudicating Authority had rejected the resolution plan as approved by the CoC.

12. The appeal is accordingly allowed, and the order of the Adjudicating Authority dated 21.10.2022 in I.A./ CA No. 69/2019 in C.P. No. IB 155/Chd/Hry/2018 is hereby set aside.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

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