NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

APPELLATE JURISDICTION

23.09.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

JATINDRANATH SWAIN, MEMBER (TECHNICAL)

Company Appeal (AT) (CH) (Ins) No.191/2022

In the matter of:

MR. S. VISWANATHAN
Former Resolution Professional of
Maylari Agro Products Ltd.,
10, 6th A-Cross, Ramaswamy Palya,
Vignana Nagara,
Bangalore-560 037. **... Appellant**

Vs

CANARA BANK
No.96, South End Road,
South End Circle,
Bangalore - 560 004. **... Respondent**

WITH

Company Appeal (AT) (CH) (Ins) No.231/2022
(IA No.496/2022)

In the matter of:

MR. S. VISWANATHAN
Former Resolution Professional of
Maylari Agro Products Ltd.,
10, 6th A-Cross, Ramaswamy Palya,
Vignana Nagara,

Bangalore-560 037. **... Appellant**

Vs

CANARA BANK
No.96, South End Road,
South End Circle
Bangalore - 560 004. **... Respondent**

Present :

For Appellant : Mr. S. Viswanathan, Party-in-Person

For Respondent : Mr. M.L. Ganesh, Advocate

JUDGMENT
(Hybrid Mode)

[Per: Jatindranath Swain, Member (Technical)]

1. The Company Appeal (AT) (CH) (Ins) No.191/2022 has been filed under Section 61 of the IBC, 2016 by Mr. S. Viswanathan, former RP of Maylari Agro Products Ltd., the Appellant herein, challenging the order dated 30.11.2021 passed by the Adjudicating Authority, National Company Law Tribunal, Bengaluru Bench, in I.A. No. 349 of 2021 in C.P. (IB) No.02/BB/2020 passed under Section 9 of the IBC, 2016. By the Impugned Order, the Adjudicating Authority passed the following order:

> *"3. In view of the order passed in I.A. No.276 of 2021 in C.P. (IB)No,02lBBl 2020, and for the identical reasons the instant I.A. is liable to be dismissed. Accordingly, I.A. is dismissed."*

2. Another Company Appeal (AT) (CH) (Ins) No.231/2022 has been filed by the Appellant challenging the order dated 30.11.2021 passed by the

Adjudicating Authority, National Company Law Tribunal, Bengaluru bench, in I.A.No.276 of 2021, in C.P. (IB) No.02/BB/2020 passed under Section 9 of the IBC, 2016, wherein the following direction was passed:

> *"10. In the circumstances, and in view of the clear mandate of Section 27 of the IBC and in view of the failure in conducting the CIRP by the Respondent in accordance with the Code and Regulations made thereunder, the instant IA is allowed. Accordingly, the Respondent is replaced as the IRP of the Corporate Debtor i.e. M/s. Mylari Agro Products Ltd. and Ms. Shirley Mathew is appointed as the Resolution Professional in place of the Respondent. The Law Research Associate of this Tribunal has checked the credentials of Ms. Shirley Mathew and there is nothing adverse against her. The existing IRP is directed to handover all the records to the new Resolution Professional. The above new RP is directed to take immediate steps to complete the CIRP process in question, within stipulated period, in accordance with the Code and Regulations made thereunder.*
>
> *11. Accordingly, I.A. is disposed of."*

3. The brief facts giving rise to both the Appeals are as follows:

(i) The Corporate Debtor, M/s. Maylari Agro Products Ltd., was admitted into the Corporate Insolvency Resolution Process ("CIRP") by the Adjudicating Authority on 08.03.2021 in C.P. (IB) No.02/BB/2020, filed by Shree Ratna Farm Products, the Operational Creditor, and the Appellant was appointed as the Interim Resolution Professional ("IRP").

(ii) After his appointment, the Appellant, as IRP, convened the first meeting of the Committee of Creditors ("CoC") on 09.04.2021. The Financial Creditors consisted of Canara Bank, having an 84.6% voting share, which is the Respondent herein, and Karnataka Bank, having a 15.4% voting share. As per the minutes of the meeting drafted by the Appellant, both the Financial Creditors were reported to have unanimously resolved to retain the Appellant as the Resolution Professional ("RP") at a professional fee of Rs. 3 lakh per month, plus applicable taxes, which subsequently disputed by the Respondent, Canara Bank, when the minutes were circulated.

(iii) On 26.04.2021, the Respondent sent a letter to the Appellant withdrawing its consent for his appointment as the RP, raising certain allegations against him and demanding that the CoC be reconvened to consider the matter. On the following day, the RP replied to the Respondent, denying the allegations raised against him.

(iv) Thereafter, the Respondent filed I.A. No. 276 of 2021 before the Ld. NCLT, seeking directions for the replacement of the Appellant with a new RP. Ld. NCLT heard the application on 17.09.2021 and directed the Appellant to convene a meeting of the CoC within one week and pass a resolution for his replacement. Pursuant to the said direction, on 21.10.2021, the Appellant convened the 2nd meeting of the CoC, wherein a resolution for his replacement with other RP was placed for consideration. The Respondent voted in favour of replacing the Appellant, whereas the other Financial Creditor voted against the resolution.

(v) The Appellant thereafter filed I.A. No. 349 of 2021, seeking reconfirmation of his appointment. In the said counter application IA No.349/2021, the Ld. NCLT, on 27.10.2021, directed the parties to amicably settle the issue concerning the professional fees and expenses of the RP.

(vi) Pursuant thereto, on 30.11.2021, the Adjudicating Authority heard both the Interlocutory Applications and, after considering the submissions of the parties, vide the impugned order, dismissed the application filed by the Appellant for re-confirmation as Resolution Professional and allowed the application filed by the Respondent for replacement of the Appellant with a new RP.

(vii) Aggrieved by the Impugned Order dated 30.11.2021, the present Appeals have been filed.

<u>Submissions on behalf of the Appellant:</u>

4. It is submitted that the Adjudicating Authority failed to exercise the jurisdiction conferred upon it under Section 27(3) of the IBC, inasmuch as it did not render any finding with respect to the allegations made by the Respondent against the Appellant and the defence raised by the Appellant in I.A. Nos. 276 and 349 of 2021, without considering his Addendum of

18.11.2021, or his oral arguments on 23.11.2021. He submits this violated the principle of *audi alteram partem* and damaged his professional reputation.

5. The Ld. NCLT in the impugned order observed that the absence of a voting sheet as "unacceptable and against the code". The Appellant counters the same by stating that under Regulations 24 and 25 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, there is no statutory requirement to maintain a voting sheet in all cases, and that under Regulation 25(3), when all members are present and vote unanimously, electronic voting is not required, and that signed, circulated minutes are sufficient. He submits that the minutes of the 1st CoC meeting (held on 09.04.2021) were recorded, circulated, and confirmed by the other independent CoC member (Karnataka Bank).

6. It is further contended that I.A. No. 276 of 2021, filed by the Respondent, was not maintainable for non-joinder of Karnataka Bank, which held a 15.4% voting share in the CoC and was a necessary party to the proceedings. Moreover, the application was filed without a Power of Attorney (PoA) and should have been dismissed *in limine.*

7. The Ld. NCLT has found fault with the Appellant for not holding a CoC meeting within one week of oral directions on 17.09.2021. The Appellant submits that no oral orders were passed on that date, and the written order was uploaded only on 06.10.2021, that he reached out to Canara Bank immediately and that due to the Dussehra holidays, the earliest date when all

three parties were available was 21.10.2021. He also points out that the Ld. NCLT did not flag any delay during subsequent hearings on 27.10.2021 or 10.11.2021. Furthermore, the "Resolution" mentioned in the 17.09.2021 order referred to resolving the company's insolvency, not replacing the RP.

8. On 27.10.2021, the Ld. NCLT directed Canara Bank to meet the Appellant to amicably settle differences (including fees). Canara Bank refused to meet or communicate with him, despite multiple calls and emails, which the Appellant constitutes as contempt of court.

9. The Appellant relies on *Re: Torque Automation Pvt. Ltd.*, *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, the **32nd Report of the Standing Committee on Finance**, and ***Bhupendra Singh Rajput v. IBBI*** to contend that the RP must function independently and that replacement should not be permitted arbitrarily or merely at the instance of a dominant creditor.

10. Based on his submissions, the Appellant seeks the following reliefs:

> *"(i) Direct Canara Bank to immediately pay his outstanding professional fees of Rs. 17.83 Lakhs and reimburse valid CIRP expenses of Rs. 3.38 Lakhs (totaling Rs. 21.21 Lakhs).*
>
> *(ii) Order the complete expunging of all derogatory and adverse remarks made against his professional reputation in Paragraphs 4, 5, 6, 7, 9, and 10 of the Impugned Order"*

Submissions on behalf of the Respondent:

11. It is submitted that the Appellant cannot question the commercial wisdom of the Financial Creditor, namely Canara Bank, which held 84.60% voting share in the CoC, in seeking replacement of the Appellant as the Resolution Professional in accordance with Section 22 of the IBC,2016 ("IBC"). It is submitted that the Appellant cannot question the commercial decision of the Committee of Creditors ("CoC"), particularly in view of the ratio laid down by the Hon'ble Supreme Court in ***R.K. Vallal v. Sree Ramkrishna Sponge (P) Ltd.***

12. It is submitted that the Adjudicating Authority specifically observed that the Appellant had failed to furnish any physical or electronic voting record in respect of the various agenda items considered in the meeting of CoC dated 09.04.2021. The Respondent further submits that, instead of addressing the procedural deficiencies, the Appellant had raised allegations against the Respondent and its officials and had failed to convene the subsequent CoC meeting until directed to do so by the Adjudicating Authority.

13. The Adjudicating Authority, by order dated 17.09.2021, had directed the Appellant to convene a meeting of the CoC to ascertain the decision of the CoC regarding his continuance as RP. Pursuant to the said direction, the Appellant convened the second CoC meeting only on 21.10.2021, wherein Canara Bank, holding 84.60% voting share, voted against the continuation of the Appellant as RP.

14. The Respondent submits that, prior to the passing of the Impugned Order, it had lodged a complaint dated 22.10.2021 before the Insolvency and Bankruptcy Board of India ("IBBI") concerning the conduct of the Appellant. The Respondent submits that the IBBI, by its communication dated 16.12.2021, informed the Respondent that the allegations had been examined by the Board and that the complaint was accordingly closed, while reserving the right to take such action as may be considered appropriate in accordance with law.

15. The Respondent further submits that, after replacement of the Appellant, the newly appointed RP conducted the CIRP in accordance with the applicable provisions and Regulations and brought CIRP to a conclusion by obtaining a suitable resolution plan for an amount of Rs. 5.05 crores and getting it approved by the CoC with 100% voting share on 30.03.2022

16. According to the Respondent, the subsequent conduct of the CIRP demonstrates that the process could proceed effectively after the Appellant's replacement, and therefore its insistence that the Appellant should be replaced is justified.

Analysis and Findings:

17. The Appellant who appeared in person through virtual mode, submitted that, by virtue of this observation, the Appellant was subjected to certain disciplinary proceedings by the IBBI and he was suspended for a year. The

Appellant prays for his pending professional fees, for validation of minutes of the 1st CoC meeting, and for expunging of the adverse findings made against him and for setting aside of the IBBI suspension order. The Appellant has further submitted that he had made considerable progress towards resolution of insolvency of the Corporate Debtor and reached out to a number of eligible parties in that regard, and that his focus was on nursing back the Corporate Debtor to health whereas the Respondent Bank only intent was on recovering its dues and that is why the difference of opinion between him and the Bank arose leading to demand for his replacement.

18. The Respondent argues that under Section 22 of the IBC, CoC has power to replace RP and the Appellant had violated IBBI regulations, which mandates keeping the voting sheet during CoC meeting. The Respondent further submits that the Appellant did precious little to move the CIRP process forward whereas the new RP was able to conclude the CIRP with getting a resolution plan of Rs.5.05 crores approved by the CoC with 100% voting on 30.03.2022, within 5 months of her appointment.

19. Having considered the submissions of the parties and the reliefs sought by the Appellant, the Appeal is disposed of with the following directions:

(i) With respect to the claim for professional fees and CIRP expenses, the Appellant has sought payment of outstanding professional fees of Rs. 17.83 lakhs and reimbursement of Rs.3.38 lakhs towards CIRP expenses, aggregating to Rs.21.21 lakhs. Documents submitted before us indicate that the Respondent Bank was not agreeable to a fee of

Rs.3.00 lakh per month, that as his fees as IRP was fixed at Rs.1.5 lakh per month and that the new RP worked with a fee of Rs.50,000/- per month only. Therefore, the fees to be paid to him for the period till he was replaced will depend upon the quantum of work done by him, the willingness of the CoC with regard to the scale of the fees. Similarly, the reimbursement of the expenses sought for by him will have to be determined based on consideration of relevant facts and objections of the parties, which have to be done at the level of Ld. NCLT. Accordingly, liberty is granted to the Appellant to approach Ld. NCLT, being the appropriate forum, for adjudication of his claim. The Ld. NCLT shall consider and determine the said claim in accordance with law after affording an opportunity of hearing to the concerned parties, preferably within 2 months of him filing of the appropriate application.

(ii) With respect to the adverse observations contained in Paragraphs 4, 5, 6, 7, 9 and 10 of the Impugned Order, we find that the observations were made in the context of the alleged delay on the part of the Appellant in taking steps pursuant to the Respondent's request for change of the RP. However, since such observations have a bearing upon the professional reputation of the Appellant, having regard to the circumstances of the case, the said remarks are not required to be retained against the Appellant and are accordingly expunged.

(iii) As regards the replacement of the Appellant as RP, the decision of the Committee of Creditors to seek his replacement falls within the scope of its commercial wisdom, subject to compliance with the statutory and procedural requirements under the Insolvency and Bankruptcy Code, 2016. The Ld. NCLT was therefore justified in taking note of the considered view of the CoC and accordingly directing replacement of the Appellant by a new RP. We are of the view that the Appellant has no vested right to continue in the post of RP. While it has to be accepted that RP must function independently and not as per the whims and fancies of the dominant creditor, the commercial wisdom of the CoC (as represented by the majority view) has to be respected unless he is being asked to perform a task contrary to the provisions of the Code and the Regulations framed thereunder. Therefore, the decision of Ld. NCLT ordering replacement of the Appellant with a new incumbent cannot be faulted.

(iv) Accordingly, both the Appeals stands **disposed of** in the above terms. The Appellant's claim for professional fees and CIRP expenses is left open for adjudication by the Ld. NCLT. Interlocutory Application, if any, pending shall stand closed.

[Justice N. Seshasayee]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

AR/MS/AK