

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No. 1148/(MAH)/2017  
M.A. No. 604/2017,  
629/2017 & 630/2017

CORAM:

Present: SHRI M.K. SHRAWAT  
MEMBER (J)




SHRI BHASKARA PANTULA MOHAN  
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 14.12.2017

NAME OF THE PARTIES: Fortune Pharma Pvt. Ltd.

SECTION OF THE COMPANIES ACT: I & BP Code 2016.

S. No. NAME DESIGNATION SIGNATURE

6.	Prakash Shinde ilb msp & pabr	Advocate	
6	Amur Arsuwara	Advocate for IRP	
6.	Madhavi Nalluri	Advocate ORDER intervenors	

MA 604 IN CP 1148/I&BC/NCLT/MB/MAH/2017

1. From the side of the Committee of Creditors one Member viz. State Bank of India moved this Miscellaneous Application under the provisions under section 22(3)(b) of The Code seeking replacement of the Insolvency Resolution Professional and to appoint an Insolvency Professional.
2. The impugned section provides that where the Committee of Creditors resolve to appoint or to replace Insolvency Professional, shall communicate the decision to the Insolvency Resolution Professional and to the Adjudicating Authority to replace

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the Interim Resolution Professional (IRP). The Members of the Committee of Creditors shall file an Application before the Adjudicating Authority for appointment of Resolution Professional. Under Sub-section 4 of Section 22 the Adjudicating Authority is required to forward the name of the replaced Resolution Professional as proposed by the Committee of Creditors to the Board for its confirmation and shall make such appointment after confirmation by the Board.

3. In this case a technical issue had cropped up in the past that whether on Assignment of Debt, the Assignees who were originally the "related party", be treated as "non-related party" on Assignment of Debt. So the question that when an Assignor assigns a Debt then whether the Assignee steps into the shoes of the Assignor who happens to be a related party or not? This question was addressed by us and vide an Order of 13.11.2017 held that the Insolvency Professional went wrong in changing the status of the Assignees as "non-related party" on transfer of Debt from a related party. It was concluded that since the Debt belonged to a "related party Financial Creditor" hence on transfer its status shall remain unchanged. As a consequence the Committee of Creditors have resolved to replace the IRP Mr. Martin K. Golla with another Insolvency Professional viz. Mr. Anurag Sinha. A consent on Form No.2 of the said proposed Resolution Professional is placed on Record.
4. From the side of the outgoing IRP, an Affidavit in reply is submitted and duly considered by us. In this Affidavit Learned Professional has explained his bona fide and understanding of Law that in his opinion the requisite percentage of Voting Share of State Bank of India got reduced from 75% and thereupon the decision of the Committee of Creditors had approved the continuation of IRP. He has also intimated that the Corporate Debtor had not cooperated, rather physically stopped the visit to the Factory. He has also intimated that he had arranged an Investor from China to propose the Resolution Plan and also made an attempt for

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revival of the Financial position of the Corporate Debtor. According to him the Applicant i.e. State Bank of India is more concerned to alienate the property of the Corporate Debtor instead of proposing a Resolution Plan. According to his argument the substitution as well as its Application is with mala fide intention. On the points raised no adjudication under the provision of the I&B Code is presently required. The efforts of Mr. Martin K. Golla are worth appreciation.

5. Having heard the submission and on perusal of the case record as also the view already taken vide two detailed Orders respectively dated 28.08.2017 and 13.11.2017 we are of the conscientious view that the Provisions of The Code as discussed *supra* are unambiguous. Once the Committee of Creditors has proposed for substitution of the Insolvency Professional then the next requirement is to intimate the name of the substituted Insolvency Professional to the Board. We hereby allow MA 604. As a consequence, Mr. Anurag Kumar Sinha, Registration No. IBBI/IPA-001/IP-P00427/2017-18/10750 is substituted as Resolution Professional and the Registry is directed to communicate the substitution to the Insolvency Board of IBBI, New Delhi. The out-going Insolvency Resolution Professional shall hand-over the Reports, documents and any other information to the substituted Insolvency Professional.

Sd/-

**BHASKARA PANTULA MOHAN**

Member (Judicial)

Date: 14.12.2017

Sd/-

**M.K. SHRAWAT**

Member (Judicial)