



and final settlement alongwith all their claims has been accepted by the 'Corporate Debtor' in respect of the loan in question. Thus the ~~payment of the loan in four separate tranches on or before 31.10.2017 as per the schedule has been accepted.~~ According to the aforesaid Resolution, the Corporate Debtor is to make payment of the defaulted amount and in pursuance thereof, four post-dated cheques for a sum of Rs. 23 lakhs, Rs. 20 lakhs, Rs. 20 lakhs and Rs.20 lakhs were issued. Accordingly, our approval has been sought under the provisions of Section 31 of the Insolvency & Bankruptcy Code, 2016 (for brevity the 'Code').

Notice of the application was issued and objections have been filed on behalf of the Bank of India (Financial Creditor).

Mr. V. Seshagiri, learned Counsel for the Objector-Bank of India has raised numerous objections to the resolution proposed by the Interim Resolution Professional. According to the learned Counsel, there are grave irregularities in the public announcement in as much as the public announcement was required to be made by IRP within three days from the date of his appointment, which has not been done. It is maintained that IRP was appointed on 30.06.2017 and notice was required to be published within three days thereafter as per Regulation 6 of the Insolvency & Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for brevity 'IB Regulations'). However, the IRP issued public notice on 07.07.2017 taking the period of three days from the date of communication of the order of admission. It is erroneously

claimed by the Insolvency Resolution Professional that the order was received by him on 05.07.2017.

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Another argument raised by the learned Counsel is that there was defect in the constitution of the 'Committee of Creditors' as the IRP failed to include the objector-Bank in the Committee of Creditors constituted by him. Moreover, details concerning the constitution of the Committee of Creditors were filed with the Tribunal after expiry of the limitation period prescribed under the IBBI Regulation. It has then been argued that there are material defects in the Resolution Plan which suffer from want of mandatory contents prescribed under the Insolvency & Bankruptcy Regulation 2016 and finally there is a breach of duty on the part of the Insolvency Resolution Professional, who has acted blatantly against the procedure laid down under the law. It has thus been submitted that the IRP has failed to maintain the updated list of creditors as per the requirement of law. He has also failed to receive and collate the claim submitted to him by the objector. He continued to act in his capacity as Interim Resolution Professional and held meeting of the creditors after his tenure of 30 days came to an end on 30.07.2017.

In reply to the aforesaid objection, learned Counsel for the Insolvency Resolution Professional has argued that there is no lack of bonafide in conducting the insolvency resolution process. It is emphasised that according to Regulation framed by the Insolvency Board, the Interim Resolution Professional was not competent to consider any claim which was not filed within the time specified in the notice. According to the learned Counsel, the claim which was filed or received after the date of meeting of the Committee of

Creditors was not to be considered. In that regard learned Counsel has placed reliance on the Regulation Nos. 12 & 13. The Objector has surrendered to the jurisdiction of the IRP even after 30<sup>th</sup> July which falsify the argument that his tenure had ended on 30<sup>th</sup> July, 2017.

We have thoughtfully considered the submissions made at the bar. A casual look at the report of the corporate insolvency resolution process would reveal that the 'Corporate Debtor' apprised him as on 01.08.2017:

“As required by you please find herein below our point wise response and documents:

- List of Shareholders: As per Annexure-1.
- Copy of ABS for the FY 2014-15 : As per Annexure-2.
- PBS for the period as on 31.03.17/30.06.17 and 15.07.17: The Provisional Balance Sheet is under preparation and yet to be completed and finalized. We will be able to provide the same by the end of this month.
- Details of litigation and ongoing investigation or proceedings initiated by Govt. and statutory authorities: NIL

The other points in the memorandum sheet have been clarified there itself.

Hope you will find the above details/information in order”.



A perusal of the aforesaid information furnished by Corporate Debtor would show that the provisional Balance Sheet for the period as on 31.03.17, 30.06.2017 and 15.07.2017 was under preparation and was yet to be completed and finalized. It further states that the Corporate Debtor would be able to provide the same by the end of the month i.e. towards last week of August.

However, in the report, the claim of M/s. Reliance Commercial Finance Limited has been noticed and the amount claimed is Rs.2,01,26,510/- and thereafter the Resolution Plan has been proposed as noticed in the preceding paragraph. It is also an admitted fact that the objector-applicant filed its claim by electronic process on 2<sup>nd</sup> August, 2017 and by post which reached on 3<sup>rd</sup> August, 2017. It is represented by the Counsel for M/s. Reliance Commercial Finance Ltd. that for verification of the claim made by it, the ledger account was available and the verification of the claim was in fact made from the ledger account as per the provisions of Regulations 8 & 14 of the Insolvency & Bankruptcy Regulations. We have perused the charge as registered by ROC in respect of the Corporate Debtor as depicted in Annexure-VII attached with the petition namely, (IB)156(PB)/2017. The first three entries pertain to charges registered in favour of Bank of India and the same read as under:

"Charges Registered U74899DL1995PLC066170  
Company VED CELLULOSE LIMITED  
CIN/FCRN/LLPIN/FLLPIN

**Charges Registered**

S.No.	SRN	Charge Id	Charge Holder	Date of Creation	Date of Modification	Date of Satisfaction	Amount	Address
1.	C33143009	1052898	Bank of India	13.10.2014	05.11.2014	-	6660000.0	Krishna Nagar Branch 1/11, Krishna Nagar, New Delhi-110051 IN
2.	C33139940	10528702	Bank of India	13.10.2014	05.11.2014	-	207500000.0	Krishna Nagar Branch 1/11, Krishna Nagar, New Delhi-110051 IN

Once the aforesaid factual position is clear, then it was incumbent upon the Interim Resolution Professional to consider the claim of the Bank of India-Objector as Regulation 12(2) of 'IB Regulations' provides that if a creditor fails to submit proof of claim within the time stipulated in the public announcement then such a claim could be submitted till the approval of resolution plan by the Committee of Creditors.

The Bank of India-Objector deserved to be a member of the Committee of Creditors. In that regard, reliance may be placed on Section 21 of the Code which reads as under:

***“Committee of creditors***

*21. (1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.*

*(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:*

*Provided that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors”.*

A perusal of the aforesaid provision would show that there is obligation cast on the Interim Resolution Professional to constitute a Committee of Creditors after collation of all claims received against the Corporate Debtor. The committee of creditors must be comprised of all Financial Creditors of the Corporate Debtor.

However, the Objector-Bank of India was not included in the Committee of Creditors despite the fact that its name figures in ~~certificate of charge registered with ROC, Delhi. It is evident from a~~ perusal of Annexure-vii that the name of Bank of India figures in the first three items. Therefore, there is flagrant violation of the provisions of Section 21(2) of the Code.

It appears to us that the Interim Resolution Professional was in a shooting hurry despite the fact that the initial period of 180 days as stipulated under Section 12 of the Code was to expire much later. It is further extendable by another 90 days if the Adjudicating Authority is satisfied on the application filed by the Insolvency Resolution Professional.

We also find substance in the submissions made by Shri V. Seshagiri, learned Counsel for the Objector that the Interim Resolution Professional has completed his tenure of one month. It is appropriate to mention that the petition was admitted on 30.06.2017 and according to the provisions of Section 16 of the Code, the tenure of Interim Resolution Professional commenced from the date of his appointment. We being the Adjudicating Authority has appointed him on 30.06.2017 as an Interim Resolution Professional and according to Section 16(5), his tenure to act as Interim Resolution Professional came to an end when period of 30 days expired. The provisions of Section 16 reads as under:

*“16. Appointment and tenure of interim resolution professional –*

*(1) The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.*

*(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor,*

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as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

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(3) Where the application for corporate insolvency resolution process is made by an operational creditor and—

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

(5) The term of the interim resolution professional shall not exceed thirty days from date of his appointment.

A perusal of the aforesaid provision leaves no manner of doubt that the Interim Resolution Professional can be appointed by the Adjudicating Authority within 14 days from the date of commencement of the



insolvency process. The insolvency process has commenced in the present case as per the provisions of Section 5(12) on the date of admission of the application. The date of admission of the application in the present case is 30.06.2017 which is also the date of appointment of the Interim Resolution Professional. The term of Interim Resolution Professional as per the provisions of Section 16(5) came to an end on 30<sup>th</sup> July, 2017. Therefore, we are unable to approve the Resolution Plan as it fails to conform to the mandatory provisions of the Code and Regulations framed by Insolvency & Bankruptcy Board of India.

As a sequel to the above discussion, we reject the report dated 8<sup>th</sup> August, 2017 proposing a Resolution Plan dated 03.08.2017 as approved by the Financial Creditor. In this case the period of 180 days commenced from 30.06.2017, which is to expire on 30.12.2017 even if no extension is sought. In the facts and circumstances of this case we deem it appropriate to request the Insolvency & Bankruptcy Board of India to appoint a new Interim Resolution Professional to conduct the proceedings in accordance with the provisions of the Code, Rules and Regulations within a period of two weeks who shall conduct the process from the stage of receipt of claims in accordance with law.

- Sd/-

(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

- Sd/-

(DEEPA KRISHAN)  
MEMBER(TECHNICAL)

04.10.2017  
V. Sethi