

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 412/2025

(IA No.1172/2025)

IN THE MATTER OF:

**Mathioli N, Resolution Professional of
MQ Networks Private Limited,
VGN La Parisienn Apartment,
Block 1, 2E, 4th Main Road,
Nolambur, Mogappair West,
Chennai – 600 037.**

... Appellant

V

**M/s. Reliance Asset Reconstruction Company Limited
11th Floor, North Side, R-Tech Park,
Western Express Highway, Goregaon East,
Mumbai – 400 063.**

Rep by its Vice President (Resolution)

... Respondent

Present:

For Appellant : Mr. Mathioli N, RP/Party-in-person

For Respondent : Mr. R. Imayavaramban, Advocate

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

This Company Appeal, revolves around very peculiar facts and circumstances. Hence, while rendering Judgment in this instant Company Appeal, we are carving out an exception in order to meet the ends of Justice, which may not be taken as to be a precedent for any other matter of a similar nature. Primarily, the exception, which has been carved out is to meet out the argument extended by the Appellant in person, about his alleged plea that the entire action taken against him by virtue of the impugned order dated

07.07.2025, as it has been passed by the NCLT, Chennai Bench – II in IA(IBC)/917/CHE/2025 as rendered in CP(IBC)/188/CHE/2023 is bad in the eyes of law for the following reasons: -

- (i) That the impugned order suffers from the vices of being in violation of the Principles of Natural Justice because, since the impugned order is having a civil consequence, the Appellant was required to be mandatorily heard, which has not been done prior to passing of the order.
- (ii) That the action taken by virtue of the impugned order dated 07.07.2025, is in violation of adoption of the procedure prescribed under Section 27 of the I & B Code, 2016.

2. Brief facts are that M/s. MQ Network Private Limited, the Corporate Debtor, that was placed under the CIRP Process, and consequent to which the Appellant, who appears in person, was appointed as a Resolution Professional. In the impugned order, the direction has been issued to replace the Appellant, from functioning as the Resolution Professional, owing to the fact that the financial creditor sought his replacement as Resolution Professional on the ground that his attitude and aptitude were found to be non-cooperative. The findings of the impugned order is that the Applicant Financial Creditor, at the stage of the 1st CoC meeting, had approved the resolutions relating to the fixation of the RP's fee and extension of the CIRP period for a period of three months, that because of the conduct and adamant attitude of the Resolution

Professional, they were constrained to file an application seeking his replacement for smooth and effective conduct of CIRP in light of his improper conduct, aggressive behaviour and obstructionist approach, and that the documents filed on record show that the CIRP Process, is not being carried in a smooth manner due to non-cooperation of Resolution Professional and difference of opinion between the CoC and the Resolution Professional and therefore there is a need for replacing the Resolution Professional with a new incumbent. Based upon the aforesaid set of findings, the Tribunal proceeded to pass the following order: -

“In view of above, we find present RP needs to be replaced in order to ensure effective conduct of CIRP and timely Insolvency Resolution. Therefore, Mr. Pathukasahasram Raghunathan Raman, Insolvency Professional having IBBI Registration No.IBBI/TPA-002/IP-N00295/2017-18/10896 who has been proposed by the Applicant sole Financial Creditor shall be appointed as RP in respect of Corporate Debtor”.

3. Under Section 22 of I & B Code, contemplates the process of appointment of a Resolution Professional, whereby the Committee of Creditors (CoC) in its first meeting to be held within 7 days of the constitution of the CoC, will resolve, by not less than 66% of the voting shares of the Financial Creditors, to appoint the IRP as RP or, to replace the IRP by another RP. Accordingly, the Appellant was appointed as a Resolution Professional to carry out the CIRP Process of the Corporate Debtor, i.e., M/s. MQ Network Private Limited. As per the provisions of I & B Code, RP is to convene and conduct

the meeting of CoC, and it is his responsibility to place various Agenda, for consideration and approval, if any, by the CoC. However, the allegation of Financial Creditor/Respondent is that the Appellant herein, despite of having knowledge about the resentment over his manner of functioning as expressed by the Financial Creditor, deliberately avoided to place the Agenda for his replacement for consideration, in the 2nd CoC meetings, which was convened by him. On the other hand, the argument of the Appellant, i.e., the Resolution Professional, is that the directions issued by the Learned NCLT on the basis of the email communication of the Financial Creditor pertaining to the conduct of the Resolution Professional directing to replace the Resolution Professional, was in violation of the provisions contained under Section 27 of the I & B Code. Section 27 of the I & B Code is extracted hereunder: -

“27. Replacement of resolution professional by committee of creditors

(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

¹ [(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent

from the proposed resolution professional in the specified form.].

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) where any disciplinary proceeding are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another professional under the section”.

4. In its strict sense, Section 27 of the I & B Code, 2016, provides for the replacement of a Resolution Professional as already appointed under Section 22 of the I & B Code, could be only by way of a decision to be taken by the Committee of Creditors by a majority of at least 66% of voting share and with the prior consent of the Proposed Resolution Professional, who is supposed to substitute the existing Resolution Professional. The Appellant's grievance is that the provisions of Section 27 of the I & B Code, 2016, was not complied with. This has been argued to the contrary by the Learned Counsel for the Respondent, contending thereof that the Respondent in the email communication dated 22.04.2025 had prayed for that owing to the improper and unparliamentary behaviour of the Resolution Professional i.e., the

Appellant herein, and in view of the telephonic conversation, which was carried, he may be replaced in the light of the provision contained under Section 27 of the I & B Code, 2016, and a new Resolution Professional may be appointed in his place which is permitted under the Code and that there is no illegality about it. But, the said communication of 22.04.2025 was disregarded and was not made as part of the Agenda of the 2nd CoC meeting by the Appellant deliberately and that all other issues were included in the Agenda of the proposed 2nd CoC meeting, to be held on 23.06.2025. The Learned Counsel for the Respondent has alleged that the responsibility of formulation of Agenda for consideration by CoC is vested with the Resolution Professional, and since the draft Agenda item circulated by the Respondent on 22.04.2025 threatened the continuance of the Appellant as the Resolution Professional, he deliberately omitted it from the Agenda of the 2nd CoC meeting. One of the questions which will emerge for consideration would be that, whether the Appellant, when he himself has avoided to place the communication of 22.04.2025 proposing replacement of RP in the Agenda for the 2nd CoC meeting, thus circumventing provisions of Section 27 of the Code, can now take an advantage of the non-compliance of the said provisions contained under Section 27 of the I & B Code, 2016, to challenge the impugned order, which has been passed by the Tribunal. Apparently, the answer would be that since being the Resolution Professional, the Appellant was expected to act fairly and was also supposed to place the Agenda before the CoC, even when it contains a prayer for his replacement in the light of the provisions contained under

Section 27(2) of the I & B Code, 2016. Having not done so, the Appellant may not have the liberty to argue that, the removal of his or a direction contained in the impugned order for replacement of the Resolution Professional was in violation of Section 27 of the I & B Code, 2016.

5. The fact remains that the Agenda formulated for the 2nd CoC meeting, did not include the issue flagged by the Respondent/Financial Creditor. Aggrieved by this, the FC filed an application in IA(IBC)/914(CHE)/2025 before the Learned NCLT on 13.06.2025. While hearing IA(IBC)/917/(CHE)/2025, praying for a change of RP, the Learned NCLT in its order dated 16.06.2025, specifically directed the RP to convene CoC meeting within a week of the order and to place the Agenda of change of RP. However 2nd CoC conducted on 23.06.2025, did not contain the Agenda of the change of RP. The Applicant/Respondent 1 herein, preferred an application under Regulation 44(2) of the Insolvency and Bankruptcy Board of India Regulations, 2016. The Applicant therein i.e., Respondent undertook to pay the dues of the Resolution Professional and the Resolution Professional was directed to convene the meeting of the CoC within a week, but that was not done, which forced the Respondent to file an application under Section 60(5) of the I & B Code, 2016, before the Learned Adjudicating Authority, wherein the Respondent had prayed for that the Resolution Professional who was expected to convene the CoC meeting, may be directed to convene the 2nd CoC, meeting at the earliest because of the fact that the earlier 2nd CoC meeting

stood cancelled, which was earlier scheduled for 26.04.2025. Since the same has not been conducted, the Respondent had invoked Section 60 of the I & B Code, 2016, to file IA(IBC)/917/(CHE)/2025, wherein he prayed for the following reliefs: -

“V. RELIEF SOUGHT:

The Applicants therefore pray that this Hon’ble Tribunal may be pleased to;

- a. Replace the present Resolution Professional/Respondent, in light of his improper conduct, aggressive behaviour, and obstructionist approach, with a new RP to be appointed by the Hon’ble Tribunal for the smooth and effective conduct of the Corporate Insolvency Resolution Process (CIRP) by permitting Applicant to make payment of Revised 3rd Invoice dated 22.04.2025 of Rs.3,11,498/- raised by the Respondent till April 2025; and*
- b. To pass such further or other orders as the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case”.*

6. The argument which has been extended by the Appellant in person, is to the effect that as to whether at all an application under Section 60(5) of the I & B Code, 2016, for the nature of relief prayed for could be pressed into particularly, when it related to the prayer for replacement of the Resolution Professional, which has to be resorted to in the light of the provisions contained under Section 27 of the I & B Code, 2016. But then we cannot be oblivious of

the fact that, in all the earlier communications made by the Respondent, they were consistently requesting the 2nd CoC meeting be conducted to consider their proposal for replacement of RP under the provisions contained under Section 27 of the I & B Code, 2016 and that there was persistent inaction on the part of the Appellant as he was trying to take an advantage of his own inaction so as to continue to function as Resolution Professional. The filing of an application under Section 60(5) of the I & B Code, 2016, would be tenable as the statute does not contain any such contingency that, where the Financial Creditor intends to replace the Resolution Professional, owing to his misconduct or misbehaviour which disrupts the CIRP process, the motion for replacement could be placed in any other manner except for Section 27 of the I & B Code, 2016. In view of the above, the process of replacement of the Resolution Professional, at the request of the Financial Creditor, could only be possible by moving an application under Section 60(5) of the I & B Code, 2016, when Resolution Professional persists in not placing the agenda for the same before CoC for its consideration. With that intention only, the Respondent had filed the application being IA(IBC)/917/CHE/2025, on which the impugned order had been passed, and therefore, said Application under Section 60(5) of the I & B Code, 2016, would be tenable because any party aggrieved by any of the proceedings or inaction cannot be left remedy-less if the statute is silent with regard to prescribing a forum for redressal of the grievances.

7. Taking cognizance of the said application, the Tribunal has passed the impugned order, which is under challenge at the behest of the Resolution Professional.

8. We feel that when the application being IA(IBC)/917/CHE/2025, came up for consideration before the Learned Adjudicating Authority, and the Respondent (Financial Creditor) made the Tribunal conscious of the fact that the Resolution Professional is deliberately not placing the Agenda for its consideration before CoC for his replacement in the light of the provision contained under Section 27 of the I & B Code, 2016, nothing under law restrained the Learned Adjudicating Authority to formulate the agenda on its own and direct the CoC to consider the same in the light of the provisions contained under Section 27 of the I & B Code, 2016. That would have been the appropriate recourse, because the modalities laid down in the code for replacement of the Resolution Professional has had to be carried in accordance with the provisions contained under Section 27 of the I & B Code, 2016. Nothing under law holds back the Learned Adjudicating Authority on or even this Appellate Tribunal for the said purpose, to formulate an agenda for replacement of RP as raised in IA(IBC)/917/CHE/2025 in the light of the provisions contained under Section 27 of the I & B Code, 2016, and to place it before the CoC for its consideration. Thus, the only legal lacuna, which the impugned order suffers from, though we may not basically disagree with the spirit and purpose in, which the order has been passed, is the procedural flaw of

not placing the Agenda before the CoC, prior to the order of replacement of the Resolution Professional as per Section 27 of the I & B Code.

9. We are of the view that any order, which is to be passed for either replacement or removal of the Resolution Professional as appointed under Section 22 of the I & B Code, 2016, would have a civil consequence and therefore before ousting/replacing the Resolution Professional, was atleast required to be heard before the CoC.

10. In these peculiar facts and circumstances, without carving out as a precedent, we direct the Learned Adjudicating Authority, to discharge the onus of formulating an Agenda for consideration of replacement of Resolution Professional on its own, in the light of the allegations levelled in the application being IA(IBC)/917/CHE/2025 and to direct it to be placed before the CoC for its consideration in the light of the provisions contained under Section 27(2) of the I & B Code, 2016. It is hoped and trusted that the Learned Adjudicating Authority, will act upon the aforesaid directions while exercising its inherent powers by formulating an Agenda within a period of two weeks from the date of the uploading of this order, and within two weeks thereafter, the CoC is to meet and consider the agenda in the light of the pleadings in IA(IBC)/917/CHE/2025. Subject to the above, the impugned order dated 07.07.2025, so far it relates to the order passed on IA(IBC)/917/CHE/2025, would stand quashed, leaving all options to the Learned Adjudicating Authority to take action, as directed above to satisfy the spirit of Section 27 of

the I & B Code, 2016. Subject to the above exceptions, the Company Appeal (AT) (CH) (Ins) No.412/2025 would stand allowed, limited to the restrictions observed above. All Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

18/09/2025
VG/MS/RS