

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

I.A. No. 59/2025

IN

C.P. NO. 881(IB)/MB/2023

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

Jubin Kishore Thakkar

Erstwhile Promoter of Corporate Debtor

Having its residence at:

Devidas Lane, Near St. Lawrence High School, Borivali (West),
Mumbai – 400 103.

.... Applicant

Versus

Ashutosh Agarwala

RP for KLT Automotive and Tubular Products Limited

Having its address at:

C/o Excedor Resolvency Pvt. Ltd., Peninsula Business Park, Tower B, 19th Floor, Lower Parel, Mumbai – 400 013.

... Respondent No.1

Phoenix ARC Private Limited

Member of the Committee of Creditors

Having address at:

3rd Floor, Wallace Towers, 139-140/B/1, Crossing of Sahar Road and Western Express Highway, Vile Parle (East), Mumbai – 400 057.

... Respondent No.2

Union Bank of India

Member of Committee of Creditors

Having address at:

Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai – 400 021.

.... Respondent No.3

In the matter between:

Under Section 7 of the Code

Phoenix ARC Private Limited

.... Financial Creditor

Versus

KLT Automotive and Tubular Products Limited.

Having registered address at:

B-601, Elegant Business Pak, MIDC Road No.2, Andheri (East), Mumbai- 400059, Maharashtra, India.

[CIN: U34300MH1994PLC081463]

.... Corporate Debtor

Order Pronounced on: 04.12.2025

Coram:

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For Applicant: Adv. Ayush Rajani, Adv. Shyam Kapadia, Adv. Sanaya Patel and Sourasubha Ghosh.

For Respondent 1 Adv. Nausher Kohli a/w Pulkitesh Dutt Tiwari i/b Menon& Mankava.

For Respondent 2: Adv. Rohit Gupta a/w Adv. Manaswi Agrawal and Adv. Salomi Kalwade i/b Meraki Chambers.

PER: SHRI HARIHARAN NEELAKANTA IYER MEMBER, (TECHNICAL)

ORDER

I.A. No. 59 of 2025

1. This application has been filed by Mr. Jubin Kishore Thakkar, the erstwhile promoter of KLT Automotive and Tubular Products Limited (**'Corporate Debtor' / 'KLT'**), against the Resolution Professional of the Corporate Debtor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following prayers:

- a) *Remove the Respondent from his role as Resolution Professional of the Corporate Debtor;*
- b) *in the alternative, direct the Committee of Creditors to consider removing the Respondent from his position as Resolution Professional of the Corporate Debtor;*
- c) *direct that the corporate insolvency resolution process of the corporate debtor be stayed pending the hearing of this Application; and*
- d) *pass any other orders or directions as this Hon'ble Tribunal deems fit, in the interest of justice.*

Brief Facts of the case: -

2. The Corporate Debtor, was admitted into the Corporate Insolvency Resolution Process (**'CIRP'**) vide order dated 26.09.2024 of this Tribunal and Mr. Ashutosh Agrawal (**'Respondent No.1'**) was appointed as the (**'IRP'**). In the first Committee of Creditors Meeting (**'CoC'**) meeting held on 22.10.2024, the Respondent No.1 was appointed as the Resolution Professional (**'RP'**) of the Corporate Debtor.
3. Earlier, Colour Roof (India) Limited (**'CRIL'**), a subsidiary of the Corporate Debtor was admitted into CIRP earlier, vide order dated 24.02.2023 by Learned NCLT Court IV Mumbai, and Mr. Hemant Kumar Shah was appointed as the Interim Resolution Professional (**'IRP'**) for CRIL.
4. Pursuant thereto the IRP issued public notice on 25.02.2023, calling for claims from the creditors of CRIL. KLT vide email dated 13.05.2023 submitted its claim of Rs.12,69,19,52,744/- to the IRP of CRIL. The IRP on receipt of claim, verified the same and vide email dated 24.05.2023, requested KLT to submit documents substantiating its claim.
5. In the meantime, the admission order dated 24.02.2023 with respect to CIRP of CRIL was challenged before the Hon'ble NCLAT. The Hon'ble NCLAT vide its order dated 03.03.2023 stayed the constitution of CoC.

Thereafter, Mr. Hemant Kumar Shah resigned as the IRP of CRIL on 12.06.2023. Thus, vide order dated 30.06.2023, Learned NCLT Court IV, appointed the Respondent No.1 as the IRP for CRIL.

6. On appointment as the IRP of CRIL, the Respondent No.1 vide email dated 27.11.2023 once again requested KLT to submit documents for substantiating its claim of Rs.12,69,19,52,744/-.
7. Subsequently, the first CoC meeting of CRIL was held on 08.01.2024. The Respondent No.1 once again vide its email dated 02.04.2024 requested KLT to submit documents within 7 days of receipt of the said email.
8. KLT failed to substantiate its claim therefore, the Respondent No. 1 as the RP of CRIL vide his email dated 19.04.2025 informed the Applicant that a nominal claim of Re.1 of the Corporate Debtor was admitted, claim amounting to over Rs. 12,12,66,01,993/- was rejected, and the remaining part claim of Rs. 56,53,50,750/- was categorised as contingent liability. The Applicant being aggrieved by the aforesaid action has filed the present Interlocutory Application alleging that appointment of Respondent No. 1 as the RP for KLT and CRIL has created conflict of interest.

9. **Submissions of the Applicant:**

- 9.1 It is submitted that the Applicant is a promoter of KLT and CRIL. The rejection of claim of the Corporate Debtor by Respondent No. 1 in CIRP of CRIL, gave rise to disagreements on various issues including CIRP costs to be paid, payment of salaries of employees of CRIL, payment of licence fee for the use of office premises of CRIL, etc. The applicant has alleged that the Respondent No. 1 refused to make any of the payments mentioned above.
- 9.2 It is further submitted that the Applicant had submitted an Expression of Interest (**'EOI'**) to the Respondent No.1 in his capacity

as lead member of a consortium comprising of the erstwhile promoters of CRIL (**'Consortium'**) and that the Respondent No.1 illegally refused to include the Applicant in the list of Prospective Resolution Applicants (**'PRAs'**) of CRIL which constrained the Applicant to file IA No. 4414 of 2024 before Learned NCLT Court IV seeking directions against the Respondent No.1 to consider the Consortium's EOI. Further the said IA has been allowed by Learned NCLT Court IV on 4.10.2024; however, the Respondent No.1 refused to include the Consortium's name in the list of PRAs in the CIRP of CRIL.

- 9.3 It is submitted that the Applicant was in the process of filing an interlocutory application before this Tribunal to challenge the incorrect rejection and categorization of KLT's claim, however on 26.09.2024, this Tribunal admitted KLT into insolvency Resolution Process and appointed the Applicant as the IRP. In the first meeting Committee of Creditors held on 22.10.2024, the Respondent was appointed as the RP for KLT.
- 9.4 It is submitted that, in usual circumstances, the IRP or RP of a corporate debtor would have assessed the company's assets and liabilities and taken appropriate action to recover any debts due to the corporate debtor. However, as the Respondent himself being the RP of KLT as well as of CRIL, has not taken any steps to recover KLT's claim.
- 9.5 Further, it is submitted that it is not a case where it is more convenient for an RP to be appointed as the resolution professional for group companies for speedy closure of the CIRP, but a case of competing claims, where the RP will not be able to do justice to either company which would result in destruction of value of each company.
- 9.6 It is submitted that on 21.10.2024, prior to the first CoC Meeting of KLT, the Applicant informed the Respondent No. 1 and to the COC of KLT, that there exists clear conflict of interest in appointing the

Respondent No.1 as the RP. In response Union Bank of India (**'Union Bank'**) on 28.10.2024 wrote to the Respondent No.1, asking for a clarification. In response to the same the Respondent No.1 on vide its email dated 28.10.2024 informed all creditors that his appointment as RP does not contravene any provisions of the Code because it is not a related party of either KLT or CRIL, and has not worked as an employee or advisor to either company in the past.

9.7 The Applicant in support of his submissions has also drawn attention to certain portions of the report of the Working Group on Group Insolvency (2019) and UNCITRAL Legislative Guide on Insolvency Law.

9.8 It is further submitted that the Respondent No.1 has violated Rule 1, 3, and 3A of the Code of Conduct for Insolvency Professionals under Regulation 7(2)(h) of the IBBI (Insolvency Professional) Regulation, 2016 as the RP not acted in good faith and in the best interest of KLT which has resulted in destruction of value.

9.9 It is submitted that the Respondent No.1 ought to have disclosed the conflict in the first instance. Even when the Respondent No.1 appointment as the RP of KLT was being discussed at the COC meeting, the Respondent No.1 did not highlight this issue to the Committee of Creditors.

9.10 The Applicant states that grave harm and prejudice is being caused and will continue to be caused to KLT and its COC if the Respondent No.1 continues to remain in the position of RP.

Reply by Resolution Professional:

10. The RP (**'Respondent No.1'**) has filed an affidavit-in-reply inter-alia stating as follows: -

10.1 The Applicant has come before this Tribunal with unclean hands as he has suppressed material facts and has also made false

- statements, in order to misguide this Tribunal, and derail the Corporate Insolvency Resolution Process of KLT.
- 10.2 The Applicant has not taken any steps to provide the documentary evidence and substantiate KLT's claim of Rs.12,12,66,01,993/- in the CIRP of CRIL.
- 10.3 The Applicant was well aware that the order dated 26.09.2024 appointing the Respondent No.1 as the IRP had attained finality. The Applicant had ample opportunities to challenge the order dated 26.09.2024 but failed to do so. Therefore, the present Application is nothing but a disguised appeal against the order dated 26.09.2024
- 10.4 Vide email dated 04.07.2024, the Respondent No. 1 had highlighted that the books of accounts reflect an amount which is substantially different from the claim of KLT and that the ledgers submitted by KLT have been manually adjusted to reflect the interest amount for which, no evidence has been provided and is also not accounted in the books of accounts. Therefore, the Respondent No. 1 had once again called upon KLT to provide supporting documents and assured that once the supporting documents are provided, they will be verified as per applicable laws.
- 10.5 The Applicant vide its email dated 21.08.2024 informed the Respondent No.1 and the COC of KLT, there existed conflict of interest in appointing the Respondent No.1 as the RP of the Corporate Debtor. In response Union Bank, being one of the members of the COC, sought clarifications from the RP in respect of the allegations made vide the Applicant's. The Respondent vide email dated 28.08.2024 stated that there is no conflict of interest and that his appointment as RP does not contravene any conditions of the IBC. The email dated 28.08.2024 was deliberated and examined by the Union Bank of India along with other members of the COC. The COC unanimously voted to appoint the Respondent No.1 as the RP of the

Corporate Debtor. The COC was satisfied with the RP's response there is no conflict of interest.

- 10.6 The Respondent No.1 has no vested interest and that the Respondent No.1 has always ensured that all claims are examined as per the law. Merely because the Respondent, acting as RP of CRIL, partly rejected and partly categorized the claims of KLT against CRIL as contingent liability does not mean that he has acted in contravention of any law and that there is a conflict of interest.
- 10.7 It is submitted that, in the event the necessary documents substantiating the claim of KLT are made available by the Applicant or even otherwise come within the possession of the Respondent No.1, the same shall be forthwith submitted for consideration in the ongoing CIRP of CRIL.
- 10.8 The Applicant has failed to discharge his duties as the erstwhile management of KLT. The Applicant's conduct shows that the present Application is driven by his personal grievances against the Respondent No.1.
- 10.9 M/s. Pheonix ARC Private Limited is the sole COC member in the CIRP of CRIL holding majority of the voting share in the CIRP of KLT i.e. The CoC members had filed an application and made a recommendation for appointment of the Respondent No.1 as IRP/RP in both CRIL and KLT, the COC was well aware of the position of the Respondent No.1 as the RP of CRIL.
- 10.10 It is submitted that when the Respondent No.1 partly rejected and partly categorized the claims of KLT as contingent liability, KLT had not even been admitted into the CIRP, and therefore there was no overlap between the CRIL and KLT matters.
- 10.11 It is submitted that the Applicant was fully aware of the lack of substantive documentation and justification for the claim of KLT

against CRIL which also means the lack of proof for the monies allegedly given by KLT to CRIL. Hence the transactions between KLT and CRIL which were not in normal course of business had to be examined and determination had to be made by the IRP/RP of KLT on whether the Applicant is subject to an avoidable transaction under Section 62 of the IBC.

- 10.12 It is denied that the Applicant tried on various occasions in meetings and through discussions with the Respondent No.1 to understand why the Respondent No.1 had partly rejected and partly categorized KLT's claim in the CIRP of CRIL. It is also denied that the Respondent No.1 refused to pay salaries of the employees of CRIL and license fee for the use of the office premises of CRIL. The Applicant removed the Respondent No.1 acting as the RP of CRIL and employees of CRIL from its office premises and also withdrew CRIL's access to essential services such as SAP, HR payroll, etc. However, they do bear evidence for the Applicant's repeated attempts to disrupt and derail the CIRP of any Corporate Debtor.
- 10.13 The decision to exclude the Applicant Consortium from the list of PRAs was not made by the Respondent No.1 but by the COC of CRIL. The decision of COC of CRIL was upheld by the NCLT, Mumbai vide its order dated 25.09.2024 and 12.12.2024.
- 10.14 During the entire 136-day period from 13.05.2024 to 26.09.2024, the Applicant failed to initiate any legal proceedings against Respondent's decision dated 13.05.2024 or address single correspondence to the Respondent No.1. This inaction demonstrates the Applicant's lack of commitment to KLT's interests.
- 10.15 It is further submitted that the reliance placed by the Applicant on the report of the Working Group on Group Insolvency as well as the Report of the Cross-Border Insolvency Rules/Regulations Committee (CBIRC), and UNCITRAL Legislative Guide on Insolvency Law is

misplaced and not applicable to facts and circumstances to the present matter.

11. Reply by the Respondent No.2 (COC Member)

- 11.1 The Respondent No.1 in the first CoC meeting held on 08.01.2024 was appointed as the RP for CRIL by 100% majority vote. Further, an Interlocutory Application No. 613 of 2024 was filed to confirm the appointment of Respondent No. 1 as the RP. The said application was allowed by this Tribunal vide its order dated 21.02.2024. Further, KLT was admitted into CIRP on 26.09.2024, pursuant thereto the Applicant was appointed as the IRP for KLT, therefore it is evident that Respondent No. 1 was appointed as the RP of CRIL much prior to the CIRP order of KLT.
- 11.2 It is submitted that the Applicant had attended the first CoC meeting of CRIL as well as the KLT; however, no objections were raised by the Applicant at the time of appointment of Respondent No. 1 as the Resolution Professional.
- 11.3 It is submitted that the last date for filing claim against CRIL was 10.03.2024 however, KLT filed the claim with Respondent No. 1 as the RP of CRIL after the said deadline.
- 11.4 It is submitted that the Respondent No. 1 acting as the RP of CRIL admitted a part of the claim of KLT as contingent claim subject to further substantiation by KLT and rejected the remaining claim of KLT as claim filed by KLT was only supported by a purported ledger maintained by KLT in respect the alleged financial debt advanced to CRIL.
- 11.5 It is submitted that the Applicant was in-charge and in management of KLT, but the Applicant failed to submit any additional documents in respect of its claim against CRIL or file any application whatsoever to challenge the decision dated 19.04.2024 of Respondent No. 1 by

which the claim of KLT in respect of CRIL was partly rejected. It was only after commencement of CIRP of KLT that the Applicant filed Interlocutory Application No. 59 of 2025 on 15.12.2024 inter alia to remove Respondent No. 1 as the IRP of KLT on the ground that there was conflict of interest.

- 11.6 It is submitted that the Applicant has filed Interlocutory Application 1112 of 2025 to stay the CIRP of CRIL until the above Interlocutory Application is finally decided. Further, even though the above Application directly affects the rights of the CoC of KLT, the Applicant has failed to make the CoC members of KLT a party to the above Interlocutory Application. The Applicant has filed the above Interlocutory Application is to hinder and delay the CIRP of KLT.
- 11.7 It is submitted that the claim of KLT against CRIL was originally refused to be accepted by the erstwhile IRP of CRIL (i.e. Mr. Hemant Kumar Shah). Further the claim of KLT against CRIL was rejected by Respondent No. 1 (as the RP of CRIL) on account of lack of substantiation and documentation.
- 11.8 It is submitted that the Respondent No. 1 partly rejected the claim of KLT, 5 months prior to commencement of CIRP in respect of KLT. Thus, the contention that Respondent No. 1 had a conflict of interest whilst rejecting (partly) the claim of KLT is wholly misconceived and untenable.
- 11.9 It is submitted that the committee of creditors of both KLT as well as CRIL have duly voted in favour of appointment of Respondent No. 1 as the Resolution Professional of both the companies and the said decision has been duly confirmed by the concerned Benches of this Tribunal. In these circumstances, the Applicant does not have any locus to seek replacement of Respondent No. 1 as the Resolution Professional of either KLT or CRIL.

- 11.10 It is submitted that the Respondent No. 1 by an email dated 28.10.2024 submitted that Respondent No. 1 has not violated any code of conduct specified in the IBBI (Insolvency Professionals) Regulations, 2016 by being the RP of KLT and CRIL. Further, there is no bar under the law against Respondent No. 1 from acting as the RP of sister companies. On the contrary, the same would enable Respondent No. 1 in effectively and efficiently completing the CIRP of KLT as well as CRIL.
- 11.11 It is submitted that the Applicant's conduct in respect of the insolvency of both KLT and CRIL has been wholly malafide. The Applicant, while in the management of KLT and CRIL i.e. prior to commencement of the CIRP undertook measures to prevent recovery of dues of Phoenix the largest financial creditor of both the companies. The Applicant's efforts have always been to prevent recovery of dues by Phoenix. Prior to commencement of CIRP the Applicant had entered into several settlements with Phoenix; however, the Applicant defaulted in all those settlements and it transpired that all such settlement agreements were aimed only to delay and prevent the measures being undertaken by Phoenix.
- 11.12 During the pendency of the above Company Petition, the Applicant took several adjournments and offered multiple settlement proposals to Phoenix. KLT (through the Applicant) addressed a letter dated 21.03.2024 revised proposal for repayment of the outstanding dues owed by KTL to Phoenix. However, due to constant defaults on part of KLT in fulfilling the obligations under the previous settlement proposals, Phoenix rejected the proposal of KLT vide a letter dated 27.03.2024. Pertinently, the Applicant has failed to comply with any of the settlements.

Analysis and Findings

12. We have considered the submissions on behalf of the parties and perused the material on record.

13. This is a case in which same Resolution Professional has been appointed as the RP for the parent company (KLT) as well as its subsidiary (CRIL). While CRIL was admitted under CIRP on 24.02.2023 by order of Learned NCLT Court IV, KLT was admitted under CIRP subsequently on 26.09.2024 by order of this tribunal.
14. Vide order dated 24.02.2023 in CP No.40 of 2022, Learned NCLT Court IV appointed Mr. Hemant Kumar Shah as the IRP for CRIL. Pursuant to appointment, the IRP issued public notice calling for claims from the creditors of CRIL. KLT vide email dated 13.05.2023 submitted its claim of Rs.12,69,19,52,744/- to the IRP of CRIL. The IRP vide its email dated 24.05.2023, requested KLT to submit documents substantiating its claim.
15. In the meantime, the admission order dated 24.02.2023 in respect to CIRP of CRIL was challenged before the Hon'ble NCLAT. The Hon'ble NCLAT vide its order dated 03.03.2023 stayed the constitution of CoC. Thereafter, Mr. Hemant Kumar Shah resigned as the IRP of CRIL on 12.06.2023. Thus, vide order dated 30.06.2023 of Learned NCLT Court IV, the Respondent No.1 was appointed as the IRP for CRIL.
16. On appointment as the IRP, the Respondent No.1 vide email dated 27.11.2023 once again requested KLT to submit documents for substantiating its claim of Rs.12,69,19,52,744/-.
17. Further in the First CoC meeting held on 08.01.2024, it was resolved to appoint Respondent No. 1 as the RP. The Respondent No.1 acting in the capacity as RP of CRIL, again vide its letter dated 02.04.2024 requested KLT to required documents within 7 days of receipt of claim.
18. KLT failed to submit the necessary documents therefore, the Respondent No. 1 as RP of CRIL, vide email dated 19.04.2024 informed KLT that he had admitted a token claim of Re.1/-, rejected the claim amounting to over Rs. 12,12,66,01,993/- and had categorised the remaining part claim of Rs. 56,53,50,750/- as a contingent liability.

19. It is seen that the grievance of the applicant primarily arose because of the partial rejection of claim of KLT by the Respondent No.1 in the CIRP of CRIL. However, it is pertinent to note that the CIRP of CRIL is before Learned NCLT Court IV.

20. In relation to the claim of the Applicant in the CIRP of CRIL, the Applicant has submitted, inter-alia, as follows:

- i. The RP has not pursued the claim of KLT as an Operational Creditor of CRIL.
- ii. The RP failed to take any action to admit claim of KLT against CRIL and to protect the interest of KLT.
- iii. RP refused to include the name of the Applicant in the list of PRA's of CRIL despite the orders of this Tribunal.
- iv. RP has violated Rule 1, 3 and 3A of the Code of Conduct for Insolvency Professionals under Regulation 7(2) (h) of the IBBI (Insolvency Professional) Regulation, 2016.

21. The RP in response, inter-alia has submitted as follows:

- i. Decision to exclude the Applicant, the consortium from the list of PRAs' was made by CoC of CRIL. This decision was upheld by NCLT Court IV vide its orders dated 25.09.2024 and 12.12.2024.
- ii. The RP further states that he is ready to consider the claim of KLT if the necessary documents are furnished.
- iii. The Applicant had ample opportunities to challenge the order dated 26.09.2024 passed by this Tribunal wherein the Respondent No.1 was appointed as the IRP for KLT and decision dated 19.04.2024 of the Respondent No.1, where the Respondent No.1 partly rejected and partly categorization of its claim as a contingent liability.

- iv. The RP states that he had requested for documents in support of KLT's claim in the CIRP of CRIL, which he didn't receive and therefore, he admitted a token claim of Re.1/-, rejected the claim amounting to over Rs. 12,12,66,01,993/- and the remaining part claim of Rs. 56,53,50,750/- was categorised as a contingent liability.

22. It is noted that during the course of the hearing the Ld. Counsel for the Applicant submitted that he was not pressing for the claim of Rs. 12,12,66,01,933/- as there are no documents to substantiate the same. The relevant extracts of the said order dated 02.06.2025 is reproduced herein under:

4. *During the course of the hearing today, Ld. Counsel for the Applicant/ suspended director submits that they are not pressing the claim for Rs. 12,12,66,01,993/- as admittedly there are no documents to support the said claim.*
5. *However, as far as claim of Rs. 56.53 crores are concerned the Applicant relies on audited balance sheet of Colour Roof (India) Limited. However, the CIRP of Colour Roof (India) Limited is not before us and the Applicant may agitate before the appropriate Adjudicating Authority and not before us.*
6. *According to Ld. Counsel for the Applicant for pursuing the claim of Rs. 56 crores kept as contingent claim by the RP there is conflict of interest of the RP of Colour Roof (India) Limited and the RP of KLT.*
7. *Ld. Counsel for the RP submits that despite the objection raised by the Applicant before the CoC on 21.10.2024 and on 05.11.2024, the CoC has decided to overrule the objection and went ahead to appoint the Respondent No. 1 as the RP.*

8. Matter is Reserved for Order.

23. With regard to the contention of the Applicant that the Respondent No.1 refused to include the name of the applicant in the list of PRAs of CRIL despite orders of Learned NCLT Court IV dated 25.09.2024 and 12.12.2024, as noted earlier, the CIRP of CRIL is pending before Learned NCLT Court IV, Mumbai. Therefore, it would not be appropriate for this court to get into the merits of issues raised before us, pertaining to CIRP of CRIL.

24. Therefore, the issues that remain for adjudication are;

- i. Whether in the present facts and circumstances the RP being the common RP for both the Parent Company, i.e., KLT and its subsidiary i.e. Colour Roof (India) Limited amounts to conflict of interest.*
- ii. Whether in the facts and circumstances it necessitates removal/ replacement of RP of KLT?*

Issue No.1

25. Before we consider the applicant's contentions, it is pertinent to note that Regulation 3(1) and the explanatory clause of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 lays down that the RP must not have any conflict of interest or business relationship with the corporate debtor, its promoters, or any other stakeholders. Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 provides that insolvency professionals must adhere to a Code of Conduct specified in the First Schedule to these regulations for avoiding conflicts of interest and maintaining independence. The relevant extracts of the said Regulation are reproduced herein under:

"1. An insolvency professional must maintain integrity by being honest, straightforward, and forthright in all professional relationships."

"3. *An insolvency professional must act with objectivity in its professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.*"

"3A. *An insolvency professional must disclose the details of any conflict of interests to the stakeholders, whenever he comes across such conflict of interest during an assignment.*"

"8B. *An insolvency professional shall disclose its relationship, if any, with the corporate debtor, other professionals engaged by it, financial creditors, interim finance providers, and prospective resolution applicants to the insolvency professional agency of which he is a member, within the time specified hereunder... Explanation- For the purpose of clause 8-B and 8-C above, 'relationship' shall mean any one or more of the following four kinds of relationships at any time or during the three years preceding the appointment of other professionals....."*

"8C. *An insolvency professional shall ensure disclosure of the relationship, if any, of the other professionals engaged by it with itself, the corporate debtor, the financial creditor, the interim finance provider, if any, and the prospective resolution applicant, to the insolvency professional agency of which he is a member, within the time specified as under....."*

"14. *An insolvency professional must not act with mala fide or be negligent while performing its functions and duties under the Code.*"

"23-B *An insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment.*"

"23-C *An insolvency professional shall not provide any service for or in connection with the assignment which is being undertaken by any of his relatives or related parties.*"

26. We note that, the Applicant vide email dated 21.10.2024, addressed to Union Bank had raised issue of conflict of interest regarding the RP. Union Bank, a member of CoC relating to CIRP of KLT vide its email dated 28.10.2024 wrote to the RP asking for clarification on the same.

The RP gave a detailed response to the said email of Union Bank which is reproduced as under:

*“Dear Sir, please do note that the as per the Insolvency and Bankruptcy Code, 2016 (IBC) and the related provisions and regulations, the undersigned has no conflict of interest in being the Resolution Professional of Colour Roof (India) Limited and KLT Automotive and Tubular Products Limited. The undersigned is not a related party to any of the corporate debtors namely Colour Roof (India) Limited and KLT Automotive and Tubular Products Limited as per the said criteria laid down in the IBC, but the promoter group is the related party to both the said corporate debtors. **The undersigned has never worked as any employees or the advisor to the said Corporate debtors or the promoter group at any time in the past and hence appointment as IRP/RP does not contravene any conditions of the IBC.***

Also, there are numerous stances of the same Insolvency Professional being appointed as the Resolution Professional of all the companies of the Promoter Group as it allows visibility of all the financial and operational interlinkages for better understanding of the avoidable transactions and maximization of the value. At the end of the day all decisions of the IP are taken within the legal framework and as per the information made available by the promoter group or that which comes in the possession of the IP without applying any discretion.

(Emphasis Provided)

27. We note that the Respondent No.1 vide its email has clearly disclosed that it was not a related party and has never worked as any employees or the advisor to the said Corporate debtors or the promoter group at any time in the past. Moreover, the CoC members were fully aware of the Applicant's allegations of conflict of interest, raised vide his email on 21.10.2024 and response from the Respondent No.1. It is noted from the minutes of the First CoC Meeting held on 22.10.2024 that, after considering the allegations raised by the applicant, the CoC unanimously voted to appoint the Respondent No.1 as RP of the corporate debtor.

28. Moreover, the Code does not explicitly prohibit appointment of a single RP for companies which belong to the same group. Therefore, we note

that based on the facts in the present case that there is no evident conflict of interest in the appointment of the RP in the CIRP of KLT.

29. Further there is nothing placed on record to show that Respondent No.1 is found wanting in discharging his duties as RP of KLT.

30. We also note that the Applicant in support of his submissions has also drawn attention to certain portions of the report of the Working Group on Group Insolvency (2019) and UNCITRAL Legislative Guide on Insolvency Law. The reports, inter alia, deal with issues relating to appointment of common Resolution Professional when there is conflict of interest. Since it is already established in above paragraphs that there is no conflict of interest in the present case the reports quoted, do not aid the case of Applicant.

31. As noted above, there is no evident conflict of interest therefore, Issue 1 is answered in negative.

Issue 2: Replacement of RP

32. Further, it is also pertinent to note that under Section 22(3) of the Code, the Committee of Creditors (**CoC**) has the authority to appoint a Resolution Professional with a voting share of at least sixty-six percent. The CoC, however, can remove an RP under Section 22(4) of the Code if the appointed RP fails to perform his duties. The said regulation is reproduced herein under:

“27. Replacement of Resolution Professionals 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.

[(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.

(5) Where any disciplinary proceedings 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 resolution professional under this section.”

33. We note that the Applicant is the erstwhile promoter, and not a member of the CoC. The CoC has the primary authority to appoint and remove an RP, by 66 % voting.

34. It is a well-established principle that the commercial wisdom of the CoC is paramount in the insolvency process. The CoC, being the sole beneficiary of any value maximization, is best placed to assess whether the appointed RP is capable of performing his duties. Further, CoC despite the Applicant's objections, demonstrates their confidence in the Respondent No.1. We find no reason to interfere with the commercial wisdom of the CoC in this matter.

35. The E-voting results of first CoC meeting of the Corporate Debtor, *interalia*, appointing Shri. Ashutosh Agarwal as the RP are reproduced herein below:

Sr. No	Class of Creditors	Vote share	Assented	Dissented	Abstained
1.	Phoenix Arc Private Limited	91.36%	91.36%	-	-
2.	Union Bank of India	8.64%	8.64%	-	-
	Total	100%	100%	-	-

36. Further, we also rely on the case of **Anil Kumar Ojha vs Chandramouli Ramasubramaniam, RP of SLSO Industrial Ltd.& Anr Company Appeal (AT) (Insolvency) No. 75 of 2022** dated 28.02.2022, upholding the order dated 23.12.2021 in IA(IBC)/1095/CHE/2021 in CP 1264/IB/2018. The observation of as quoted in the order of NCLAT is extracted below:

10. At this juncture, this connection, this 'Tribunal' on going through the 'impugned order' dated 23.12.2021 in IA(IBC)/1095/CHE/2021 in CP 1264/IB/2018 on the file of the 'Adjudicating Authority' (National Company Law Tribunal, Special Bench -1, Chennai) is of the considered opinion that the 'Committee of Creditors' is entitled and also empowered to change the 'Resolution Professional' in 'Corporate Insolvency Resolution Process' and that too, with a Majority of 66 % votes. In reality, the 'Suspended Board of Director' under the I & B Code, 2016 is not enjoined with the 'power' to displace the existing 'Resolution Professional' and to seek for a replacement of another 'Resolution Professional', being appointed in his place.

37. Therefore, we do not find any material irregularity or malafide action in the conduct of Respondent No.1. Thus, there is no merit in the Applicant's prayer to remove the Respondent No.1. Issue 2 is answered in negative. Accordingly, prayer '**a**' is rejected.

38. Further in regards to prayer 'b' we note that the CoC is better placed to decide on who should be the RP. They have already reposed their faith in the present RP. We don't see any reason to interfere with their decision as stated in paras above nor do we find it necessary to issue any direction to CoC to consider removal of RP. Accordingly, prayer 'b' is rejected.

39. Since the matter has been disposed, prayer 'c' has become infructuous.

40. The I.A. 59 of 2025 is, accordingly, **dismissed**.

SD/-

**HARIHARAN NEELAKANTA IYER
(MEMBER TECHNICAL)**

/Apurva/

SD/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**