

FREE OF COST COPY

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH III
NEW DELHI**

CA No.60/C-III/ND/2018

CA No.69/C-III/ND/2018

CANo.70/C-III/ND/2018

In

CP-IB-446/ND/2017

**IN THE MATTER OF SECTION 60(5) OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016.**

**M/S TAKKSHILL ENTERPRISES
R/O FLAT NO. C-2/605,
NIRMAL CHHAYA SOCIETY,
VIP ROAD, ZIRAKPUR,
SAS NAGAR,
MOHALI-140603.**

... OPERATIONAL CREDITOR/APPLICANT

Versus

**M/s IAP COMPANY PVT.LTD.
C/O HOUSE NO. 353/1,
NEAR GOLAK DHAM TEMPLE,
MAIN ROAD,BIJWASAN,
NEW DELHI-110061.**

.. CORPORATE DEBTOR/RESPONDENT

**M/s Takkshill Enterprises vs. M/s IAP Company Pvt. Ltd.
IB-446/ND/2017**



Coram:

R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)

Dr.V.K.SUBBURAJ
Hon'ble Member (TECHNICAL)

Counsel for the Petitioners : Mr.Sushan Mahajan, Mr. Abhishek Iyer , Advocates

Counsel for the Respondents : Mr. Pulkit Agarwal, Advocate for IRP
Mr. Rajendra Beriwal, Advocate.

Counsel for IBI (IMPLEADED UNDER
DIRECTIONS DATED
23.04.18)

Ms. SWARUPAMA CHATURVEDI, ADVOCATE .
Order delivered On: 16.05.2018

Signature

ORDER

This is an Application filed by the Insolvency Resolution Professional (IRP) seeking for discharge from the Corporate Insolvency Resolution Process (CIRP) initiated by this Tribunal by admitting the above main Company Petition filed by the Operational Creditor (OC) namely, Takkshill Enterprises in view of defaults committed by the Corporate Debtor (CD) in relation to the operational debt owed to it. The main Company Petition was admitted by this Tribunal vide order dated

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Signature

28.2.2018 wherein the IRP as required was also appointed namely, the Applicant herein to discharge the duties as required of him under the provisions of Insolvency and Bankruptcy Code, 2016 (IBC,2016) read with all attendant rules and regulations. Perusal of the present Application shows that in relation to the order dated 28.2.2018 passed by this Tribunal, it is contended by the Applicant that it was not received by him either by way of email or by way of post till 14.3.2018 and since the order was also not uploaded on time, the parties were not in a position to provide the order dated 28.2.2018. On 15.3.2018, it is further stated that a representative was sent by the IRP to the Registry of this Tribunal for obtaining a free copy and that the free copy was given to the representative of IRP on 15.3.2018. However, on receipt of the copy of order on 15.3.2018, it is averred by the Applicant that an email was sent on 17.3.2018 addressed both to the advocate for the OC as well as to the Registrar of this Tribunal, expressing the inability of IRP-Applicant to continue as IRP and that the consent given in Form-2 be treated as withdrawn in the matter due to unavoidable circumstances. Further the initial deposit of Rs.2.00 lakhs it is stated had also been advised not to be paid to the IRP in view of the email dated 17.3.2018 expressing inability. Thus, with the above averments, this Application has come to be filed by the Ld. IRP appointed by this Tribunal.

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2. Before going into the merits of the Application, it will be in order to consider the scope and duties of an IRP enjoined by IBC,2016 as well as attendant regulations and guidelines framed by IBBI there under. From a perusal of Section 16 of IBC,2016 which is extracted hereunder for ready reference the following is noticed in relation to the appointment of an IRP:

16. (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, 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.

(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

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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.

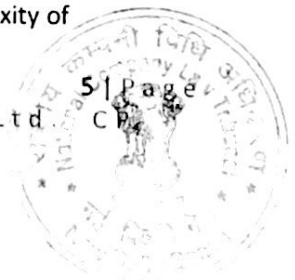
3. A perusal of the above Section would reveal that where the OC has not chosen to propose the name of an IRP, then by virtue of Section 16(3), the Adjudicating Authority namely, this Tribunal is required to make a reference to the Insolvency and Bankruptcy Board of India (IBBI) for the recommendation of an Insolvency Professional who may act as an IRP.

4. Due to unavoidable administrative delays in communication of reference and subsequent recommendations as contemplated above, IBBI in order to overcome the administrative delays, amended the guidelines formulated earlier by it in May, 2017 titled as Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017 dated 25.5.2017 and wherein detailed guidelines were framed by IBBI. It will be pertinent to reproduce paragraph 3 of the earlier guidelines (May, 2017) which reads as under:

3. When a reference is received from AA for recommending the name of an IP, the Board has no information about the volume, nature and complexity of

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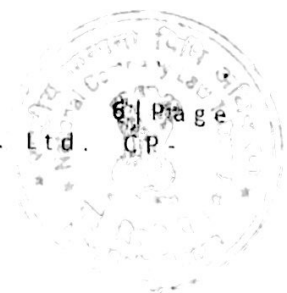


the CIRP or the resources available at the disposal of an IP. Keeping in view the observations of the Joint Parliamentary Committee and this fact, the Board believes that every IP is equally suitable to act as IRP of any CIRP, if otherwise not disqualified. Therefore, it is necessary to have guidelines to recommend one IP out of all registered IPs for any CIRP.

5. In furtherance to the May, 2017 guidelines framed by IBBI in relation to appointment of IRP in a given instance, an amended guidelines as already mentioned and titled as Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2017 dated 15.12.2017 was issued. Paragraph 4 of the said December 2017 guidelines, being material is extracted as under:

The Board will prepare a Panel of IPs for appointment as IRP or Liquidator and share the said Panel with AA. The AA may pick up any name from the Panel for appointment of IRP or Liquidator for a CIRP or Liquidation, as the case may be. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first Panel will be valid for appointments during January - June, 2018, the next panel will be valid for July - December, 2018 and so on.

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6. Further, in relation to paragraph 5 of the guidelines, the eligibility of an IP to be in the panel as specified in guidelines dated 15.12.2017 is to the following effect:

5. An IP will be eligible to be in the Panel of IPs if - (a) there is no disciplinary proceeding pending against him; (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction; and (c) he expresses his interest to be included in the Panel for the relevant period.

7. Taking into consideration the above guidelines framed in the year 2017, IBBI has forwarded to the Hon'ble President, NCLT, New Delhi vide their communication dated 10.1.2018 a panel of IPs recommended for appointment as IRP/Liquidators in respect of CIRP for any CD located in the State of Delhi and Rajasthan for the period from 01.01.2018 to 30.06.2018. From the above panel containing the list of IPs who are eligible to be appointed as IRPs, this Tribunal has chosen the Applicant herein to act as the IRP in relation to the CIRP of the CD in the main petition.

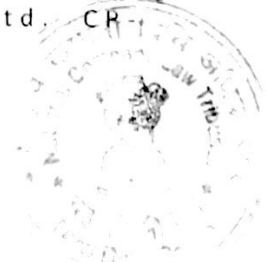
8. However, without assuming charge of his office and discharging the functions as are required to be done under the provisions of IBC,2016, that too after having given his consent for the 6 months

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period with IBBI commencing from 01.01.2018 to 30.6.2018, in terms of paragraph 4 of December, 2017 guidelines, the IRP has chosen to file this Application seeking for discharge from the functions of IRP, thereby effectively subverting the provisions of IBC,2016 of the CIRP of CD and from the expeditious manner in which the Resolution Process is required to be carried out. In this regard, it is to be observed that IRPs carry a very serious onus for effectively carrying out the requirements under the provisions of IBC,2016. For e.g. under Section 17 of IBC,2016 from the date of appointment of an IRP, the management of affairs of the CD are to vest in the IRP and the powers of the Board of Directors of the CD shall stand suspended and be exercised by the IRP. It is also provided in clause (d) of sub-section (1) of Section 17 of IBC,2016 that the financial institution maintaining the accounts of the CD is required to act in accordance with the instructions of IRP. Further, officers of the CD are also required to report to the IRP and also to provide access to documents and records, as may be required by the IRP for the discharge of his functions. The duties of the IRP has been listed out under Section 18 of IBC,2016, wherein, one of the important duties of the IRP is to constitute a Committee of Creditors (CoC) after receiving the claims as envisaged under Section 21 of IBC,2016 by collating all the claims against CD received by the IRP pursuant to public announcement, as required to be made within a period of 3 days from



the date of admission, as provided under Section 15 of IBC, 2016 read with the attendant rules. It is also further worth while to observe that as per Section 16(5), the term of IRP shall not exceed 30 days from the date of his appointment. The reading of the above provisions of IBC,2016 clearly brings forth the importance of an IRP in the implementation of CIRP process and any laxity on the part of IRP or any hesitancy on the part of IRP to act in accordance with the provisions of IBC,2016 virtually results in a setback, not only to the CIRP process, but to all the stakeholders concerned including the creditor who has approached this Tribunal in the first place for the initiation of the CIRP process, as well as to those similarly placed creditors as well as to the CD itself. Thus, the initial period of 30 days is very crucial under the provisions of IBC,2016 soon after the Petition is admitted, as during the said period, the control of the assets and affairs of a Corporate Debtor is effectively taken out of the hands of the persons who have been hitherto managing the affairs of the Corporate Debtor and on behalf of its behalf shareholders to the hands of the IRP for the benefit of creditors which process effectively stands stultified by the inaction on the part of the IRP.

9. Hence keeping the gravity of the situation in mind, even though the Application made is not in consonance with any of the provisions of



IBC,2016 for the purpose of seeking for the discharge of an IRP, this Tribunal was forced to direct notice to IBBI and also make IBBI as a party to the Application, as the Insolvency Professionals are basically empanelled and regulated by IBBI and the list of names of empanelled IPs is also forwarded by it to this Tribunal as noted in paragraph supra. Hence its reply was sought for to the Application, more by way of assistance, then in relation to facts, though some material facts have also come to light in the affidavit as filed by IBBI of which this Tribunal has duly taken note of in relation to the conduct of the IRP as borne out in the succeeding paragraphs. In this connection, a perusal of the powers of IBBI which has been delineated under Section 196 of IBC,2016 is relevant and the following sub-sections will be of significance to be noted vis-a-vis an RP, namely:

196. (1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;

(c) xxxx

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

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(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

(i) to (o) xxxxxxxx

(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;

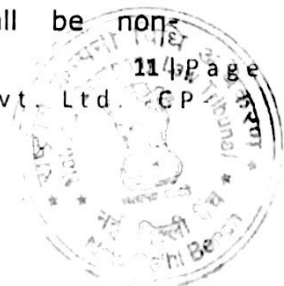
(s) xxxxxxxx

(2) The Board may make model bye-laws to be to adopted by insolvency professional agencies which may provide for—

(a) the minimum standards of professional competence of the members of insolvency professional agencies;

(b) the standards for professional and ethical conduct of the members of insolvency professional agencies;

(c) requirements for enrolment of persons as members of insolvency professional agencies which shall be non-



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discriminatory; Explanation.—For the purposes of this clause, the term "non-discriminatory" means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified;

(d) the manner of granting membership;

(e) setting up of a governing board for internal governance and management of insolvency professional agency in accordance with the regulations specified by the Board;

(f) the information required to be submitted by members including the form and the time for submitting such information;

(g) the specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by members;

(h) the grounds on which penalties may be levied upon the members of insolvency professional agencies and the manner thereof;

(i) a fair and transparent mechanism for redressal of grievances against the members of insolvency professional agencies;

(j) the grounds under which the insolvency professionals may be expelled from the membership of insolvency professional agencies;

(k) the quantum of fee and the manner of collecting fee for inducting persons as its members;

(l) the procedure for enrolment of persons as members of insolvency professional agency;

(m) the manner of conducting examination for enrolment of insolvency professionals;

(n) the manner of monitoring and reviewing the working of insolvency professional who are members;

(o) the duties and other activities to be performed by members;

(p) the manner of conducting disciplinary proceedings against its members and imposing penalties;

(q) the manner of utilising the amount received as penalty imposed against any insolvency professional.

(3) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under this Code, the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person at any place;

(iv) issuing of commissions for the examination of witnesses or documents.

Further, it is also pertinent to note in this connection Section 208 (c) of IBC,2016 reproduced as under:

208. (1) Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely:—

(a) a fresh start order process under Chapter II of Part III;

(b) individual insolvency resolution process under Chapter III of Part III;

(c) corporate insolvency resolution process under Chapter II of Part II;

(d) individual bankruptcy process under Chapter IV of Part III; and

(e) liquidation of a corporate debtor firm under Chapter III of Part II.

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(2) Every insolvency professional shall abide by the following code of conduct:—

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;

(c) to allow the insolvency professional agency to inspect his records;

(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified.

It is also significant to note that pursuant to the powers vested in it, IBBI as a Regulator has formulated regulations governing the functions of Insolvency Professional Agencies and Insolvency Professionals titled, inter alia, as follows:-

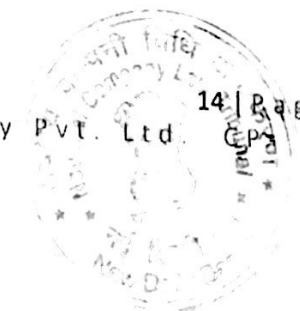
IBBI (Insolvency Professional Agencies) Regulations, 2016.

IBBI (Model Bye-Laws and Governing Body of Insolvency Professional Agencies) Regulations, 2016.

IBBI (Insolvency Professional) Regulations, 2016.

IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017.

IBBI (Inspection and Investigation) Regulations, 2017.



10. From the Regulations as framed above, reference initially to Model Bye-Laws of an Insolvency Professional Agency proposed by IBBI and to be incorporated by any Insolvency Professional Agency, pursuant to Regulation 3 of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulation, 2016 and as contained in Schedule to the said Regulations and more particularly clauses 13(i)(e)(g)(h) of Chapter VIII of the Model Bye-Laws provide in relation to duties of IP as follows:

13(1) In the performance of his functions, a professional member shall-

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(e) discharge his functions with the highest standards of professional competence and professional ethics;

xxxx

(g) perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code;

(h) comply with applicable laws in the performance of his functions; and

xxxx

11. While Chapter X provides for disciplinary proceedings, pertinent is Chapter XI containing clause 26(2) of the said Chapter.

Temporary Surrender of Professional Membership

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26(1)

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26(2) No application for temporary surrender of professional membership of the Agency shall be accepted if-

- (a) there is a grievance or disciplinary proceeding pending against the professional member before the Agency or the Board, and he has not given an undertaking to cooperate in such proceeding; or
- (b) the professional member has been appointed as a resolution professional, liquidator or bankruptcy trustee for a process under the code, and the appointment of another insolvency professional may be detrimental to such process.

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Further in relation to IPs, Chapter IV of IBBI (Insolvency Professional)

Regulations, 2016 more particularly clause 10(1) & (2) provides as

follows:

(1) An insolvency professional agency shall inform the Board if any of its professional members has temporarily surrendered his certificate of membership or revived his certificate of membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case maybe.

(2) The Board shall take note of the information received under sub-regulation (1)

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In view of the power to regulate IP's as well as IPA's and also taking into consideration the several regulations passed by IBBI in relation to IP's and IPA's to all of which the applicant is also amenable and subjected to, with a view to hence ascertain the actual position IBBI was considered as a necessary party.

12. Thus, consequent to the notice served upon IBBI and IBBI having been impleaded as a party to this Application, IBBI has filed a detailed reply through its Deputy General Manager, wherein it has been stated that the Application as filed by the Applicant is not justified as it lacks merit since the issue raised is based upon an incorrect understanding of law. In accordance with the guidelines of December, 2017 as noticed above in this order, it is stated that the Board prepares a panel of IPs for appointment as IRP or liquidator and has shared the said panel with this Tribunal and that the said panel has a validity of 6 months and that a new panel replaces the earlier panel every 6 months. It is further pointed out in the affidavit that based on the expression of interest to be included in the panel for the relevant period by the IRP who is Applicant herein, his name has been included in the panel which has been forwarded to this Tribunal and in view of the same the prayer as sought for by the IRP in the Application cannot be encouraged particularly having come to know



that he has been appointed as an IRP. It is also brought to the notice of this Tribunal by way of the above referred affidavit filed by IBBI that even though in the present Application, the grounds of unavoidable circumstances has been cited seeking for the discharge, however, vide email annexed dated 26.4.2018 and as evidenced by Annexure A-4 filed along with the reply affidavit, the reasons given therefor is on the grounds of inability to devote adequate time to the subject assignment and in view of the same, the reasons for discharge advanced by the IRP are contradictory and non maintainable it is stated. Taking into consideration, the guidelines, it is also pointed out that every assignment under the Code irrespective of its size and stake has the same importance under the law and is required to be seen with the same importance by the IRP. Provisions of Section 17 and 18 of IBC,2016 which had already been referred to by this Tribunal in relation to the management of the affairs of the CD and the duties of IRP are also brought into focus in the affidavit. Specific relevance is also placed upon consent and Expression of Interest provided by the IRP to be empanelled in the list of IPs or Liquidators as forwarded to this Tribunal and having given his consent to act as a Resolution Professional or Liquidator for a period of 6 months commencing from 01.01.2018 to 30.06.2018, it is stated that the IRP should not be discharged from his duties to act as an IRP in relation to the CD as

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sought for in the Application and in the circumstances the functions of IRP being of serious nature and in the nature of public functions, the casual attitude should not be entertained.

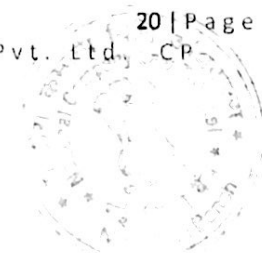
13. Along with this Application an Application No. CA-69/C-III/ND/2018 which has been filed by the OC invoking the provisions of Section 60(5) of IBC,2016 seeking of this Tribunal to issue appropriate directions to the IRP namely the Applicant in CA-60/C-III/ND/2018 or for appointment of new IRP under the Code and in addition to the above Application filed by the OC, another Application in CA No.70/C-III/ND/2018 which has also been filed by the OC seeking for the appointment of Mr. Sunil Kumar Agarwal to act as an IRP in relation to the CD and to pass such or further orders to secure the ends of justice was also heard, all being in relation to issue arising out of the impasse created by IRP/Applicant as seen in the earlier paragraphs.

14. We have carefully considered the pleas made in the Application as filed by the IRP appointed by this Tribunal vide order dated 28.2.2018 as well as the reply filed by IBBI and the Applications filed by the OC in CANo.69/C-III/ND/2018 and CA No.70/C-III/ND/2018. Further, representations of the CD as well as the Financial Creditors of the Company were also heard. It is evident from the representations of

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the OC, CD as well as Financial Creditors who are before us that there is prime need for the CIRP Process to commence, as envisaged under the provisions of IBC,2016 and in consonance with the order of admission of CIRP as initiated against the CD by this Tribunal. From the submissions made by the stakeholders who were before us, it is clear that the management of the CD is willing to act in accordance with IBC,2016 and cooperate with the IRP. However, the unprofessional action of IRP has virtually made the CIRP process initiated by this Tribunal by way of admission of Company Petition as a non-starter. The delay on the part of IRP ascribing, however, of a procedural nature in the application about receipt of the order of this Tribunal dated 28.02.2018 even though fairly conceded by Ld.Counsel appearing for the IRP/Applicant that the IRP appointed by this Tribunal was put on notice through telephone about the order of appointment immediately after the order shows that there was a delay on the part of IRP/Applicant who has failed to recognize the importance of his unique position in the entire scheme of IBC,2016, particularly in relation to CIRP of the CD. Ld. Counsel for the Applicant/IRP represented before this Tribunal that with great efforts after passing the qualifying exam a certificate of registration has been granted to him to act as a Resolution Professional. If that were so, the Applicant should be all the more well aware of his duties as well as the functions



which is required to be performed on his appointment as an IRP in relation to CIRP processes of a Corporate Debtor in which he is likely to be appointed to carry on the CIRP process. Further the reasons given of unavoidable circumstances before this Tribunal without even specifying what is the nature of personal inconvenience and which is being touted about for seeking discharge to act as an IRP however on the other hand making a representation before the IBBI that too subsequent to his appointment by this Tribunal giving contradictory and paradoxical reasons does not in any way advance the cause of the Applicant before this Tribunal, and also points out to the sheer unprofessional attitude of the Applicant/IRP. It is also pertinent to note that consent has been given to IBBI as rightly pointed out in the affidavit filed by IBBI by the Applicant/RP herein to be included for a period of 6 months commencing from 01.01.2018 to 30.06.2018 and which panel list was forwarded to this Tribunal and also from which panel list this Tribunal had chosen and appointed the Applicant as the IRP of the CD and hence the stand taken by the Ld. Counsel for the Applicant/IRP before us that declaration in Form 2 has not been filed the same being a pre-condition and subject to which the IRP assumes charge as per the orders of this Tribunal is too technical and cannot be accepted as it does not hold much water. Further, the reasons given in the application does not in any way mention that in relation to CD and

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its affairs he cannot act independently and hence filing Form-2 is only a mere formality and that cannot be made a ground that his appointment has not been accepted and he is not an IRP, more so when consent to act as an IRP has already been given to IBBI based on which panel list has been forwarded and from which it is sought to be withdrawn. Thus it can be seen that the act of the IRP is totally unprofessional and instances of similar nature on the part of IRPs is being evidenced in some of the matters before this Tribunal and also seems to be not uncommon, before other Benches of NCLT as well. This practice of IRP's appointed by NCLTs based on panel list provided by IBBI and subsequently trying to resile from their consent earlier given and that too upon appointment by Adjudicating Authority (AA) is strongly required to be eschewed and is to be nipped in the bud at the earliest opportunity. In this connection, the role of the Insolvency Professionals on the one hand and on the other that of AA and their interplay has been succinctly brought in the Report of the Bankruptcy Law Reforms Committee Volume I, Rational and Design, 2015 and at Chapter 4.4 dealing with the Insolvency Professionals after elucidating the role of IPs in the process of Insolvency and Bankruptcy and while stressing the importance of IPs concludes with the following paragraph of Chapter 4.4, which is extracted hereunder:



The role of the IPs is thus vital to the efficient operation of the insolvency and bankruptcy resolution process. A well functioning system of resolution driven by IPs enables the adjudicator to delegate more and more powers and duties to the professionals. This creates the positive externality of better utilization of judicial time. The worse the performance of IPs, the more the adjudicator may need to personally supervise the process, which in turn may cause inordinate delays. Consumers in a well functioning market for IPs are likely to have greater trust in the overall insolvency resolution system. On the other hand, poor quality services, and recurring instances of malpractice and fraud, erode consumer trust.

The above paragraphs brings in a nut-shell and concisely as to where the success or failure of IBC rests and nothing more is required to be said in this connection.

15. Taking into consideration all of the above, we are not in a position to entertain the plea of the IRP seeking for his discharge. In the circumstances, this Application stands dismissed with costs of Rs.50,000/- payable to Insolvency and Bankruptcy Fund as envisaged under Section 224 of IBC,2016 and in case of absence of the fund to the credit of Prime Minister's Relief Fund. Further the IRP is directed to commence the performance of his duties forth with not later than 3 days from the date of this order in the interest of all the stakeholders concerned and facilitate the convening of the Ist Committee of Creditors meeting. Further, the unprofessional attitude of the Resolution Professional/Applicant cannot also be looked away

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as well and in the circumstances, this Tribunal directs the following to IBBI, being the Regulator of IRP (i.e.) to initiate such actions as contemplated under several of the Regulations as framed by it in relation to IPs and Insolvency Professionals Agencies empanelled with it and for this purpose consider and treat the Application in CA.No.69/C-III/ND/2018 as a complaint of a aggrieved person. Consequent to the dismissal of the above application Company Application in CA.No.70/C-III/ND/2018 also stands dismissed but however without costs.

Sd/- 11/5/2018
(Dr.V.K.SUBBURAJ)
MEMBER (TECHNICAL)

Sd/- 17/5/2018
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta
16 /05/2018



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17.5.2018
Registrar
National Company Law Tribunal
New Delhi