

(2022) 05 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No. 9920 Of 2022

Gopal Prasad Agrawal

APPELLANT

Vs

State Bank Of India And Another

RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 95, 97, 99

Citation : (2022) 05 OHC CK 0016

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Saswat Kumar Acharya

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

W.P.(C) No.9920 of 2022 and I.A. No.5139 of 2022

1. Mr. Acharya, learned advocate appears on behalf of petitioner and submits, impugned is order dated 4th March, 2022 made by National Company Law Tribunal (NCLT), Cuttack Bench. He submits, application was made under section 95 of Insolvency and Bankruptcy Code, 2016 by the bank against his client for initiating insolvency proceeding. It was done without notice to his client. There is no reason in impugned order as to why it was made ex-parte. He submits, there has been gross violation of principles of natural justice. He seeks interference.

2. Impugned order appears to have been made under section 99 upon the adjudicating authority having appointed Resolution Professional (RP) under section 97. Paragraph 10 in impugned order is reproduced below.

"The Applicant/Creditor has proposed the name of Mr. Shikhar Chand Jain for appointment as Resolution Professional. Therefore, as proposed by the Financial Creditor, Mr. Shikhar Chand Jain [E-mail: advcacs@gmail.com], having his address at AD&B Co., Chartered Accountants, 1st Floor, Mahavir Gaushala

Complex, Maudhapara, Raipur (C.G) having Reg. No.IBBI/IPA-001/IP-P00495/2017-18/10883, is hereby appointed as Resolution Professional, in exercise of the powers conferred on this Adjudicating Authority under section 97 of the IBC, 2016 read with regulation 4(1) and (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The resolution professional has filed the required declaration in Part IV of the Petition.”

3. It appears from above quoted paragraph 10 in impugned order that RP has been appointed acting on proposal of applicant bank. On query from Court, Mr. Acharya submits, there has not been any amendment to section 97. Said provision does not appear to empower adjudicating authority to nominate a resolution professional on proposal made by applying creditor or debtor. In the circumstances, impugned order will remain stayed till next date.

4. Issue notice along with this order on opposite party nos.1 and 2 by registered/speed post with A.D. Petitioner will put in requisites.

5. The I.A. is disposed of.

6. List on 20th June, 2022. It is made clear, opposite parties are at liberty to apply earlier for vacating or varying the ad-interim order.

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