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NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH, BENGALURU, HELD ON 09.10.2019

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), **Shri Rajeswara Rao Vittanala**
2. Hon'ble Member (T), **Dr Ashok Kumar Mishra**

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 122/BB/2017	For consideration of NCLAT order IA 133/19 IA 439/19 IA in DY No. 5734/19	Sec 7 of I&B Code 2016	M/s New Age Real Properties, LLP	R Bhuvaneshwari RP	Bhuvana Infra Projects Pvt Ltd	K Ravichandra Mohan & others

ADVOCATE FOR PETITIONER/s:

R-BHUVANESHWARI RP/APPLICANT
for IA 133/19 & 439/19

ADVOCATE FOR RESPONDENT/s:

(DEEPAK
Advocate for Respondent.
IA in DY NO. 5734/

Theerthesh B.S
for VGB Associates
9738926045

for R1 in
IA No. 133/2019

PTO

ORDER

Heard Ms. R. Bhuvaneshwari, learned Resolution Professional/Applicant in I.A.No.133 of 2019 & 439 of 2019, Shri Theerthesh B.S., learned Counsel for Respondent No.1 in I.A.No.133 of 2019 and Shri Deepak, learned Counsel for Applicant in I.A.No.515 of 2019.

I.A.No.133 of 2019 is disposed of by separate order.

I.A.No.439 of 2019 is dismissed by separate order.

I.A.No.515 of 2019 is disposed of as withdrawn. Post the case on 22/10-2019.

MEMBER(T) **MEMBER(J)**

Puja

ORDER

1. I.A.No.515 of 2019 in C.P.(IB)No.122/BB/2017 is filed by Shri M. Srinivas, (hereinafter referred to as 'Applicant') under Section 12 of the IBC, 2016, R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to remove Mrs. Ramanathan Bhuvaneshwari as the Resolution Professional for her dereliction of duties and violating the IBC and replace her by appointing another Resolution Professional etc.
2. Heard Shri Deepak, learned Counsel for the Applicant and Mrs. Ramanathan Bhuvaneshwari, and learned Resolution Professional. We have carefully perused the pleadings of the parties and extant provisions of the Code.
3. Shri Deepak, learned Counsel for the Applicant submits that he wants to withdraw the instant Application with a liberty to file fresh Application in accordance with law.
4. Since the Applicant wants to withdraw the Application, we are inclined to permit the Applicant to withdraw it with a liberty to file fresh Application in accordance with law.
5. In the result, I.A.No.515 of 2019 in C.P.(IB)No.122/BB/2017 is hereby disposed of as withdrawn by granting liberty to the Applicant to file fresh Application, if so advised, in accordance with law. No order as to costs.

MEMBER(T) **MEMBER(J)**

Puja

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.439 of 2019 in
C.P.(IB)No.122/BB/2017
U/r11of the NCLT Rules, 2016

Smt. Ramanathan Bhuvaneshwari
Resolution Professional of M/s.Bhuvana Infra Projects Private Limited
Flat No.528, K.R. Garden, First Floor,
6th Block, Koramangala,
Bangalore. - Applicant/ Resolution Professional

In the matter of:

M/s.New Age Real Properties LLP - Petitioner

Versus

M/s.Bhuvana Infra Projects Private Limited - Respondents

Date of Order: 9th October, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

Applicant/Resolution Professional : Smt. R. Bhuvaneshwari

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.439 of 2019 in C.P.(IB)No.122/BB/2017 is filed by Smt. R. Bhuvaneshwari (hereinafter referred to as 'Applicant') Resolution Professional of M/s.Bhuvana Infra Projects Private Limited, U/r 11 of the NCLT Rules, 2016, by inter alia seeking for exclusion of 75 days from the 270 days of the period of CIRP, in order to continue the CIRP etc.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

(1) The main Company petition filed by M/s.New Age Real Properties LLP, a Financial Creditor, under Section 7 of the IBC, 2016 R/w Rule 4 of the I&B (AAA) Rules, 2016 was admitted by this Adjudicating Authority, vide order dated January17th, 2018 ('Admission Order') by initiating CIRP, appointing Mr. Pavan Kankani as IRP, moratorium etc. Subsequently, the COC changed said IRP with Smt. Ramanathan Bhuvaneshwari as Resolution Professional,, and it was approved by the AA vide its order dated 04th May 2018.

(2) It is contended that the Corporate Debtor presently does not carry any business activity and hence the Company in made a Shell Company with no employees, no business and no assets. All the assets of the Company have been diverted to the Group entities. U/s 25(2) of the Code, the Resolution Professional has to control and custody of all the assets of the Corporate Debtor. As there are no other assets available with the Corporate Debtor, except receivables from the group Companies, the Resolution Plan has to come out of the Assets diverted to Group Companies and receivables which are overdue from the group Companies.

(3) Based on the Audit Report for 2016-17, 2017-18 RP filed an application bearing IA No. 269/18, on September 5th, 2018 u/s 66 of the Code, with prayer to pass orders to recover Rs.46 Crores from the Group Company and its Directors, in order to come up with Resolution Plan during the CIRP period. As the hearing was going on, based on the approval of COC in the meeting held on 6th October 2018, the CIRP got extended further by 3 months in the hearing held on 24th October 2018 and the CIRP of 9 months was extended to 11th January 2019.The Adjudicating Authority dismissed the I.A 269/18 stating that COC has asked for criminal

action and no prima facie case is made out by the Resolution Professional u/s 66.Further to the oral observation of the Bench on 24th October 2018 while passing the order, RP took it up with COC and COC in its meeting held on 29th October 2018 appointed BDO India as the Forensic Auditor to conduct Forensic Audit from the period 2011 to September 2018.The Forensic Auditors have submitted a 110 pages Report, observing several irregularities in the business of the Corporate Debtor.

(4) It is stated that based on the Forensic Audit Report, the Resolution Professional filed a fresh application IA No. 446/18 ,u/s 66 of the Code, duly supported by Forensic Audit Report. Again another Application by seeking further exclusion of time for 120 days and the Adjudicating Authority passed order on 12th April 2019 allowed by excluding time as prayed for and thus time available for conclusion of the CIRP till 11th May 2019.The Adjudicating Authority disposed of the Application 446/18 vide order dated 16th April 2019 by inter alia directing the Resolution Professional to send all records to the Central Government so as to refer the matter to SFIO for further investigation.

(5) It is also stated that the CoC in its meeting held on 10th May 2019 approved further exclusion of time of 112 days so as to extend CIRP till 31stAugust 2019 as further time is required due to the Appeal initiated by the Respondents and also to explore other legal options, including settlement effort initiated by the Corporate Debtor and its group companies. Accordingly, an Application was filed and it was duly approved vide its order dated 30th May 2019.Meanwhile, the Respondent filed appeal with NCLAT, with prayer to set aside the order dated 16.04.2019 passed by the Adjudicating Authority. Further to the Appeal filed by the Director of Corporate Debtor and Appeal by the Group Companies, in the hearing held on 21stAugust 2019, the Hon'ble

NCLAT directed the Corporate Debtor and its Group Companies to handover all the assets and business records of the Corporate Debtor and report compliance by 26th August 2019.

(6) On 26th August 2019, as the Assets were not handed over as directed, Hon'ble NCLAT passed the following order:

"Ms. R. Bhuvaneswari, Advocate for 'Resolution Professional' submits that all assets and records of the 'Corporate Debtor'have not been handed over by the Promoter including the Appellant. Mr.Lagadapati Ramesh – Promoter/Appellant is present in the court and submits that all records including keys of the 'Corporate Debtor' will be handed over within a week. In the circumstances, we allow Ms. R. Bhuvaneshwari, Advocate for 'Resolution professional' to take help of the local police authority on 30th August, 2019 at 10.30 A.M. Mr. Lagadapati Ramesh and other officers/employees of the 'Corporate Debtor' will contact Ms. R. Bhuvaneshwari before 30thAugust, 2019 and will also remain present with the 'Resolution Professional' on the said date and will hand over the records and premises, if not yet handed over by 30th August, 2019. Mr. Lagadapati Ramesh will remain present in person and will file affidavit of compliance on next date. Ms. R. Bhuvaneshwari will also file affidavit of compliance after taking joint signatures of the records and charge showing the handover of the premises. Place the case for 'Orders' on 20th September, 2019".

(7) It is further stated that considering the above direction of Hon'ble NCLAT and other ongoing legal proceedings, the parties, namely, Corporate Debtor and its group companies, felt that it is better to settle with the creditors. Based on the Form FA submitted by the Petitioner M/s.New Age Real Properties LLP, the Resolution

Professional Ms. Ramanathan Bhuvaneshwari issued notice and conducted a meeting of Committee of Creditors on 30th August 2019 at 10.00 A.M.The proposal from the Promoter and its group Companies is to provide Post dated cheque (PDC) to all the creditors as per the agreement with each creditor. However, the CoC rejected the same offer, with a demand that any withdrawal of application can be considered only if the dues are settled fully with immediate payment. For this, the promoter and the group companies wanted more to arrange. Considering the above Appeal process with NCLAT and settlement under CIRP, COC feels appropriate to exclude the time spent during CIRP, towards the proceedings with the Adjudicating Authority and NCLAT, which was not considered earlier for exclusion.

(8) It is stated that the last order for exclusion of time was considering CIRP time lapse till April 26th 2019, the date of receipt of order from Adjudicating Authority. As the Respondents have gone on appeal, further time of 126 days, lost till 30th August 2019, which requires to be excluded. However, as per the amended act 2019, the ongoing CIRP cases are to be completed within 90 days of official notification which was done one on 16th August 2019 and hence out of 126 days time lost, they can exclude only 75 days and CIRP shall be completed on November 14th, 2019.

Sl. No.	Date	Stage	No. of Days
1.	27th April 2019 to August 30th 2019, being date of the CoC meeting	Time spent in hearing of order dated 16th April 2019, forwarding the case to SFIO till the date of CoC meeting (April 2019-4days +May -31 days + June 30 days + August 30 days)	126 days (upto Jan 4th2020), restricted to 90 days from 16th August 2019 to November14th2019. Hence availing only 75 days out of 126 days

		Total time lost in CIRP	**112 days**

3. Heard Smt. R. Bhuvaneshwari, learned Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code and the law on the issue.

4. As per Code of Conduct for Insolvency Professionals are enumerated, in First Schedule, Under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016, which reads as under:

"***Integrity and Objectivity***.

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

(2) *An insolvency professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.*

(3) *An insolvency professional must act with objectivity in his 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.*

(4) *An insolvency professional appointed as an interim resolution professional, resolution professional, liquidator, or bankruptcy trustee should not himself acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so.*

Independence and impartiality

(5) *An insolvency professional must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.*

(6) *In case where the insolvency professional is dealing with assets of a debtor during liquidation or bankruptcy process, he must ensure that he or his relatives do not knowingly acquire any such assets, whether directly or indirectly unless it is shown that there was no impairment of objectivity, independence or impartiality in the liquidation or bankruptcy process and the approval of the Board has been obtained in the matter.*

(7) *An insolvency professional shall not take up an assignment under the Code if he, any of his relatives, any of the partners of directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director is not independent, in terms of the Regulations related to the process under the Code, in relation to the corporate person/debtor and its related parties.*

(8) *An insolvency professional shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under Section 53 or 178 of the Code, and the concerned corporate person/debtor as soon as he becomes aware of it, by making a declaration of the*

same to the applicant, committee of creditors, and the person proposing appointment, as applicable.

a. An insolvency professional shall disclose as to whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor, to the committee of creditors and to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

(9) An insolvency professional shall not influence the decision or the work of the committee of creditors or debtor, or other stakeholders under the Code, so as to make any undue or unlawful gains for himself or his related parties, or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any mala fide objectives.

Professional competence

(10) An insolvency professional must maintain and upgrade his professional knowledge and skills to render competent professional service.

Representation of correct facts and correcting misapprehensions.

(11) An insolvency professional must inform such persons under the Code as may be required, of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.

(12) *An insolvency professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable.*

Timeliness

(13) *An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.*

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

5. The main Company Petition bearing C.P.(IB)No.122/BB/2017 is filed by M/s.New Age Real Properties LLP, under Section 7 of the IBC, 2016, R/w Rule 4 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate CIRP in respect of M/s.Bhuvana Infra Projects Private Limited. Accordingly, the Adjudicating Authority admitted the case, vide order dated January17th, 2018, by initiating CIRP. Subsequently, several orders have been passed by the Adjudicating Authority, basing on various Applications filed by the Resolution professional, which includes the change of IRP, exclusion of times, fraud etc. Now, after doing exclusion of time, initiating criminal proceedings, filing Applications under Section 66 etc, against the Companies and its Directors, has now says that they are trying for settlement of the issue too. In normal case, criminal acts like fraud, cheating etc involved, there cannot be any compromise on those things and law take its own course.

However, the Resolution Professional instead of discharging her duties as per law, in order to complete CIRP/Liquidation process as per the provisions of the Code and the Rules made is resorting to various actions/steps contrary to it. In the instant case, the CoC consisting the Bank of Maharashtra with 97.28% and M/s.New Age Real Properties LLP with 7.22%. Bank of Maharashtra has not placed on record the action taken to recover its dues from the Corporate Debtor or Group Companies for recovery but only harping on the Resolution Professional to file various Applications.

6. It is settled position of law that once CIRP initiated, it should be concluded within stipulated time, even though various issues pending adjudication on Application(s) filed in the meanwhile. However, in the instant case, the records shows that even though the case was admitted as early as January 2018, still the Resolution Professional is only filing Applications one by one without taking appropriate steps either to conclude CIRP or filing Application seeking liquidation of Corporate Debtor. As per provisions of Code, there cannot be extension of time for more than 90 days beyond 180 days. And grant of exclusion of time is permitted only on justifiable reasons in a given case by exercising inherent powers of Adjudicating Authority and it cannot be claimed as a matter of right. As stated supra, we have already exercised our inherent powers to a maximum extant and we cannot exercise our inherent powers further and the Applicant too failed to justify the relief as asked for. Therefore, we are of the considered opinion that the instant application is liable to be dismissed.

7. In the result, I.A.No.439 of 2019 in C.P.(IB)No.122/BB/2017 is hereby dismissed by directing the Resolution Professional to expedite CIRP/Liquidation, in accordance with law without further delay. No order as to costs.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARARAOVITTANALA)
MEMBER, JUDICIAL

Puja

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.133 of 2019 in
C.P.(IB)No.122/BB/2017
U/s 65 of the IBC, 2016
R/w Section 21, 66 and other applicable
Provisions of the I&B Code, 2016

In the matter of:

Smt. Ramanathan Bhuvaneshwari
Resolution Professional of M/s. Bhuvana Infra Projects Private Limited
Flat No.528, K.R. Garden, First Floor,
6th Block, Koramangala,
Bangalore. - Applicant/ Resolution Professional

Versus

Shri Pratap Kunda
Director of M/s.New Age Real Properties LLP
6-3-1096, FNOL 304,
V.V. Vintage, Somajiguda,
Hyderabad – 500 082. & Another - Respondents

Date of Order: 9th October, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

Applicant/Resolution Professional	:	Smt. R. Bhuvaneshwari
For the Respondent No.1	:	Shri Theerthesh B.S.

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.133 of 2019 in C.P.(IB)No.122/BB/2017 is filed by Smt. R. Bhuvaneshwari (hereinafter referred to as 'Applicant')

Resolution Professional of M/s.Bhuvana Infra Projects Private Limited, U/s 65 of the IBC, 2016, R/w Sections 21, 66 and other applicable Provisions of the I&B Code, 2016, by inter alia seeking to impose maximum penalty of Rupees one Crore, each on M/s.New Age Real Properties LLP, on its Directors Mr. Pratap Kunda and Mr. Amaranth Devaki respectively for initiating the Insolvency Resolution Process fraudulently and with malicious intent for pushing the Corporate Debtor to Liquidation through the CIRP route etc.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

(1) The main Company petition filed by M/s.New Age Real Properties LLP, a Financial Creditor, under Section 7 of the IBC, 2016 R/w Rule 4 of the I&B (AAA) Rules, 2016 was admitted by this Adjudicating Authority, vide order dated January 17th, 2018 ('Admission Order') by initiating CIRP, appointing Mr. Pavan Kankani as appointed as the IRP, moratorium etc. Subsequently, the COC changed said IRP with Smt. Ramanathan Bhuvaneshwari as Resolution Professional and it was approved by the AA vide its order dated 04th May 2018.

(2) It is stated that the Corporate Debtor i.e. M/s.Bhuvana Infra Projects Pvt. Ltd. was incorporated in the year 2011 and it is the subcontracting Arm of its Group Companies and undertakes work contracts exclusively for its group companies. The Group consists of M/s.Golden Gate Properties Ltd, (GGPL), M/s.Prisha Properties India Pvt. Ltd. (PPIL) and M/s.Commune Properties Pvt. Ltd. (CPIL), M/s.New Age Properties LLP and other Companies. The Corporate Debtor presently does not carry any business activity and hence the Company in made a Shell Company with no employees, no business and no assets. All the assets of the Company have been diverted to the Group entities.

(3) It is also stated that U/s 25(2) of the Code, the Resolution Professional has to control and custody of all the assets of the Corporate Debtor. As there are no other assets available with the Corporate Debtor, except receivables from the group Companies, the Resolution Plan has to come out of the Assets diverted to Group Companies and receivables which are overdue from the group Companies. The Resolution Professional has filed application bearing I.A.No.446/18 dated 17th December, 2019 under Section 66 of the Code, duly supported by Forensic Audit Report, detailing the fraudulent conduct of the business to defraud the creditors, with prayer to direct the parties to contribute Rs.46 Crores to the assets of the Corporate Debtor or to attach the personal properties of the persons, who are involved in the whole scam, in order to complete the Resolution Process during CIRP.

(4) As per Forensic Audit Report, M/s.New Age Real Properties LLP, being one of the Related Party of the Corporate Debtor:

a. The Director of M/s.New Age Real Properties LLP are Mr. Amarnath Devaki and Mr. Pratap Kunda.

b. Mr. Amarnath Devaki is also Director of M/s.Prisha Properties India Pvt. Ltd. (PPIL) and also related to other Entities of the Golden Gate Group Companies.

c. Mr. Pratap Kunda is the person who owns all the Related Companies as shown in the Forensic Audit Report.

d. The entire Group, adopted a modus operandi of making the Corporate Debtor a 'Shell' by diverting the Receivables, Inventory and Fixed Assets to the Group Companies, namely, M/s.Golden Gate Properties Ltd., (GGPL), M/s.Prisha Properties India Pvt. Ltd. (PPIL) and M/s.Commune Properties Pvt. Ltd.

e. The following are alleged by the Resolution Professional:

i. This Golden Gate Group of Companies with a fraudulent intention set up the Corporate Debtor for various fraudulent transactions, namely, to somehow avail bank loans, to generate unaccounted cash, to manage round tripping of funds with respect to group Companies businesses, for diversion of funds amounting to fraud, etc.

ii. The Corporate Debtor and its Directors applied for encashment of CC facility for working capital with a fraudulent intention to use the same for purchase of Fixed Assets as the Term loan applied for Capex was rejected by Bank.

iii. Increased the losses in 2016-17 through fictitious transactions to reduce the statutory liability and also to justify default to banks.

iv. Liquidated Assets/Inventory in a planned manner in 2016-17 to make the Company a Shell.

v. Mr. Sanjay Raj, one of the common Directors in all the group Companies resigned from directorship of all the customer of BIPPL i.e. GGPL, PPIPL, CPIPIL and from New Age Properties LLP in 2017, the year when New Age Properties LLP in 2017, the year when New Age Properties filed an application on BIPPL, under Section 7 of the IBC. To avoid responsibility on loans becoming NPA, all Directors of Corporate Debtor resign around the same time in Feb/March 2017. Planned fraudulent liquidation of the Corporate Debtor in an organized manner by using the Provisions of the Code. The Group decided to liquidate the Corporate Debtor, as the fraudulent goal of amassing public wealth to the group by defrauding creditors and collecting as much public money as possible was fully achieved. As there are loans and other dues worth Rs.45 Crores outstanding, they cannot directly go for voluntary liquidation. Hence, they adopted the strategy to file application for CIRP, knowingly fully well that no CIRP is possible as they have fraudulently made the Corporate Debtor a 'Shell' and the provisions of IBC will automatically push the Company to liquidate. Thus, their sole objective of cheating the creditors of public funds is fully achieved as neither CIRP nor liquidation can give even one Rupee of the dues to the creditors.

3. The Respondent No.1 has filed Statement of Objections dated 12.07.2019, by inter alia contending as follows:

(1) The instant Application is not only in contravention with the provisions of law but also based on false and frivolous facts and hence the same must be dismissed in limine.

(2) It is denied that the Corporate Debtor M/s.Bhuvana Infra Projects is incorporated in the year 2011. The Corporate Debtor is the subcontracting Arm of its group companies and undertakes work contracts exclusively for its grouped companies. The Group consist of M/s.Golden Properties Ltd., (GGPL), M/s Prisha Properties India Pvt. Ltd. (PPIPL) and M/s.Commune Properties India Pvt. Ltd., (CPIPL) New Age Properties LLP and other companies. The Resolution professional hasn't defined what is Group Company. The RP is making her own assumption without any basis. Neither the Respondent No.1 nor his LLP come under the definition of Related Party.

(3) The allegations of RP that the Corporate Debtor presently does not carry any business activity and hence the company is made a shell company with no employees, no business and no assets and all the Company assets of the Company have been diverted to the Group entities" are denied as false and baseless. Respondent No.1 is not connected to the operations of the M/s.Bhuvana Infra Projects Private Limited. The RP, without any basis is dragging the Respondent in the above matter for the reasons best known to her. Whether the corporate debtor was run as a shell company or not doesn't concern with the Respondent No.1.

(4) The Resolution professional has filed an application bearing IA No. 269/2018 on 05.09.2018, under Section 66 read with Section 25(2) of the IBC, 2016, by inter-alia seeking to attach the personal assets of the Sanjay Raj and 6 others, as they were personal guarantors, alleging that they are responsible for defrauding the creditors of Rs. 46,11,63,402/-. The Respondent No.1 was not arrayed as a party to the said application. The Hon'ble NCLT disposed the said application IA No. 269/2018 in CP No. 122/2017 vide order dated 24.10.2018 observing that *'The learned Resolution Professional has not made out any prima facie case so as to take cognizance of the alleged discrepancies under Section 66. There cannot be parallel proceedings before the Tribunal and criminal court. Moreover appropriate forum for initiating fraudulent action is criminal court. Therefore, it is for the RP to initiate appropriate criminal proceedings as per the decisions of the COC'*. After the disposal of the said application, the Resolution professional re-agitate under the same provisions by filing a revised application under section 66, R/w Section 25(2) of the IBC Code, 2016. The Respondent No.1 was for the first time arrayed as Respondent No. 1 in the said revised application which was numbered as IA No. 446/2018 in CP(IB) No. 122/BB/2017 for attaching the personal assets of the

Respondent No.1 and 8 others. The said application was disposed of with a direction to SFIO to investigate the matter. The above application is the third application, which is filed by Resolution Professional re-agitating the same issue.

4. Heard Smt. R. Bhuvaneshwari, learned Resolution Professional and Shri Theerthesh B.S., learned Counsel for Respondent No.1. We have carefully perused the pleadings of both the parties and extant provisions of the Code and the law on the issue.

5. As stated supra, the RP is filing Applications in casual manner without substantiating the averments made therein. One of IA No.446 of 2018 U/s 66 of the Code, R/w Sections 25(2), 69, 70 and other applicable sections of the I&B Code, 2016. The Adjudicating Authority, after considering the various issues by the RP, has passed detail order dated 16.04.2017 which reads as under:

> (1) *"Learned Resolution Professional is directed to forward all material documents, which is connected to the present case including the Forensic Audit Report dated 14.12.2018, the Central Government, within a period of three weeks from the receipt of the copy of the order.*
>
> (2) *Learned Resolution Professional is also directed to furnish all the documents forwarded to the Central Government, to all parties/other side duly following principle of natural justice.*
>
> (3) *The Central Government is directed to refer the matter to the SFIO for further investigation into the affairs of the Corporate Debtor, Bank of Maharashtra and other related Companies, including Director of Companies of Corporate Debtor & related Companies and officials of*

Bank of Maharashtra basing on the Report of Forensic Audit Report, as expeditiously as possible.

(4) *Bank of Maharashtra is also directed to extend full assistance to the SFIO to complete the investigation as expeditiously as possible.*

(5) *The parties are at liberty to take appropriate legal course of action basing on the ultimate findings given by the SFIO in this case.*

(6) *The prayer as sought for in the application stand disposed of in the light of above directions."*

6. Aggrieved by the order the Parties approach Hon'ble NCLAT in *Company Appeal (AT) (Insolvency) No.574 of 2019* (*Mr. Lagadapati Ramesh Vs. Smt. R. Bhuvaneshwari*) and it was disposed of an order dated 20.09.2019 by upholding the order, by inter alia holding as follows:

Para 40, 41, 42, 43 and 44 of the order reads as follows:

In view of the aforesaid position of law also, the procedure laid down under Section 213 of the Companies Act, 2013 can be exercised by the Tribunal/Adjudicating Authority, as held above.

Further, after the investigation by the Inspector, if case is made out and the Central Government feels that the matter also requires investigation by the 'Serious Fraud Investigation Office' under Section 212 of the Companies Act, 2013, it is open to the Central Government to decide whether in such case the matter may be referred to the 'Serious Fraud Investigation Office' or not. This will depend on the gravity of charges as may be found during the investigation by the Inspector.

In view of the aforesaid position of law, we are of the view that the Adjudicating Authority was not competent to straight away direct any investigation to be conducted by the 'Serious Fraud Investigation Office'. However, the Adjudicating Authority (Tribunal) being competent to pass order under Section 213 of the Companies Act, 2013, it was always open to the Adjudicating Authority/Tribunal to give a notice with regard to the aforesaid charges to the Promoters and others, including the Appellants herein and after following the procedure as laid down in Section 213, if prima facie case was made out, it could refer the matter to the Central Government for investigation by the Inspector or Inspectors and on such investigation, if any, actionable material is made out and if the Central Government feels that the matter requires investigation through the 'Serious Fraud Investigation', it can proceed in accordance with the provisions as discussed above. Impugned order shows parties have been heard on the charges claimed by the 'Resolution Professional'.

We, accordingly, modify the impugned order dated 16th April, 2019 and refer the matter to the Central Government for investigation through any Inspector or Inspectors.

As we have heard learned Counsel for the parties and prime facie we are of the view that the matter requires investigation to find out whether one or other promoter or the Company as referred to in paragraph 9 and quoted above to find if they have violated any of the provisions of Sections 68, 69, 70, 71, 72 and 73 of the 'I&B Code', we modify the impugned order dated 16th April 2019 and refer the matter to the Secretary, Ministry of Corporate Affairs, Government of India, to get the matter *investigated by Inspector or Inspectors and following the procedure in terms of Section 213 of the Companies Act, 2013 and/or on such report after investigation by the inspector, the Central Government feels that the matter is further required to be investigated by the 'Serious Fraud Investigation Office' it may be do so and thereafter, if actionable material making out case of fraud is made out after such investigation by the 'Serious Fraud Investigation Office', it may act in terms of sub-section (2) of Section 236 of the I&B Code' for referring the matter to the Special Court.*

Both the appeals stand disposed of with aforesaid observations and directions. No Costs."

7. In light of above facts and circumstance of the case, we are of considered opinion that Resolution Professional, in a casual way resorting to filing various Applications without proper evidence, seeking to pass orders having severe civil consequences. The main Company Petition, though admitted on 17th January, 2018, still the Resolution Professional is only resorting to filing applications without following due process of law and also contrary to provisions of Section 208 of Code, which inter alia says that every Insolvency Professional shall abide by code of conduct, in which IRP/RP has to take reasonable care and diligence while performing duties. It is also to be noted that sole Financial Creditor, namely Bank of Maharashtra, has not initiated the instant CIRP but only harping on Resolution Professional to file Applications to seek various reliefs.

8. Shri Theerthesh B.S., learned Counsel for Respondent No.1 placed a copies interim orders dated 25.07.2019 and 19th August, 2019 passed by the Hon'ble High Court of Karnataka in WP

No.28969 filed by Mr. Pratap Kunda, granting stay of impugned order dated 16.04.2019 so far as Petitioner is concerned.

Therefore, the said WP is against the order dated 16.04.2019 passed in IA No. 446 of 2018 and there is no stay against the instant application to consider. The instant Application is filed under Section 65 of the IBC, 2016, R/w Sections 21, 66 and other applicable provisions of the I&B Code, 2016.

9. The facts and circumstances, as mentioned in the instant application has a direct bearing on the result of final conclusion on the investigation to be made by SFIO, in pursuant to order passed in IA No.446 of 2018, stated supra. Therefore, it would be just and proper to grant liberty to the Applicant to approach the Central Government with all material documents seeking appropriate relief. However, we are not prima facie satisfied with the evidence produced by the Applicant to impose penalties as prayed for, and it would depend on finding made on detailed investigation. Since the issue in respect of Mr. Pratap Kunda is pending with the Hon'ble High Court, as stated supra, the case against him cannot be further prosecuted till further orders to be passed by the Hon'ble High Court. However, the remaining Respondents can be proceeded against, in accordance with law.

10. In the result, I.A.No.133 of 2019 in C.P.(IB)No.122/BB/2017 is disposed of by granting liberty to the Applicant to approach the Central Government, with all material evidence available with the Applicant, and to seek appropriate relief. No order as to costs.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

Puja

(RAJESWARARAO VITTANALA)
MEMBER, JUDICIAL