

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

(1) IA No.1279/MB.IV/2020 in
IA No.1195/MB-IV/2020 in
CP (IB) No.4675/MB-IV/2018

and

(2) IA No.1195/MB-IV/2020 in
CP (IB) No.4675/MB-IV/2018

Under section 22(2) & 22(3)(b) of the
Insolvency & Bankruptcy Code, 2016

Bank of India
*(Acting on behalf of the Committee of
Creditors of Salelink Ecom Private Limited)*

...Applicant

In the matter of

Aramex India Private Limited
...Operational Creditor

Versus

Salelink Ecom Private Limited
[CIN:U74999MH2016PTC282578]
... Corporate Debtor

Order pronounced on 26.10.2020

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Rajesh Sharma : Member (Technical)

Appearances (via video conferencing):

For the Applicant/RP : Ms. Prajakta Menezes, Advocate.

Interim Resolution Professional : Mr Prabhakar Bhat, IRP in person.

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. The court convened through video conferencing today.

IA No.1195/2020

2. This is an Interlocutory Application (IA) filed by Bank of India, acting on behalf of the Committee of Creditors (CoC) of Salelink Ecom Private Limited, under sections 22(2) read with 22(3)(b) of the Insolvency & Bankruptcy Code, 2016 (IBC), seeking approval for replacing Mr Prabhakar Bhat, Interim Resolution Professional (IRP), with Mr Kamal Kishor Gurnani as Resolution Professional (RP) of the Corporate Debtor.
3. This Adjudicating Authority had, *vide* order dated 22.10.2019 in CP (IB) No.4675MB-IV/2018, admitted the petition filed under section 9 of the IBC and ordered initiation of Corporate Insolvency Resolution Process (CIRP) against Salelink Ecom Private Limited, the Corporate Debtor, and appointed Mr Prabhakar Bhat as the IRP.
4. Public announcement of the CIRP was made on 04.12.2019 under section 13 of the IBC read with regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Committee of Creditors (CoC) was duly constituted with Bank of India as the sole financial creditor.
5. The first meeting of the CoC was held on 30.12.2019, while the second meeting was held on 14.01.2020. Finally, at the third CoC meeting dated 26.02.2020, the agenda of appointing Mr. Kamal

Kishor Gurnani as the Resolution Professional was put for voting before CoC, comprising of the Applicant with 100% share which was passed. Mr Kamal Kishor Gurnani (Reg No.IBBI/IPA-001/IP-P01463/2018-2019/12338) as the RP of the Corporate Debtor in place of Mr. Prabhakar Bhat, IRP. The voting sheet has been placed at Ex-11 (Pg.63-64) of the Interlocutory Application. Mr Kamal Kishor Gurnani has also filed his written consent in Form AA to act as RP of the Corporate Debtor, which has been placed on record as Ex.10 at p.62 of the Application. There are no circumstances that inhibit the appointment of Mr Kamal Kishor Gurnani as such RP.

6. This Bench, has duly considering the facts and circumstances mentioned in the interlocutory application and the submissions made by the learned counsel for the Applicant/RP at the time of hearing held on 28.09.2020.
7. In terms of sub-section (2) of section 22 read with sub-section (3) of the IBC, the CoC was enjoined to either continue the IRP as RP, or propose the replacement of the IRP with another RP of its choice, in its first meeting itself. In the present case, though the first meeting of the CoC was held on 30.12.2019, the resolution for appointment of an RP was not put to vote at the instance of the sole member of the CoC. Even at the second meeting held on 14.01.2020, the vote for appointment of RP was unnecessarily postponed. This delay has been explained away as being due to the fact that approval from higher authorities was awaited. Such an explanation cannot be easily countenanced, because the Applicant Bank would no doubt already be part of several other CoCs, and the act of taking approval from higher ups cannot be a

valid reason for delay. The Adjudicating Authority has virtually been presented with a *fait accompli* in this matter.

8. We also notice that the IRP has tried his best on the two previous occasions when CoC meetings were conducted on 30.12.2019 and 14.01.2020 to get the matter of appointment of RP resolved, and therefore, no blame can be ascribed to the IRP. It is the CoC that is squarely to be blamed for the delay. The CoC ought not to have taken the matter so lightly, since it impacts the whole CIRP timeline. We feel that this is a matter that needs to be brought to the notice of the IBBI since this is a systemic issue.
9. Therefore, this Bench hereby orders as follows: -
 - (a) The appointment of Mr Kamal Kishor Gurnani [Reg. No.IBBI/IPA-001/IP-P-01463/2018-19/12338] as RP of Salelink Ecom Private Limited [CIN: U74999MH2016PTC-282578], the Corporate Debtor, is hereby approved. Mr Kamal Kishor Gurnani is directed to take charge as RP of the Corporate Debtor immediately;
 - (b) Mr Prabhakar Bhat, IRP is directed to hand over charge of the Corporate Debtor and all assets, books and other documents in his possession, to the RP without any delay;
 - (c) The Registry of this Bench shall communicate a copy of this order both to the RP as well as the IRP immediately; and
 - (d) The Registry of this Bench is additionally directed to forward to the IBBI a copy of this Order for its consideration and, if deemed appropriate, to take up the matter with the Indian

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Banks' Association (IBA) for issue of appropriate directions to
all the member banks of the IBA.

10. IA No.1195/2020 in CP (IB) No.4675/2018 is disposed of
accordingly.

IA No.1279/2020

11. IA No.1279/2020 in IA No.1195/2020 in CP (IB) No.4675/2018
is an application seeking urgent hearing of the underlying IA
No.1195/2020.
12. Since IA No.1195/2020 has been taken up for hearing and
disposed of in terms of this Order, nothing survives in the said IA
No.1279/2020, and hence the same also stands disposed of.

Sd/-
Rajesh Sharma
Member (Technical)

Sd/-
Rajasekhar VK
Member (Judicial)

26.10.2020