

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 105
(IB)-996(ND)2020

New IA-2460/2023, New IA-2472/2023

IN THE MATTER OF:

Tulsi Nandan Kant Bansal

... **Applicant/Petitioner**

Versus

**P.G Advertising Pvt. Ltd. {erstwhile ...
Prabhatam Advertising Private Limited}**

Respondent

Under Section: 7 of IBC, 2016

Order delivered on 03.05.2023

CORAM:

**SHRI. ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

For the Applicant : Adv. Harish Taneja in IA. No. 2460/2023

For the RP : Adv. Abhishek Anand, Adv. Karan Kohli, Adv.
Vaibhav

ORDER

IA-2460/2023: The prayer made in the application reads thus:

“Issue directions to the Resolution Professional to provide information Memorandum and other relevant documents to the OC being a participant of Committee of Creditors.”

Indubitably, the Applicant herein is the representative of OC and has sought the issuance of direction to RP to provide the information memorandum and other relevant documents. To buttress his plea and the prayer espoused in the IA, Ld. Counsel appearing for the Applicant referred to the judgment of the Hon'ble Supreme Court in Civil Appeal No. 8430 of 2018 titled “Vijay Kumar Jain Vs. Standard Chartered Bank & Ors.” and submitted that in terms of the aforementioned judgment (supra), it is incumbent upon the RP to provide all the documents qua the affairs of CD to Operational Creditors. Para 9 of the judgment reads thus:

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“9. This statutory scheme, therefore, makes it clear that though the erstwhile Board of Directors are not members of the committee of creditors, yet, they have a right to participate in each and every meeting held by the committee of creditors, and also have a right to discuss along with members of the committee of creditors all resolution plans that are presented at such meetings under Section 25(2)(i). It cannot be gainsaid that operational creditors, who may participate in such meetings but have no right to vote, are vitally interested in such resolution plans, and must be furnished copies of such plans beforehand if they are to participate effectively in the meeting of the committee of creditors. This is for the reason that under Section 30(2)(b), repayment of their debts is an important part of the resolution plan qua them on which they must comment. So the first important thing to notice is that even though persons such as operational creditors have no right to vote but are only participants in meetings of the committee of creditors, yet, they would certainly have a right to be given a copy of the resolution plans before such meetings are held so that they may effectively comment on the same to safeguard their interest.”

Mr. Abhishek Anand, Ld. Counsel for the Respondent submitted that in terms of the provisions of Regulation 36(4) of IBBI (CIRP) Regulations 2016, the Information Memorandum can be made available only to the members of the Committee and similarly, in terms of Regulation 35(2), the fair valuation report can also be made available only to the members of the CoC. A perusal of the said provisions of IBBI, CIRP Regulations 2016 clearly reveals that the emphasis of the regulation is positive i.e., to whom the information memorandum and fair valuation report has to be provided. Ld. Counsel for the Respondent could not draw our attention to any such provision which prohibits providing of such documents to the participants in CoC. It is not in dispute that the OCs represent 10% of the debt of the CD and their representative is a participant in the CoC. In the aforementioned judgment, the Hon'ble Supreme Court has categorically ruled that a copy of the resolution plan needs to be made available to OC.

In the absence of their being any specific provision prohibiting making the copy of information memo and valuation report available to the representative

of the OC and there being a specific verdict by the Hon'ble Supreme Court that the representative of the Suspended Board of Directors and OC cannot be kept in oblivion regarding the resolution plan - a vital document qua the affairs of the CD, the prayer made in the IA is allowed. The Respondent is directed to make a copy of the information memorandum as also other documents considered in the meeting of CoC available also to the Applicant herein, irrespective of the fact that the Applicant herein is a participant in the COC.

With this, the present IA stands allowed.

IA-2472/2023: Issue notice to the Respondent returnable on 22.05.2023. The Applicant undertakes to serve notice upon the Respondent through all modes viz. registered post, speed post and E-mail. Affidavit of service be filed within one week. Reply, if any, may be filed by the Respondent within one week from the date of receipt of the notice. Rejoinder, if any, may be filed before the next date of hearing.

List on 22.05.2023.



**(L. N. GUPTA)
MEMBER (T)**



**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**