



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH - I, HYDERABAD**

**I.A. NO. 1428 OF 2024
AND
I.A. NO. 1429 OF 2024
IN
C.P. (IB) NO. 645/7/HDB/2018**

Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 read with
Rule 11 The National Company Law Tribunal Rules, 2016

IN THE MATTER OF M/S. VIBHA AGRO TECH LIMITED

BETWEEN

1. All India Kisan Sabha

Through Mr. Ravula Venkaiah,
President Office at: Ajoy Bhawan, 15,
Kotla Marg, Indrajit Gupta Marg, New Delhi- 110002.

2. M/s. Divya Seeds

Having Office at No. Dhatri Ginning Seeds & Processing
at - Khasa, Padardi Post, Kankrej Taluk,
Banaskantha District, Gujarat
Represented by Mr. Pankaj Kumar Bhikhabhai Patel,
S/o. Bhikabhai Patel, R/o. Sungar, Sabarkantha,
Dungari, Gujarat - 383 110.

3. M/s. Tamilnadu Seeds

Having Office at: No. 30/12, Sovurimuthu Street,
Ranipet, Attur, Salem District, Tamil Nadu - 636 102.
Represented by Mr. B. Vinoth Kumar
S/o Balasubramaniyan, R/o. 6/97, Nattar Thottam,
Seeliampatty Puthur, Attur Taluk,
Sellampattu, Salem, Tamilnadu - 636 107.

4. M/s. Sivasakthi Agro Hybrid Seeds

Having Office at: No. 138-A, Trichy Main Road,
Thedavoor, Gangavalli Taluk,
Salem District, Tamil Nadu - 631 116.
Represented by Mrs. T. Amritham,
W/o Thangavel, R/o. 138/A, Veerakannur Main Road,
Thedavuru, Sellampattu, Villupuram, Tamilnadu - 636 116.



5. M/s. Sri Ganesh Seeds

Having Office at: No. 5, NGR Building, Raja Nagar,
Gandhi Road, Kallakurichi, Villupuram, Tamilnadu - 606 202.

Represented by Mr. K. Ramesh

S/o Krishnan, R/o. 2-26, Kachirayapalyam Road,
Sellampattu, Villupuram, Tamilnadu - 606 207.

6. M/s. TMA Seeds

Having office at: No. 4/90/E2,
V.O.C Nagar, Opp. PWD Office,
Kallakurichi, Villupuram, Tamilnadu - 606 202.

Represented by Mr. J. Thennerasu,

S/o Jayaraman, R/o. 719, West Kattu Kottay, Kallakurichi,
Manmalai, Villupuram, Tamilnadu - 606 207.

7. M/s. Sri Selva Seeds

Having office at: No. 1/135, Middle Street, Seeliyampatti,
Attur Taluk, Salem District, Tamilnadu - 636 107.

Represented by Mr. R. Kumaresan,

S/o Ranga Swamy, R/o. 5/114(1), Seelampatti,
PO: Salem District, Tamil Nadu - 636 107.

8. M/s. Aruna Agro Seeds

Having office at: 110/AE, V.O.C Nagar, Opp. PWD Office,
Kallakurichi, Villupuram, Tamilnadu - 606 202

Represented by Mr. S.P.Ayyanar,

S/o. P. Raghavendra Rao, R/o. 2/55, Kattukottagai,
Kallakurichi Taluk, Seelampatti,
PO: Salem District, Tamil Nadu - 636 207.

...Applicants

AND

1. M/s. Vibha Agro Tech Limited,

Through Mr. Madasa Kumar
(Resolution Professional)

2. State Bank of India,

Stressed Assets Management Branch,
Secunderabad, Door No. 6-2-915,
5ht floor, Rear Block, HMWSB Compound,
Khairtabad, Hyderabad -04

Rep by its authorized representative.

...Respondents



Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Applicants : Mr. DV Seetharam Murthy, Ld. Senior Counsel for
Mr. A. Karthik, Ld. Counsel

For Respondent No.1 : Mr. Avinash Desai, Ld. Senior Counsel for
Mr. GP Yash Vardhan along with
Mr. Madasa Kumar, Resolution Professional

For Respondent No.2 : None

PER BENCH

ORDER

1. These Applications were filed by the Applicants herein under Section 60(5) of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') read with Rule 11 of The National Company Law Tribunal Rules, 2016 against 'M/s. Vibha Agro Tech Limited' (hereinafter referred as 'Corporate Debtor') represented by Mr. Madasa Kumar, Resolution Professional of the Corporate Debtor. The Applicants herein, aggrieved by the alleged inaction of the Interim Resolution Professional of the Corporate Debtor in publication of the Public Announcement in the manner provided under Regulation 6 of 'IBBI (Insolvency Resolution Process for Corporate Debtors) Regulations,



2016' (hereinafter referred as 'CIRP Regulations') sought the following reliefs:

I.A. No. 1428 of 2024

To pass a direction granting stay of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.

I.A. No. 1429 of 2024

To declare the action of Interim Resolution Professional in non-publishing the public announcement in all locations where the Corporate Debtor conducted its material business as illegal arbitrary and contrary to the provisions of IBC and consequently direct the Resolution Professional of the Corporate Debtor to issue fresh Public Announcement under requisite form in states of Gujarat, Maharashtra, Andhra Pradesh, Telangana & Tamil Nadu; and to include the claims of the Applicants as per the submission of claims and books of accounts of the Corporate Debtor in the Information Memorandum.

2. The Applicant No.1 is an organization of farmers and is stated to be authorized to represent Applicant No.2 to 7 in these Applications.
3. The Corporate Debtor is in the business of supply and production of hybrid seeds. The Corporate Debtor was put into 'Corporate Insolvency Resolution Process' (hereinafter referred as 'CIRP') by an order of this Tribunal dated 05.06.2023 in C.P. (IB) NO. 645/7/HDB/2018 and appointed Shri Ram Ratan Kannongo having Registration No. IBBI/IPA-001/IP-P00070/2017-2018/10156 as the Interim Resolution Professional (IRP) of the Corporate Debtor.



4. The IRP, in pursuance of Regulation 6 of CIRP Regulations issued a Public Announcement in Form-A in Economic Times – English Language (Hyderabad Edition) and Nava Telangana – Telugu Language (Hyderabad Edition) on 14.06.2023 calling for submission of claims from the creditors of the Corporate Debtor.
5. Pursuant to the Public Announcement, claims were received from the creditors of the Corporate Debtor and a ‘Committee of Creditors’ (CoC) of the Corporate Debtor was constituted accordingly. Subsequently, the Respondent herein was appointed as Resolution Professional (hereinafter also referred to as ‘RP’) by an order of this Tribunal dated 22.12.2023 in C.P. (IB) No. 645/7/HDB/2018. During the CIRP, CoC approved the Resolution Plan for the Corporate Debtor submitted by M/s. Vasavi Realty Private Limited (hereinafter referred as ‘Resolution Applicant’) at the 10th CoC Meeting held on 24.05.2024 and the said Resolution Plan is pending for approval of this Tribunal vide I.A. (IBC) Plan No. 11 of 2024 in C.P. (IB) NO. 645/7/HDB/2018.
6. As the things stood thus, the present applications were filed by the Applicants stating that the manner of conduct of CIRP of the Corporate Debtor is not proper as the IRP failed to issue proper public announcement which resulted in improper collation of claims of the Corporate Debtor.



Case of the Applicants

7. It was submitted that the Public Announcement dated 14.06.2023 made in Form-A by the IRP of the Corporate Debtor under Regulation 6 of the CIRP Regulations was not proper and the same is liable to be set aside.
8. It was submitted that the Corporate Debtor conducts material business operations in the states of Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Telangana & Tamil Nadu and that there was no proper public announcement made in these states as provided by Regulation 6 of the CIRP Regulations.
9. As submitted, the business relation (*modus operandi*) between the Applicants and the Corporate Debtor is as follows:
 - The Applicant No.2 to 8 (individually) and the Corporate Debtor entered into agreements named “Organizer Agreement for Delinted Cotton Seed Production”. As per the said agreements, the Corporate Debtor is to provide ‘**foundation seeds**’ to the ‘Applicant No.2 to 8’ (also referred as ‘Organizers’) and in return, these Organizers are to supply hybrid seeds to the Corporate Debtor which are produced out of these foundation seeds.
 - As part of the production, these organizers identify good progressive farmers and fertile land for production of hybrid seeds from the foundation seeds.



- The identified farmers produce the hybrid seeds and also perform primary operations such as cleaning, bagging and storage of the hybrid seeds. These hybrid seeds will be collected by the Organizers from the farmers and are supplied to the Corporate Debtor.
 - In receipt of these hybrid seeds, the Corporate Debtor makes payment to the Organizers, who in turn make payments to the farmers who actually produced the hybrid seeds.
10. It was submitted that similar to Applicant No.2 to 8, the Corporate Debtor is in relationship with about 750 organizers all over India and more particularly from the states of Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Telangana & Tamil Nadu. That under each of these Organizers, there are about 500 to 5000 farmers working in the production of hybrid seeds required for the Corporate Debtor.
11. It was submitted that as per the Organizer Agreement, Applicant No. 2 to 7 supplied the produced hybrid seeds to the Corporate Debtor and the Corporate Debtor issued delivery challans after receiving the hybrid seeds. But after receiving the hybrid seeds, the Corporate Debtor failed to make payments to Applicant No.2 to 7 as per the Organizer Agreement, who in turn are liable to pay to the farmers working under these Organizers.



12. Thus stating, it was submitted that the Applicant No.2 to 7 constitute the creditors/stakeholders of the Corporate Debtor and that no proper intimation was served to these Applicants regarding the initiation of CIRP of the Corporate Debtor, so as to file their claims in respect of the amounts owed by the Corporate Debtor. It was submitted that the Applicants were unaware of the order of this Tribunal dated 05.06.2023 in C.P. (IB) NO. 645/7/HDB/2018 admitting the Corporate Debtor into CIRP till recent times.
13. It was submitted that the Public Announcement dated 14.06.2023 issued by the IRP under Regulation 6 of CIRP Regulations in respect of Corporate Debtor was made only at Hyderabad where the Registered Office of the Corporate Debtor is located. That there was no proper intimation given to the creditors/stakeholders of the Corporate Debtor belonging to the states of Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Telangana & Tamil Nadu states who are in business relations with the Corporate Debtor.
14. As a result of the non-intimation, the claims of the Operational Creditors (excluding the workmen and government departments) of the Corporate Debtor as available on the IBBI website as on 18.12.2023 reflects that only 13 entities filed the claims aggregating to a sum of Rs.12,65,63,662. It was submitted that due to improper issuance of Public Notice, the farmers working under Applicant No. 2 to 8, being the Operational



Creditors of the Corporate Debtor, were unable to file their respective claims within the time limit as specified in the Public Announcement.

Hence, the public announcement issued by the IRP of the Corporate Debtor needs to be set aside and a fresh announcement is to be issued to balance the interests of all the stakeholders.

15. It was submitted that Section 15 of IBC read with Regulation 6 of CIRP Regulations makes it mandatory for the IRP to issue Public Announcement at any other place where the Corporate Debtor conducts material business operations. But in the present case, the IRP have issued the public announcement in newspapers having circulation at the registered office of Corporate Debtor and not at any other places where the Corporate Debtor conducts material business operations.
16. It was submitted that the Resolution Plan of the Corporate Debtor as approved by the Committee of Creditors (CoC) do not find place for the claims of the farmers under these organizers and that the same has far reaching consequences. It was submitted that the Resolution Plan for the Corporate Debtor which does not include the claims of the farmers, if approved by this Tribunal, would lead to extinguishment of the debt of the Corporate Debtor owed to farmers and that the farmers become helpless.
17. In view of these facts, it was submitted that the Respondent/RP be directed to issue a fresh proper public announcement under Regulation 6



of CIRP Regulations in the interests of all the stakeholders of the Corporate Debtor.

COUNTER OF THE RESPONDENT NO.1

18. It was submitted that the Applicant No.1 has no *locus standi* to bring the present Application before this Tribunal as there is no creditor-debtor relationship between the Applicant No.1 and the Corporate Debtor. It was further submitted that nothing was brought on record to show any contractual relationship between Applicant No.1 and the Corporate Debtor. It was also submitted that Applicant No.2 to 8 are aggregators/seed organizers and not the farmers, and hence the Applicant No.1 has no *locus* to file the present Application as a representative of Applicant No.2 to 8.
19. It was submitted that as per Regulation 6 (2) (b) (i) of CIRP Regulations, only if in the opinion of the IRP the Corporate Debtor conducts material business operations at any other locations apart from the Registered Office and principal office, then Public Notice is to be issued at such other location. It was submitted that the said Regulation is directory and not mandatory.
20. It was submitted that Applicant No.2 to 8 are commercial parties and hence cannot seek ignorance of the public announcement. It was submitted that the Agreements said to have been entered into by Applicant No. 2 to 8 with the Corporate Debtor pertain to the year 2012 and the



alleged claims arising out of the said agreements pertain to 2012-13 whereas the Corporate Debtor was defunct for the last several years. That in lieu of the same, the contention of the Applicants that the public announcement was to be made in the states of Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Telangana & Tamil Nadu is not tenable. It was further submitted that the IRP and Resolution Professional have already received the claims of seed aggregators from Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Telangana & Tamil Nadu and the same were considered as per law.

21. It was submitted that in the present Application, the Applicants have annexed the email communications exchanged between the Resolution Professional and the suspended Managing Director of the Corporate Director and the same shows that Applicant No. 2 to 8 were aware of CIRP of the Corporate Debtor. That Applicant No. 2 to 8 failed to submit their claims in respective forms within the stipulated time and are delaying the approval of Resolution Plan of the Corporate Debtor by filing the present Applications.
22. It was submitted that Applicant No.4 have already submitted a claim of Rs. 1,18,35,446/- to the IRP on 25.06.2023 which was fully admitted and the same was communicated by the IRP by way of an email dated 03.11.2023. That in view of the said fact, the allegation of Applicant No.4



that there is no notice of CIRP of the Corporate Debtor raises a question as to the genuineness of the reliefs sought for in these Applications.

23. In the above backdrop, the points that arise for our consideration are:

1. Whether the Applicant No.1 and other Applicants No. 2 to 8, have *locus standi* to bring the present applications?

2. Whether Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is not complied with by the Interim Resolution Professional (IRP) in making public announcement in Form A and if so for what relief?

24. We have heard Ld. Senior Counsel Mr. DV Seetharam Murthy for Mr. A. Karthik-Ld. Counsel for Applicants, Ld. Senior Counsel Mr. Avinash Desai for Mr. GP Yash Vardhan-Ld. Counsel for Respondent/Resolution Professional, perused the record and the written submissions.

POINT 1:

Whether the Applicant No.1 and other Applicants No. 2 to 8, have *locus standi* to bring the present applications?

SUBMISSIONS

25. Ld. Senior Counsel Mr. Avinash Desai submits that Applicant No.1 is not a creditor or stakeholder of Corporate Debtor and there is no privity of contract between Applicant No.1 and the Corporate Debtor. Hence Applicant No.1 do not have *locus* to maintain these applications. Ld. Senior Counsel further submits that Applicant No.1 do not have any



authorization to represent other Applicants and hence, these Applications are liable to be dismissed.

26. *Per contra*, Ld. Senior Counsel Mr. DV Seetharam Murthy submits that Applicant No.1 is a registered farmers' organisation and that Applicant No.2 to 8 are members of the organisation of Applicant No.1. That the Applicant No.1 brought this Application for resolution of the grievances of Applicant No.2 to 8 and thus as an organisation representing the farmers, Applicant No.1 has *locus standi* to maintain the present Application. Ld. Senior Counsel further contended that the affidavits from Applicant No.2 to 8 authorizing Applicant No.1 to represent them have also been produced before this Tribunal. Hence, question of *locus standi* of Applicant No. 1 does not arise.
27. Ld. Senior Counsel Mr. Avinash Desai further submits that Applicant No.2 to 8 are commercial parties and hence cannot seek ignorance of the public announcement. He further submitted that the Agreements said to have been entered into by Applicant No. 2 to 8 with the Corporate Debtor pertain to the year 2012 and the alleged claims arising out of the said agreements pertain to 2012-13, whereas the Corporate Debtor was defunct for the last several years. It was further submitted that the IRP and Resolution Professional have already received the claims of seed aggregators from Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Telangana & Tamil Nadu and the same were considered as per law.



28. *Per contra*, Ld. Senior Counsel Mr. DV Seetharam Murthy submits that as per the Organizer Agreement, Applicant No. 2 to 8 have supplied the hybrid seeds to the Corporate Debtor and the Corporate Debtor also issued delivery challans after receiving the hybrid seeds but failed to make payments for the same. Ld. Senior Counsel thus contended that in view of the above facts Applicant No.2 to 8 being the creditors/stakeholders of the Corporate Debtor are affected parties and thus have a *locus* to file these applications.

OUR ANALYSIS & FINDINGS

29. We have perused the agreements and the respective delivery challans/receipts produced on behalf of Applicants. It can be said that Applicant No.2 to 8 have entered into agreements with the Corporate Debtor in respect of production and supply of delinted cotton seeds to the Corporate Debtor. These agreements state that the seeds are to be supplied by Applicant No.2 to 8 to the seed conditioning plant of Corporate Debtor located at Janampet Village of Mahabubnagar District. Though these agreements pertain to the year 2012-13, the same can be treated as a valid relevant material for establishing the contractual business relationship between Applicant No.2 to 8 and the Corporate Debtor. Hence, Applicant No.2 to 8 can be treated as persons interested in the CIRP of the Corporate Debtor and has a *locus* to participate in the CIRP of the Corporate Debtor.



Thus, it is established that Applicant No.2 to 8 have *locus standi* to file these applications.

30. In so far as, *locus standi* of Applicant No. 1 is concerned though affidavits were produced on behalf of Applicant No.2 to 8 wherein Applicant No.2 to 8 have authorized the President of Applicant No.1 organization to represent Applicant No.2 to 8 but after perusing the same, we are of the view that though these affidavits give authority to Applicant No. 1 to contest on behalf of Applicant No. 2 to 8, but these affidavits do not establish any contractual relationship between Applicant No.1 and the Corporate Debtor . In lieu of the same, we decide that Applicant No.1 has no *locus* to maintain the present Applications.
31. In view of the above discussion, we decide that these applications are maintainable in view of Applicant No.2 to 8 having *locus standi* to bring these Applications.

The point is answered accordingly.

POINT 2:

Whether Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is not complied with by the Interim Resolution Professional (IRP) in making public announcement in Form A and if so for what relief?



SUBMISSIONS

32. Ld. Senior Counsel Mr. DV Seetharam Murthy submits that the IRP of the Corporate Debtor failed to issue a public announcement in respect of the Corporate Debtor in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. As such, Applicant No.2 to 8, being the seed aggregators, who are having claims against the Corporate Debtor were not aware of the initiation of CIRP of Corporate Debtor because of the non-issuance of Public Announcement in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
33. Ld. Senior Counsel further submits that the Corporate Debtor is in the business of production and supply of hybrid seeds. That as part of the business, the Corporate Debtor entered into agreements with Applicant No.2 to 8 herein for supply of delinted cotton seeds. That under the said agreements, the Corporate Debtor is to provide foundation seeds to these Applicant-Organisers who in turn identify farmers for cultivating these foundation seeds. That the seeds produced from the cultivators are to be collected by these Applicant No.2 to 8 and are to be supplied to the Corporate Debtor.
34. Ld. Senior Counsel Mr. DV Seetharam Murthy submits that after receiving the cultivated hybrid seeds from Applicant No.2 to 8, Corporate Debtor makes payments to the Applicant-Organizers and in return, the



farmers are paid by these organisers. Ld. Senior Counsel submits that these organisers and the farmers under the organizers hail from different states of India viz., Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Telangana & Tamil Nadu with whom the Corporate Debtor conducts business operations. That as per Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant was to issue public announcement in these states where these farmers and organisers are located, but the IRP failed to do the same. That because of the said inaction on part of IRP, the farmers and organisers were unaware of the initiation of CIRP of the Corporate Debtor and were unable to file their claims with the IRP of Corporate Debtor.

35. Ld. Senior Counsel submits that the public announcement dated 14.06.2023 was made only at Hyderabad where the Registered Office of the Corporate Debtor is located and there was no proper intimation given to other stakeholders of Corporate Debtor residing at places other than Hyderabad.
36. On the other hand, Ld. Senior Counsel Mr. Avinash Desai submits that the public announcement to be made at any place other than the registered office and principal office of the Corporate Debtor must be such a place where in the opinion of IRP, the Corporate Debtor conducts material business operations. That the IRP has to consider the places where Corporate Debtor conducts business and not where the claimants of



Corporate Debtor conduct business. In this regard, reliance was placed on **Akshar Plastchem Investment Pvt Ltd vs Shri Bijay Murmuria, RP of Kitty Industries Ltd., Company Appeal (AT)(Ins.) No. 191 of 2022,**

“12. We are not persuaded to accept the submission of learned Counsel for the Appellant that under Regulation 6, sub-regulation (2) (i), the Resolution Professional was also obliged to make publication at the places where the Appellant is carrying the business. The statutory requirement cannot be stretched to mean that publication has to be made from all places where the Corporate Debtor is receiving goods and supplies. The mandatory requirement is to publish in one English and one regional newspaper with wide circulation at the location of the registered and corporate office of the Corporate Debtor and any other location, where in the opinion of the IRP the Corporate Debtor conducts material business operations. The IRP has made publication at other places as noted above, which indicates that there is compliance of requirement of Regulation 6, sub-regulation (2)(i). We thus are not persuaded with such submission of learned Counsel for the Appellant that publication ought to have also been made in the State of Maharashtra particularly District Nashik, Taluka Igatpuri and Mumbai City.”

37. Ld. Senior Counsel Mr. Avinash Desai further submits that the Corporate Debtor has factories located at Janampet Village of Mahabubnagar District and Gowdavalli Village of Ranga Reddy District, but as the Corporate Debtor was defunct since 2017 without any business operations, there arose no necessity of issuing a public announcement at places other than the Registered Office of the Corporate Debtor.
38. Ld. Senior Counsel submits that the Applicants have also filed communications exchanged with the suspended Director of Corporate Debtor and a perusal of the same reveals that Applicant No. 2 to 8 were aware of the initiation of CIRP of Corporate Debtor since beginning.



OUR ANALYSIS & FINDINGS

39. Before we proceed to decide the point before us, we usefully refer Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is reproduced as under:

PUBLIC ANNOUNCEMENT

6. Public announcement. (1) *An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional. Explanation: 'Immediately' means not later than three days from the date of his appointment.*

(2) *The public announcement referred to in sub-regulation (1) shall:*

(a) *be in Form A of the Schedule;*

(b) *be published-*

(i) *in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;*

(ii) *on the website, if any, of the corporate debtor; and*

(iii) *on the website, if any, designated by the Board for the purpose,*

(c) *provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.*

(3) *The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.*

Clarification- The expenses on the public announcement shall not form part of insolvency resolution process costs.

40. On perusal of Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it is very clear that the IRP is required to issue the public announcement in Form A in one English and



one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations. The registered office of the Corporate Debtor is located at Somajiguda, Hyderabad – 500082. Accordingly, on 14.06.2023, the IRP of Corporate Debtor issued the public announcement in compliance of Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The said Public Announcement was issued in Economic Times – English Language (Hyderabad Edition) and Nava Telangana – Telugu Language (Hyderabad Edition) calling for submission of claims.

41. On perusal of Regulation 6 (*supra*), we find that IRP is also required to publish the notice at other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations. The respondents would contend that since processing plants of Corporate Debtor at Janampet Village of Mahabubnagar District and Gowdavalli Village of Ranga Reddy District were not in operation, the IRP formed an opinion that there is no need to publish notice at other places where the Corporate Debtor has processing plants and other suppliers of cotton seeds.
42. Admittedly, there was no publication of Form A in these areas where the factories/plants of Corporate Debtor were located. It is the defence of the



Resolution Professional that the Corporate Debtor was defunct since 2017 and there is no requirement of public announcement in these areas. Even assuming the same to be true, it cannot be said that there is no necessity of issuance of public announcement at the areas where the factories of the Corporate Debtor are located. It is for the reason that though there are no business operations carried on by the Corporate Debtor, the factories/plants which are in existence are to be maintained. The analogy thus goes to say that there will be requirement of electricity, water supply, other maintenance works and most importantly the deployment of security personnel for safeguarding the premises of the factory and all these might have genuine claims to be taken into consideration during the CIRP of the Corporate Debtor. In addition to the above, a perusal of the case record shows that there were also claims from the related companies of the Corporate Debtor stating that the machinery belonging to them were lying at the factory of the Corporate Debtor. When such is the case, non-issuance of public announcement at the areas where the factories/plants of Corporate Debtor are located would deprive the genuine claimants of their rights available under the law.

43. Therefore, the question which arises before us is that though Regulation 6 (*supra*) provides the authority to IRP to form an opinion on whether to issue public notice in Form-A at any other location where the corporate debtor conducts material business operations, but whether the IRP can



ignore the fact that the processing plants are very important places for a corporate debtor as the whole activity is carried out and coordinated through these places and generally registered office is used only for administrative and financial control of corporate debtor . In the present case also, farmers in various states were growing hybrid cotton seeds for the corporate debtor and this produce was being aggregated through ‘Organizers’ and supplied to the processing plants of the Corporate Debtor located at various other places but not at Hyderabad, where the notice was published. The Applicants No. 2 to 8 who are before us, are also ‘Organizers’ and have supplied seeds as per the Organizer Agreement with Corporate Debtor at the seed conditioning plant of Corporate Debtor located at Janampet Village of Mahabubnagar District and the Corporate Debtor issued delivery challans after receiving the hybrid seeds. When we carefully analyse the whole chain of production of seeds, collection of seeds and its supply to the seed processing plants and then the process of payment to ultimate growers and suppliers of seeds, we find that the principal business of the Corporate Debtor is not in Hyderabad but at other places where the seeds are grown and processed and that the IRP cannot ignore these facts while making an opinion for not issuing public notice at the locations of processing plants and other places, other than registered office of the Corporate Debtor.



44. Ld. Counsel for Resolution Professional has placed reliance on **Akshar Plastchem Investment Pvt Ltd vs Shri Bijay Murmuria, RP of Kitty Industries Ltd.**, *Company Appeal (AT)(Ins.) No. 191 of 2022*, Hon'ble NCLAT. But we state that the facts of **Akshar Plastchem (supra)** are not similar to the present case. It is true that the statutory requirement cannot be stretched to mean that publication has to be made from all places from where the Corporate Debtor is receiving goods and supplies as decided in the case relied on by Ld. Counsel for Resolution Professional, but the factories/processing plants of the Corporate Debtor which form the core/central business units for any corporation/company cannot be compared with the suppliers. Therefore, we are not persuaded to accept that the opinion/decision of IRP to publish notice only at Hyderabad where registered office of the Corporate Debtor is situated as "just and equitable". We feel that the said opinion is not in the overall interest of value maximization of corporate debtor which is the main aspect to be considered in corporate insolvency resolution process.
45. Further, we find that the other requirement of Regulation 6 (*supra*) is that this publication is to be made in newspapers having wide circulation. We have perused the circulation data of the newspapers published at Hyderabad as available with the Central Bureau of Communication produced by the Applicant in I.A. No. 1404 of 2024 (the Respondent therein is none other than the Respondent herein). As per the same, the



newspapers Economic Times and Nava Telangana were categorized as ‘Small’. In the category of English Newspapers, the circulation of Economic Times is 15,227 while the highest circulation is of Deccan Chronicle with 4,29,627. Similarly, in the category of Telugu Newspapers, the circulation of Nava Telangana is 24,576 while the highest circulation is of Sakshi with 2,36,500.

46. When an analysis of this data is done, it cannot be said that the Public Announcement under Regulation 6 (*supra*) was issued in newspapers with wide circulation even at the place where the registered office of the Corporate Debtor is located. At this stage, it would be pertinent to refer to the interpretation of the words ‘*reasonable wide circulation*’ which came up for consideration of the Hon’ble Supreme Court in **Special Deputy Collector, Land Acquisition CMDA vs J. Sivaprakasam and Ors., (2011) 1 SCC 330** and it was observed as follows:

“22. This Court, in *M.P. Housing Board v. Mohd. Shafi* [(1992) 2 SCC 168] explained the object of issuing a notification under Section 4 of the Act thus: (SCC p. 173, para 8)

“8. ... The object of issuing a notification under Section 4 of the Act is twofold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the Government for the ‘public purpose’ mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the ‘public purpose’ for which the acquisition proceedings are being commenced but also the ‘locality’ where the land is situate with as full a description as possible of the land proposed to be acquired to enable the ‘interested’ persons to know as to which land is being acquired and for what



purpose and to take further steps under the Act by filing objections, etc. since it is open to such persons to canvass the non-suitability of the land for the alleged ‘public purpose’ also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.”

.....
29. If the newspapers in which the notification is published were circulating in the locality, but did not have a *reasonably wide* circulation in the locality, then neither the notification under Section 4(1) nor the consequential acquisition proceedings, will become vitiated automatically. If the person aggrieved, apart from demonstrating that the two newspapers did not have reasonably wide circulation in the locality, also asserts that as a consequence, he did not have notice of the proposed acquisition that was provided for in Section 4(1) of the Act, in the absence of evidence to the contrary, the acquisition to the extent of the land of such person will be vitiated. But if such assertion is rebutted by the acquiring authority by placing evidence to show that the person concerned had in fact notice (as for example where he participated in the enquiry under Section 5-A of the Act), the acquisition will not be vitiated on the ground of violation of Section 4-A of the Act.”

47. The Hon’ble Supreme Court has made it very clear that if the newspapers in which the notification is published were circulating in the locality, but did not have a *reasonably wide* circulation in the locality, then notification as well as consequential proceedings will become vitiated automatically only if as a consequence of such non-publication, the person aggrieved did not have such notice. In the present case also, in respect of Applicant No. 2, 3, 5 to 8, no claim was filed before the Resolution Professional and the reason for non-filing was stated to be the non-publication of notice in accordance with Regulation 6 as above. Though, Applicant No.4 has already filed the claim and the same was admitted by the IRP. The relevant communication of IRP showing admission of claim of Applicant No.4 was annexed as Annexure-1 of the



Counter of the Resolution Professional. The Respondent/Resolution Professional could not show that the Applicant No.2 to 8 (except Applicant No. 4) had a valid notice of CIRP of the Corporate Debtor. Therefore, placing reliance on **J. Sivaprakasam (supra)**, it can be safely concluded that since the notice was not carried out in newspapers having *wide* circulation even at the place of registered office of the Corporate Debtor, the public notice/announcement in Form-A dated 14.06.2023 as well as other steps taken out for corporate insolvency resolution process of the Corporate Debtor will become vitiated automatically.

48. In the above backdrop, we decide that the issuance of Public Announcement of the Corporate Debtor in Form-A dated 14.06.2023 in the newspapers Economic Times and Nava Telangana of Hyderabad Edition, which are ‘Small’ in circulation is not in compliance with Regulation 6 of CIRP Regulations.
49. Thus, we are of the opinion that Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is not complied with by the Interim Resolution Professional (IRP) in making public announcement of the Corporate Debtor in Form-A and thus, it vitiates the whole process conducted thereafter. Keeping this in view, we decide to terminate the corporate insolvency resolution process from the stage of “Public announcement of corporate insolvency resolution process” as per Section 15 of IBC, 2016.



The point is answered accordingly.

50. In view of our answers to the points before us, we pass the following order:

- i. The Resolution Professional/Respondent is directed to issue a fresh Public Announcement in Form-A as per Section 15 of IBC, 2016 and in compliance of Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in newspapers having wide circulation at the registered office, principal office and the factories/processing plants of the Corporate Debtor, within **THREE DAYS** from the date of this order.
- ii. Resolution Professional and the CoC are directed to conduct the CIRP of the Corporate Debtor as expeditiously as possible, within a maximum period of 180 days.
- iii. Since, we decide to terminate the corporate insolvency resolution process from the stage of “Public announcement of corporate insolvency resolution process” as per Section 15 of IBC, 2016, the approval of Resolution Plan by the CoC submitted by ‘M/s. Vasavi Realty Private Limited’ becomes meaningless and thus is to be treated as infructuous.
- iv. Resolution Professional is directed to return the Performance Bank Guarantee, Earnest Money Deposit or any other deposit made by M/s. Vasavi Realty Private Limited, the purported successful



resolution applicant, within a period of 7 days from the date of this order.

- v. Resolution Professional and Committee of Creditors are directed to take note of the points as raised by the erstwhile management of the Corporate Debtor in I.A. No. 1402 of 2024, I.A. No. 1403 of 2024 and I.A. No. 1404 of 2024 in C.P. (IB) No. 645/7/HDB/2018. If these points are found to be genuine and worth considering by Resolution Professional and Committee of Creditors, they may take care of them in the new resolution process and also suitably inform this Tribunal.
- vi. Since Applicant No.4, in spite of filing a claim before the IRP/RP of the Corporate Debtor and the same being admitted, approached this Tribunal pleading frivolously that no notice of CIRP of Corporate Debtor was received by Applicant No.4. Hence, a cost of Rs.25,000/- is imposed on Applicant No.4 to be paid to the Prime Minister Relief Fund within 15 days from the date of order.
51. In the result, these Applications are allowed to the extent indicated above and disposed off.

SD/-

Charan Singh
Member (Technical)

SD/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)