

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-IV**

**IA-5436/ND/2023  
IN  
CP (IB)-2552/ND/2019**

*[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal, 2016.]*

**IN THE MATTER OF:**

**M/s. LEX PRIMUS LLP**

.... Applicant

**Versus**

**Resolution Professional**

**M/s. JBK Developers Private Limited & Anr. .... Respondents**

**AND IN THE MATTER OF**

**M/s. Creative Infraheights Private Limited**

..... *Operational Creditor*

**Versus**

**M/s. JBK Developers Private Limited & Anr.**

.... Respondents

**CORAM:**

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,**  
**HON'BLE MEMBER (JUDICIAL)**

**MR. RAHUL BHATNAGAR**  
**HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on:14.02.2024**

**Present:**

**For the SRA:** Mr. Sumesh Dhawan, Mr. Vatsala Kak & Mr. Shaurya Shyam, Advs

**For Applicant in IA No.5436:** Mr. Riju Mani Talukdar, Adv..

**For the RP:** Mr. Nalin Kohli, Ms. Shraddha Deshmukh & Mr. Utkarsh Kokcha, Advs.

**For the RP (R-1) :** Mr. Aman Raj Singh & Mr. Harish Taneja, Advs.

**For erstwhile RP (R-2) :** Mr. Rohan Khanna, Adv.

## **ORDER**

**PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)**

1. The instant application is filed by M/s. Lex Primus LLP, through Mr. Pawan Kumar Ray, under Section 60(5) of the Insolvency and Bankruptcy read with Rule 11 of National Company Law Tribunal Rules, 2016 against Resolution Professional of M/s. JBK Developers Private Limited (Respondent No.1') and Mr. Vineet Aggarwal, erstwhile Resolution Professional ('Respondent No.2') inter-alia seeking the following prayers:-

a) Direct the Respondent No.1 to clear all pending invoices and outstanding dues to the tune of Rs. 95,79,500/- and;

b) Direct the Respondent No.1 to immediately call a meeting of the Committee of Creditors ('CoC') and place the agenda and pass necessary resolution for replacement of the Applicant by Mr. Harish Taneja and releasing the Applicant of all the duties and responsibilities as legal advisor of the Corporate Debtor;

c) Pass any such order(s) as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case and in the interest of justice.

2. Briefly stated, the facts of the present case as averred by the applicant are that the Corporate Insolvency Resolution Process was initiated against M/s. JBK Developers Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 17.08.2020. The Committee of Creditors in its 4<sup>th</sup> CoC Meeting conducted on 19.12.2020 had confirmed the appointment of M/s. Lex Primus LLP ('applicant') as legal advisor with effect from 23.11.2020 to represent the Corporate Debtor, in various suits and legal proceedings before different Courts/ Tribunal along with the monthly remuneration, appearance fees and out of pocket expenses etc.

3. Further, pursuant to the appointment of applicant, the Applicant, through its Partner and other Associate Advocates, started representing the RP before this Tribunal and other Courts/ Commission/ Forum etc. in the matters filed by or against the CD. As per the terms and conditions of the appointment, the Applicant

used to raise monthly invoice to the RP towards monthly remuneration and appearance fees. The CoC in its 7<sup>th</sup> CoC meeting held on 25.04.2023, had approved the resolution for appointment of Respondent No. 1, Mr. Pankaj Narang and replacement of Respondent No. 2, Mr. Vineet Aggarwal as the RP of the CD and appointment of Mr. Ashish Singh to replace Ms. Karuna Sharma as the Authorized Representative of the COC and the same was confirmed by this Hon'ble Adjudicating Authority vide order dated 17.05.2023.

4. The Respondent No.1 after his appointment as the Resolution Professional of the Corporate Debtor had appointed one Mr. Harish Taneja to act as the legal advisor of the CD and represent the CD in all suits and legal proceedings. However, no formal letter for replacement of the Applicant by Mr. Harish Taneja was sent by the COC to the Applicant. The Applicant submits that since the Applicant's appointment as legal advisor was done by the COC, the COC should also send a formal letter thereby releasing the Applicant of all its duties and responsibilities as the legal advisor of the CD and not to appear before any Courts Tribunal for and on behalf of the RP. It is submitted that the Applicant has also sent an email on 21.08.2023 to the Respondent No. 1 to this effect and seeking formal letter of release from the COC. However, to date, no reply has been received by the Applicant from the Respondent to the email.
5. The Applicant submits that between May 2022 to October 2022, part payments were made against the invoices raised and after October 2022, no payment has been received by the Applicant from the Respondent No. 2. It is submitted that to date a total amount of Rs. 95,79,500/- is due and payable by the Respondents to the Applicant for the services provided as legal advisor of the CD. Further, the applicant submits that even though no formal written letter of replacement of the Applicant has been received to date from the Respondent No. 1 or the COC, the Applicant shall not raise invoices from July 2023 onwards till the necessary resolution is passed by the COC as the new legal advisor has already been appointed and the Applicant has stopped appearing for the CD to avoid confusion. Accordingly, the applicant prays for the relief.

6. We have heard the submissions made by the applicant and perused the averments made in the present application and documents annexed therewith.
7. From records available, this Adjudicating Authority observed that the Committee of Creditors in its 4<sup>th</sup> CoC Meeting held on 19.12.2020 at Resolution No.3 had considered the confirmation of the Appointment of M/s. Lex Primus LLP and Professional Fees of the legal advisor and the same was approved with 97.57% votes in favor. The relevant extract of the Resolution No.3 passed in the 4<sup>th</sup> CoC Meeting is reproduced herein below:-

**RESOLUTION AGENDA NO 3**

**TO CONFIRM THE APPOINTMENT AND PROFESSIONAL FEE OF LEGAL ADVISOR**

To represent the Corporate Debtor in various suits and legal proceedings before High Court, NCLAT, NCLT and other legal forums the RP has appointed M/s. Lex Primus, New Delhi on the following terms and conditions:

1. Monthly remuneration: Rs. 1,25,000 pm\*
2. Appearance fees: Rs. 7,500 per appearance\*
3. Out of pocket expenses: as per actual\*

\*Applicable taxes extra

The AR asked to include the date of appointment of M/s. Lex Primus, New Delhi. The Resolution is amended accordingly as follows:

*It is "RESOLVED that M/s. Lex Primus, New Delhi be hereby appointed as legal advisor on the terms and conditions of their appointment Dated 23.11.2020 as enumerated above."*

**THE RESOLUTION WAS PUT TO VOTE ON 21.12.2020, THE RESULTS OF VOTING ARE GIVEN BELOW:-**

VOTED ASSENT	97.57%
VOTED IN DISSENT	0.78
ABSTAINED	1.63%
RESULT	PASSED

**(Extract of the Resolution No.3 passed in the 4<sup>th</sup> CoC Meeting)**

8. Moreover, this Adjudicating Authority vide its order dated had confirmed the replacement of Vineet Agarwal, Respondent No.2 with Mr. Pankaj Narang as the Resolution Professional of the Corporate Debtor as approved by CoC in its 7<sup>th</sup> CoC meeting held on 25.04.2023.

9. Considering the conspectus of facts and circumstances, we direct the Applicant to place the claim with supporting documents before Respondent No.1 and Respondent No.1 i.e., Mr. Pankaj Narang, Resolution Professional of M/s. JBK Developers Private Limited is hereby directed as follows:-

- a) to place before the CoC the necessary resolution with regard to the status of the services rendered by the Applicant as the legal service provider of the Corporate Debtor.
- b) to verify the claim of the Applicant with regard to its legal fee incurred in representing the Corporate Debtor as per the terms of Applicant's appointment as approved by the CoC in the 4<sup>th</sup> CoC Meeting and consequently place the verified invoices before the CoC for rectification and further actions as per the provision of Insolvency and Bankruptcy Code, 2016 read with CIRP Regulations, 2016.

10. We also clarify that no finding is being given by this Adjudicating Authority vis-a-vis the amount of the Applicant's claim, with regard to the legal services rendered by the Applicant in the Corporate Insolvency Resolution Process of the Corporate Debtor.

**11. In view of the above directions, the present **Interlocutory Applications (I.A/5436/ND/2023) stands disposed of.****

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (T)**

**Sd/-**  
**(MANNI SANKARIAH SHANMUGA SUNDARAM)**  
**MEMBER (J)**