IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

IA-2019/2025

In

IB-1771(ND)/2018

(Order under Section 27 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF IB-1771(ND)/2018:

Ms. PRIYANSHI ARORA

..... Financial Creditor

VERSUS

M/s. DREAM PROCON PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-2019/2025:

Mr. RAJIV KUMAR

S/o Late Shri Jagdish Singh

R/o 24, Sharad Vihar, Delhi-110092.

E-mail-autoplastapolytech@yahoo.co.in

Mob-9818661345

..... Applicant

VERSUS

1. ARUNAVA SIKDAR

(Resolution Professional of M/s. Dream Procon Pvt Ltd.)

IBBI REG. NO. IBBI/IPA-001/IPP00022/2016-2017/10047

Having office at: -

C- 10, Lower Ground Floor,

Lajpat Nagar-III, New Delhi - 110024.

E-mail: asiltdar1990@gmail.com,

ip.dreamprocon@gmail.com

2. MR. RAJEEV DHINGRA

[Authorized Representative (AR) 1, (Homebuyers class - first Sale)]

IBBI Registration no. IBBI/IPA-001/IIP-P-01946/2019-2020/12970

Having office at: -

C 237, 4th Floor, Mayfield Garden,

Sector 50, Gurugram- 122018

E-mail: dhingra_fca@yahoo.com

ar1.dreamprocon.cirp@gmail.com

At Also: -

BG - 5A/48B, DDA Flats, Paschim Vihar, Near BG 6

Market, Opposite Gas Godowns, New Delhi.

3. MR. NITESH KUMAR SINHA

[Authorized Representative (AR) 2, (Homebuyers class - Subsequent Sale)]

IBBI Registration no. IBBI/IPA-002/IP-N00280/2017-18/10838

Having office at: -

E- 262, LGF, East of Kailash, New Delhi- 110065

Email: info@csnitesh.com,

ar2.dreamprocon.cirp@gmail.com

.... Respondents

Order Pronounced On: 03.11.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant: Mr. Mayank Kshirsagar, Ms. Pavani Verma Advs.

For the Resolution Professional: Ms. Varsha Banerjee, Mr. Akash Srivastava Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application is being filed by Mr. Rajiv Kumar representing 212 homebuyers of Corporate Debtor, i.e., Dream Procon Pvt. Ltd under Section 27 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016, seeking the following reliefs: -

> *"a) Allow the present application filed on behalf of the Financial Creditor/Applicant under Section 27 of the Insolvency and Bankruptcy Code 2016 read with Rule 11 of NCLT Rules, 2016, seeking replacement of existing Resolution Professional namely Mr. Arunava Sikdar (IBBI Regn: IBBI/IPA-001/IP-P00022/2016-2017/10047) with proposed Resolution Professional namely Mr. Sunil Kumar Agrawal (IBBI Regn: IBBI/IPA-002/IP-N00081/2017-18/10222); and/or*
>
> *b) Issue appropriate directions to call a CoC for voting to confirm the appointment of proposed Resolution Professional namely Mr. Sunil Kumar Agrawal (IBBI Regn: IBBI/IPA-OO2/IP-N00081/2017- 18/10222) as Resolution Professional of the Corporate Debtor; and/or*
>
> *c) Issue appropriate directions to appoint observer in the captioned matter; and/or*
>
> *d) Pass any other further order or direction which this Hon'ble Tribunal may deem fit and proper be also passed in the favour of the Applicant and against the Respondent and be also passed in the interest of justice."*

2. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. Ms. Priyanshi Arora, against the Corporate Debtor i.e. M/s. Dream Procon Private Limited and the said application was admitted vide Order dated 06.09.2019 by this Adjudicating Authority and a moratorium was declared. Mr. Manish Gupta was appointed as the Interim Resolution Professional ("**IRP**") of the Corporate Debtor.

3. On 23.12.2019, the IRP convened the Second Meeting of the CoC when it was resolved to appoint Mr. Nilesh Sharma, having Registration no. IBBI/IP-002/IP-N00104/2017-18/10232 as the Resolution Professional of the Corporate Debtor.

4. This Adjudicating Authority vide Order dated 16.01.2020, as per Section 16(5) of the Code appointed Mr. Nilesh Sharma as the Resolution Professional of the Corporate Debtor.

5. On 22.01.2025, this Adjudicating Authority replaced Mr. Nilesh Sharma who was the Resolution Professional of the Corporate Debtor with Mr. Arunava Sikdar, having IBBI Registration No.: IBBI/IPA-001/IP-P00022/2016-2017/10047 as the Resolution Professional.

6. It is submitted that the Applicants are having more than 40% voting share and have requested the Resolution Professional by sending multiple E-mails to place the resolution for replacement of Mr. Arunava Sikdar/Current Resolution Professional with Mr. Sunil Kumar Agrawal as the Resolution Professional before the CoC. The said proposed resolution is forwarded by the Applicant to Resolution Professional to be placed before CoC is as under: -

> "*ITEM NO.*
> *Replacement of the Resolution Professional Mr: Arunava Sikdar (IBBI Regn: IBBI/IPA-001/IP-P00022/2016-2017/10047) by appointment of Mr. Sunil Kumar Agrawal*, *(IBBI Regn: IBBI/IPA-002/IP-MOO81/2017-18/10222) as Resolution Professional (RP) as per Section 27 of IBC, 2016.*
> *The Resolution Professional apprises to the Committee of Creditors (CoC) that Resolution Professional (RP) and Authorized* Representatives (AR) of Home Buyers - Class of Creditors have received emails from Home Buyers - Class of Creditors having voting right more than 33% for replacement of Resolution Professional Arunava Sikdar by appointment of Mr. Sunil Kurnar Agrawal, as Resolution Professional (RP) as per Section

27 of IBC, 2016. The consent Form AA along with IBBI Registration Certificate and AFA Valid till 31.12.2025 are received and attached with this notice.

After consideration, the following resolution may be passed through E-voting:

"Resolved that Committee of Creditors (CoC) be and is hereby appointed Mr. Sunil Kurnar Agrawal, as Resolution Professional (RP) in place of Mr. Arunava Sikdar as per Section 27 of IBC, 2016.

Further Resolved that Mr. Sunil Kumar Agrawal, be and is hereby appointed as Resolution Professional on the same fees & expenses as of the existing Resolution Professional. The Resolution Professional fees & expenses will be paid upto closure of CIRP of Corporate Debtor by order of this Adjudicating Authority."

7. It is submitted that Resolution Professional has deliberately not placed the proposed Resolution before CoC for voting even though the Applicant have more than 40% voting share as per Regulation 18 of CIRP Regulations, 2016. Hence, the present application.

8. The Respondent/Resolution Professional filed reply affidavit dated 13.05.2025 and submitted that the present application is not maintainable and liable to be dismissed on following grounds: -

A. No locus standi of the Applicant to file the present application:

The present application is filed without any locus as the Applicant being an individual homebuyer cannot file an application under Section 27 of IBC as it explicitly provides that the replacement of a Resolution Professional can only be initiated by the COC with a 66% majority of voting shares. Reliance has been placed on the Order of Hon'ble NCLAT, Chennai in the case of ***Veeral Controls Pvt. Ltd. v. Regen Powertech Pvt. Ltd., Company Appeal (AT) (CH) (INS) No. 98 of 2022.***

B. ***Non-Compliance with Voting Share Threshold under Regulation 18(3) of CIRP Regulations without prejudice:***

As per Regulation 18(3) of the CIRP Regulations to propose a resolution, including a resolution for replacement of the Resolution Professional, the requisition is required to be supported by at least 33% of the members of CoC. Annexure A-1 of the application of the Applicant whereby it is claimed that 40% home buyers are seeking replacement of the Answering Respondent cannot even otherwise give any locus to the Applicant to seek replacement of Resolution Professional.

C. ***Lack of Intra-Class Majority Approval:***

The Applicant's reliance on minority support (34% for "First Sale" and 4% for "Builder Buyer Agreement") cannot be read conjointly to make a case of request by 40% members of the CoC. The Authorized Representatives decisions, based on majority votes of the class, are binding on all creditors within that class, including dissenters. Reliance has been placed on the Judgment of Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. v. Union of India [2019] 10 S.C.R. 381.***

D. ***No Valid Grounds for Replacement of the RP:***

The Applicant herein has failed to provide any cogent reasons or any proof/ evidence justifying the replacement of the Answering Respondent. It is further submitted that Section 27 of IBC, as elucidated in ***Veeral Controls Pvt. Ltd. (supra)****, requires the CoC to form an opinion that the Resolution Professional is required to be replaced, supported by objective grounds and a 66% majority vote.*

E. ***Pendency of Resolution Plan Approval:***

The Resolution Plan of Victory Ace Social Welfare Society was approved by the CoC with a 90.66% voting share in the 11th CoC meeting held on 07.05.2021, and the application for its approval is pending before this Adjudicating Authority in IA No. 3250/2021 under Section 30(6) of the Code, 2016. The CIRP is at an advanced stage, and the replacement of the Resolution Professional at this juncture would cause unnecessary delays and prejudice the interests of all stakeholders, including the homebuyers.

9. Analysis and Findings:

i. We have heard the submissions of Ld. Counsel appearing for the Applicant and the Respondent. We have also perused the records.

ii. The Applicant has filed the instant application, on behalf of 212 homebuyers of the Corporate Debtor, seeking replacement of existing Resolution Professional, Mr. Arunava Sikdar with Mr. Sunil Kumar Agarwal on the ground that the conduct of the current Resolution Professional to not convene a meeting with the proposed agenda of his replacement even after having more than 33% of the voting rights is in contravention to the provisions of the Code.

iii. The Applicant alleges that 212 homebuyers having more than 40.14% voting share in the CoC have requested for replacement of Resolution Professional and thus, the said resolution is required to be placed for voting. Even post filing of the present application, further 9 members had shared the request on their behalf. The reason for the Resolution Professional for not putting the proposal for voting is because at the time of his appointment he had secured only 113 votes out of total 401 votes of first category which amount to 46.29% of the total voting share. Further, 130 homebuyers having 27% of voting share never participated in his appointment. The present application being filed by 186 homebuyers of the first category and 32 of second category, the current Resolution Professional is aware that if the proposal for his replacement is put up for voting, he may be replaced by newly proposed Resolution Professional.

iv. The Ld. Counsel for the Applicant submitted that Regulation 18 of the CIRP Regulations, 2016 only requires that Resolution Professional is under an obligation place a proposal if the same is made by members of the committee representing at least 33% of voting rights and does not deal with voting upon the agenda. For a proposal to be placed for consideration, it is only required that the proposal be submitted by members having 33% of voting rights placed for consideration by CoC.

v. The Ld. Counsel for the Respondent argued that the present application has been filed by a single homebuyer allegedly representing 212 homebuyers which clearly does not meet the requirement of Section 27 of IBC. The Applicant alleges that the homebuyers with more than 40% voting share have expressed intent to replace the Answering Respondent and thus the RP is duty bound to call for the meeting. However, the said submission of the Applicant to seek calling of a meeting of CoC for replacement of Resolution Professional is not in accordance with provisions of IBC computation of voting by Class of Creditors and the present application is not maintainable on the ground that the applicant has no locus standi.

vi. The Ld. Counsel for the Respondent submitted that in terms of Regulation 18(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") r/w Section 21 and Section 25A(3A) of IBC requires a resolution to be proposed in the CoC by members representing at least 33% of voting rights which is not achieved. The homebuyers being part of CoC are required to act as class through Authorized Representative after meeting required majority within the class. The homebuyers being part of Class of Creditors are required to act as Class through Authorised Representative and the required majority is to be calculated within the class. In the present case, from the first category only 34% of the class and under second category only 4% of the class had proposed for the replacement of the Resolution Professional along with one another Financial Creditor i.e., Starmax Properties having 1.444% voting share in CoC. Accordingly, in terms of Section 25A(3A) of the Code, the vote of the class as a whole was not triggered. Consequently, the Authorised Representatives for these classes cannot vote in favour of the proposal, and their voting shares (77.94% and 12.29%) cannot be counted toward the 33% threshold under Regulation 18(3) of the CIRP Regulations. The AR's vote in the CoC is binding only when approved by more than 50% of the voting share within the respective class. The requisite majority within the class is not achieved and thus the Applicant claims is legally untenable. Section 25A categorically provide that the class need to vote as a group for all purposes and the only exception to the said voting as a class is voting in case of a Section 12A of the Code.

vii. For better appreciation of the issues involved in the present case, it is pertinent to refer to the relevant provisions of the Code.

Regulation 18 of CIRP Regulations, 2016 is reproduced hereunder: -

"18. Meetings of the committee.

(2) A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty-three per cent of the voting rights.

[Explanation: For the purposes of sub- regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority.]

(3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty-three per cent of the voting rights."

Section 27(2) of the Code, 2016 is reproduced hereunder: -

*"**27. Replacement of resolution professional by committee of creditors**-*

(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."

viii. Upon perusal of the relevant provisions of the Code, it is evident that a Resolution Professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty-three per cent of the voting rights.

ix. We are of the considered view that in the present case, the Applicants comprise of 212 Homebuyers having total of 40.14% voting rights which is more than the required 33% of voting right as mandated by Regulation 18 which obligates the Resolution Professional to place the proposal for consideration before the CoC. The argument of the Respondent/Resolution Professional that the voting mechanism for Homebuyers in a class is distinct, and their participation in CoC is through the Authorised Representative, subject to intra class approval cannot be accepted in the present case because if every class of financial creditor is required to vote in one voice, then Regulation 18 of the CIRP Regulations would become redundant as any proposal to be put to vote would require that a majority should first agree that such proposal should be put before the CoC and only then can it be considered for voting by the members of the CoC.

x. In the wake of above-mentioned arguments advanced by the Ld. Counsels of both the parties, it is evident that the Resolution Professional despite the repeated emails and requests sent by the Homebuyers failed to call a meeting of the CoC to put to vote the agenda for his replacement. Instead, while conducting the 20th CoC meeting held on 29.03.2025, the Chairman answered the question of Mr. Kush Bhateja, one of the Homebuyers who requested the Chairman to include an agenda item for the replacement of the Resolution Professional. The Chairman informed the homebuyers that, as per Regulation 18(3) of the CIRP Regulations, a minimum of 33% of the voting share is required and in the present instance, the Chairman expressed his inability to include the requested agenda, emphasizing that he is bound by the said provision.

xi. Therefore, in the interest of justice and considering that the Applicant represents more than 40.14% of the CoC members, we direct the Resolution Professional to conduct a CoC meeting with the agenda seeking replacement of the current Resolution Professional/Mr. Arunava Sikdar with the proposed Resolution Professional/Mr. Sunil Kumar Agrawal.

xii. The present Application bearing **IA-2019/2025** in **IB-1771(ND)/2018** stands **allowed** in above terms.

-Sd-

(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

-Sd-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)