

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA**

**IA (IB) No.656/KB/2022
in
CP (IB) No.1303/KB/2019**

An application under Section 18 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 34A of the Insolvency Resolution Process for the Corporate Person.

In the matter of

CP (IB) No.1303/KB/2019

Gagan Ferrotech Limited

...Operational Creditor

Versus

RDG Interior Decoration Exterior Architecture Private Limited

... Corporate Debtor

IA (IB) No.656/KB/2022

In the matter of

Bharat Hotels Limited

... Applicant

Versus

Tapan Chakraborty, Resolution Professional of RDG Interior Decoration Exterior Architecture Private Limited

... Respondent

**Date of hearing: 11 August, 2022
Order pronounced on: 26 August, 2022**

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Applicant	:	Mr. Purnima Maheswari, Advocate
	:	Mr. Abhishek Sikdar, Advocate
For RP	:	Mr. Tapan Chakraborty

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This court convened *via* hybrid mode.
2. This is an Interlocutory Application filed under Section 18 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) read with Regulation 34A of the Insolvency Resolution Process for the Corporate Person, by Mr Himanshu Pandey, Company Secretary, Bharat Hotels Limited, duly authorised *vide* Board Resolution dated 18 April, 2022 (**‘Applicant’**), against the Resolution Professional of RDG Interior Decoration Exterior Architecture Private Limited (**‘Corporate Debtor’**), *inter alia*, seeking the following reliefs:-
 - a. Direct the Resolution Professional to disclose item wise insolvency resolution process costs; and/or;
 - b. Call for the entire records of the Resolution Professional maintained with respect to the present petition;
 - c. Direct the Resolution Professional to follow the steps needed under Section 18 and Section 20(2)(a) of the IBC including Forensic Audit Report before proposing liquidation of Corporate Debtor; and/ or;
 - d. Change the Resolution Professional, if needed;
3. ***The Ld. Counsel appearing on behalf of the Applicant submits as follows:***
 - 3.1 The Corporate Debtor went into CIRP on 19 December, 2019 and the Mr. Tapan Chakraborty was appointed as the Interim Resolution Professional (**‘IRP’**). Subsequently, the IRP was appointed by the Resolution Professional (**‘RP’**) by the Committee of Creditors (**‘CoC’**).
 - 3.2 The RP in terms of section 15 of the Code made public announcement on 25 December, 2019 in Financial Express (English) and Aajkal (Bengali), fixing 06 January, 2020 as the last date for submissions of the claims.
 - 3.3 Thereafter, in 2022, the RP file an Application being IA (IB) No. 441/KB/2022 for initiation of liquidation of the Corporate Debtor. However,

no approval was sought prior to filing of the said application. Further, the said Application is premature and is in contravention to the Regulations/ Provisions of the Code.

- 3.4 The RP is duty bound to conduct a review of transactions conducted by the Corporate Debtor under sections 43, 45, 49, 50, and 66 of the Code but no such process was followed by the RP.
- 3.5 It is pertinent to mention that, the Applicant i.e., Bharat Hotels Limited, along with its claim had filed the Award dated 16.05.2019 passed in favour of Applicant, wherein it's admitted fact that mobilization advance of Rs.1,07,14,989/- was received by Corporate Debtor on 14.05.2012; 11.03.2013; & 14.04.2014 for completion of the projects of the Applicant. However, neither the work for the said amount was done nor the same was returned by Corporate Debtor. Hence, to unearth where the amount has been siphoned off this was mandatory on the part of RP.
- 3.6 Upon perusal of the earlier orders specifically dated 28.03.2022 it would reflect that RP was paid an amount of Rs.1,10,000/- only on that date by Punjab & Sind Bank (majority voting shareholder) towards RP costs. Bharat Hotels Ltd. (applicant herein) had already paid Rs.0.66 lakh to RP. Nothing has been done thereafter by RP nor the details furnished as to what steps taken incurring payment. The applicant is a Public Limited Company and needs to furnish the details.
- 3.7 In terms of order dated 17 June 2022, the 7th CoC meeting was held on 28 June 2022 at 3:00 PM, wherein the Applicant explained the delay as well as requested that the duties of RP be done, prior to seeking liquidation as that would reflect as the status of affairs as well as preserve the operations of the Corporate Debtor.
- 3.8 The Punjab & Sind Bank (majority voting shareholder) under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 neither filed Form FA

application for withdrawal of corporate insolvency resolution process nor is permitting the CIRP process to conclude logically. The same is perverse, totally arbitrary and in contravention to the Regulations/Provisions of the Code.

- 3.9 The Hon'ble Supreme Court *vide* order dated 10 January, 2022 in Suo Moto Writ Petition (C) No. 3/ 2020 clarified that the period from 15 March, 2020 till 28 February, 2022 shall be excluded in computing the period prescribed in laws. Further, the Applicant, Bharat Hotels Limited, gave consent for exclusion and extension of time-period of CIRP in the 7 CoC meeting but the same was overruled by the majority voting share holder.

4. ***The Ld. Counsel appearing on behalf of the RP submits as follows:***

- 4.1 Though IA (IB) No.656/KB/2022 was filed in the month of June, 2022, it was filed after expiry of 180 days of the CIRP period on 20 June, 2020 and period of 330 days also lapsed on 12 November, 2020 as recognized by this Adjudicating Authority in paragraph 3 of the order pronounced on 17 June, 2022 and as such, the Applicant has no locus to press and prosecute the CIRP under CP(IB) No. 1303/KB/2019.
- 4.2 Till the 6th meeting of the CoC which was held on 25.03.2022, no decision was taken on liquidation of the CD. Pursuant to the direction of this Adjudication Authority in IA(IB)No.441/KB/2022 in 7th CoC meeting on one point agenda was conducted on 28.06.2022 and in that meeting CoC resolved to recommend the liquidation of the corporate debtor with a majority voting percentage of 66.93%. pursuant to such direction of the CoC, application for liquidation was filed as IA 770/2022 before this Adjudication Authority.
- 4.3 The applicant has no locus today to either maintain or pursue the said application which is therefore liable to be d dismissed. The Applicant had been habitual absentee in the CoC meetings and never cooperated with the RP during CIRP as alleged or at all. The RP has been pursuing with the CIRP since last more than 900 days with minimal participation of the Applicant.

Finding and Analysis

5. This interlocutory application has been filed the Applicant under Section 18 of the Code read with Regulation 34A of the Insolvency Resolution Process for the Corporate Person. Whereas, Section 18 of the Code envisages the Duties of the Interim Resolution Professional and Regulation 34A of the Insolvency Resolution Process for the Corporate Person says that the interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board. The Board herein refers to the Insolvency and Bankruptcy Board of India.
6. Hence, we do not find that this instant Application has any right or locus under section Section 18 of the Code read with Regulation 34A of the Insolvency Resolution Process for the Corporate Person or any other provisions under the Code. The Application is hereby ***rejected***.
7. Accordingly, the ***IA (IB) No.656/KB/2022*** in ***CP (IB) No.1303/KB/2019*** is disposed of.
8. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The Order is pronounced on 26th of August, 2022

SA, LRA