

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA Nos.588/2020, 590/2020
& 597/2020, 845/2020**

**In
CP (IB) No. 42/Chd/Pb/2018
(admitted)**

Under Section 60(5) of IBC, 2016

In the matter of:

Ashwani Kumar

....Petitioner/Operational Creditor

Versus

M/s. Kuvam Konstruktion Pvt. Ltd.

....Respondent/Corporate Debtor

And in the matter of IA No. 588/2020

Libra Associates
through Authorized Signatory Abhinav
Son of Sh. Rajiv Kumar
having its registered address at
989, Sector 21, Panchkula

...Applicant

Vs.

M/s. Kuvam Konstruktion Pvt. Ltd.
having its registered address at
House No. 536, Mamta Enclave, Village Dhakoli,
Punjab-140603

...Respondent/Corporate debtor

And in the matter of IA No. 590/2020

Libra Associates
through Authorized Signatory Abhinav
Son of Sh. Rajiv Kumar
having its registered address at
989, Sector 21, Panchkula

...Applicant

Vs.

M/s. Kuvam Konstruktion Pvt. Ltd.

having its registered address at
House No. 536, Mamta Enclave, Village Dhakoli,
Punjab-140603

...Respondent/Corporate debtor

And in the matter of IA No. 597/2020

Rajiv Bawa
Son of Sh. Nanak Chand
having its registered address at
989, Sector 21, Panchkula

...Applicant

Vs.

M/s. Kuvam Konstruktion Pvt. Ltd.
having its registered address at
House No. 536, Mamta Enclave, Village Dhakoli,
Punjab-140603

...Respondent/Corporate debtor

And in the matter of IA No. 845/2020

Ashwani Kumar (Sole Proprietor)
House No. 323, Sector-7,
Panchkula Haryana

...Applicant

Vs.

M/s. Kuvam Konstruktion Pvt. Ltd.
having its registered address at
House No. 536, Mamta Enclave, Village Dhakoli,
Punjab-140603

...Respondent/Corporate debtor

Order delivered on: 09.06.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present :

For the applicant
in IA Nos. 588/2020,
590/2020 & 597/2020 : Mr. Rohan Mittal, Advocate

For the respondent
in IA Nos. 588/2020,
590/2020 & 597/2020 : Mr. Jatin Singal, PCS

For the applicant in
IA no. 845/2020 : Mr. Yashpal Gupta, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 845/2020:

The present application has been filed by Aswani Kumar, Amrish Singla and Abhinav Bawa, who are the members of the CoC (herein referred to as the Applicants) against the corporate debtor, Kuvam Konstruktion Pvt. Ltd. through the Resolution Professional (herein referred to as Respondent) under section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of the NCLT Rules, 2016 for seeking direction for the replacement of the current RP.

2. It has been submitted by the applicant that:

2.1 Mr. Ashwani Kumar was forced to file the insolvency petition against the corporate debtor, but the appointment of the Resolution Professional is in violation to the provisions of the code as he is in collusion with the suspended board of directors and has constantly ignored the request of the members of the CoC by manipulating the minutes of the CoC.

2.2 The appointed RP has time and again in the various meetings of the CoC has arbitrarily diluted the voting share of the applicant and wrongly and unethically inducted other parties in connivance with the board of directors. The voting shares of the COC in its various meetings are shown below:

Name of Vendor	Voting Share (As per each meeting)				
	1.	2.	3.	4.	5.
Ashwani Kumar	45%	42%	38%	22%	21%
Libra associates	0%	0%	0%	0%	28%
Rajiv Bawa	0%	0%	0%	0%	0%
Om Metals	5%	5%	4%	2%	2%
PEE Aar Scaffolders	24%	29%	26%	24%	23%
Bombay Interior Decorators	16%	15%	14%	8%	8%
Shiva Bricks Co.	10%	10%	9%	5%	5%
Modern Tiles and Concrete Pavers	-	-	10%	6%	6%
Bansal Italian & Marbel House	-	-	-	9%	8%
Excise and Taxation	-	-	-	23%	-
Total	100%	101%	101%	99%	101%

2.3 As per the above-stated table, the RP has given its own discretion for the voting share for manipulating the working in favor of the board of directors and putting the genuine interest of the creditors in prejudice. Copy of minutes of the 1st CoC meeting, 2nd CoC meeting, 3rd CoC meeting, 4th CoC meeting and 5th CoC meeting are attached as Annexure A-2, Annexure A-3, Annexure A-4, Annexure A-5 and Annexure A-6 of the application respectively.

2.4 Moreover, upon requesting the Resolution Professional to keep the records updated, the Resolution Professional never supplied any information as per the proceedings done by him and also

ignored and failed to provide any justification to the various emails and letters sent by the members of the CoC opposing and questioning his conduct. The various emails addressed to the respondent Resolution Professional by the applicants are Annexure A-1 of the application.

2.5 The applicant moreover claims that the recovery can easily be made from the following parties, (i) NBCC, (ii) EMAAR, (iii) IREO, (iv) Housing Board Haryana, (v) FDR of Corporate Debtor, and (vi) Charge in Book of Accounts of Corporate Debtor on immovable property whereas, the respondent miserably failed to make the any effort for the recovery of funds.

3. The respondent has filed a reply vide Dairy No. 1640/1 dated 05.09.2022 wherein it has been stated that the allegations as put forward by the applicants are completely false, and he claims to be performing all his tasks diligently to give effect to recoveries very shortly. In response to the claim of the applicant about the Open Charge shown on the Master Data of the Corporate Debtor (Annexure A- 8 of the Application), no claim was filed by the financial creditor as per the information provided by the suspended directors. Moreover, as per the respondent, the applicants have always created hurdles during the whole CIRP, denied any preferential transaction in favour of any CoC member as the applicants have brought the CIPR process to halt at their own wish by levelling allegations against the respondent for their own inactions.

4. In the replication filed by the applicants vide Dairy No. 1640/2 dated 03.02.2023, the applicant questions why the respondent never filed any

application under Sections 19, 43 and 66 as per the provisions of the IBC, 2016. Further, the applicant states that it is denied that the respondent has played any role in resolving the Insolvency of the corporate debtor rather, the respondent has shaken hands with the ex-management of the corporate debtor who wishes the corporate debtor to go into insolvency.

5. We have heard the counsel for the parties and have gone through the relevant documents.

6. In this connection, we note that the present CIRP was initiated by an order of this Bench dated 14.11.2019 on a petition filed by the present applicant, i.e. operational creditor, Mr Ashwani Kumar. As no IRP was proposed by the operational creditor, Shri Parvinder Singh, the present Resolution Professional, was appointed by this bench. As noted in the minutes of the meeting of the first COC, there was no claim from financial creditors, and the committee of creditors has been formed from the operational creditors.

7. Subsequently, we note that four meetings of the COC were convened by the Resolution Professional. The same were attended by the applicant and other members, and various issues, as mentioned in the agendas for the meetings, were discussed, and several decisions were also taken.

8. Thus, from the initiation of the first CoC meeting on 16.12.2019 till the conclusion of the fourth CoC meeting on 11.03.2020, we do not notice any adverse mention by the applicant or any other CoC member regarding the functioning of the Resolution Professional in the minutes of these four COC meetings. The communication dated 27.10.2020 from the applicant, attached as annexure A-6 to IA No. 845/2020, makes a mention of various omissions

and commissions by the Resolution Professional for the first time. This was in reply to the agenda of the fifth meeting of the CoC of the corporate debtor held on 19.06.2020. In the normal course, the applicant--operational creditor should have raised these issues right in the first CoC meeting and in subsequent meetings of the CoC. It appears that there was full cooperation from the participants, including the applicant in taking various decisions which were crucial for the smooth progress of the Resolution Process. We also note that the issues raised by the applicant-operational creditor relate to the day-to-day functioning of the corporate debtor after the initiation of CIRP. We further note that there was no agreement by the operational creditors-members of the CoC over the payment of liquidation costs in the 5th CoC meeting on 14.03.2020, and the resolution process has come to a halt subsequently.

9. In this context, we note that a reading of Section 27 of the IBC clearly provides that when the CoC is of the opinion that the Resolution Professional appointed under Section 22 of the IBC is required to be replaced, it may replace him with another Resolution Professional in the manner prescribed under Section 27 of the IBC.

10. In view of the aforementioned discussion, we are of the view that the right forum to discuss replacing the present Resolution Professional is in the meetings of the CoC. The applicant-Member of the CoC should have raised these issues in CoC meetings. Thus, we direct the Resolution Professional to call a meeting of the CoC within 15 days of this order to discuss the issues raised in this application by the applicant-operational creditor. Consequential action in this regard, if any, be taken by the CoC as per law.

11. We, therefore, find no reason to accede to the prayer to replace the resolution professional. In the result, this application is partly allowed as per above directions.

IA Nos. 597/2020, 590/2020 and 588/2020 being, by the same operational creditor against the Resolution Professional, seeking, inter alia, the consideration of its claim, are interconnected and being taken up together for discussion.

IA No. 597/2020:

12. The present application has been filed by Shri. Abhinav Bawa, the authorized representative of M/s Libra Associates (herein referred to as the applicant) under Section 60(5) of the Insolvency and Bankruptcy Code 2016, for seeking quashing of order dated 24.03.2020 passed by the IRP.

13. It is submitted by the applicant that:

- i. The resolution process of the corporate debtor company was initiated vide order dated 14.11.2019 passed by this adjudicating authority, and CA Parvinder Singh was subsequently appointed as IRP for the said company.
- ii. The applicant thereby submitted a claim of Rs.18,24,759/- in Form B before the IRP, but the same was rejected vide order dated 24.03.2020 of the IRP (Annexure A-1 of the application).
- iii. Subsequently, two separate claims were filed amounting to Rs. 10,01,964/- as Form E and another of Rs. 8,22,855/- as Form B via email dated 07.04.2020 and update the fourth COC meeting. The IRP kept the applicant as an interested party/related party to

the company under resolution despite various representations filed by the applicant.

- iv. Further, the IRP also initiated liquidation proceedings against the corporate debtor and has selected himself as a liquidator with fees of Rs.60,000 per month, whereas no recovery has been made with regard to the same despite the submission of detailed documents by various creditors.

14. The respondent had filed his reply vide Dairy No. 447/1 dated 05.09.2022, wherein it has been stated as follows:

- i. The applicant has annexed a special power of attorney in his favour by the corporate debtor dated 29.02.2016, which was valid for a period of two years to act as a lawful attorney on behalf of the corporate debtor without any sort of terms and conditions with respect to the payment for the remuneration and expenses incurred by the applicant.
- ii. further, the applicant and his bank account statements purporting to be expenses incurred by the applicant on behalf of the corporate debtor, whereas no evidence was brought forward in support of the same.
- iii. It has been further mentioned that the amount claimed by the applicant has not been reflected in the book of accounts of the corporate debtor, and therefore, the allegations are false, baseless and denied in its entirety.

15. The applicant filed its replication vide Dairy No. 447/2 dated 22.09.2022 and reiterated the contentions raised by the respondent as wrong and vehemently denies the same.

IA No. 590/2020:

16. The present application has been filed on behalf of M/s Libra Associates (herein referred to as the Applicant) through its authorized representative against the corporate debtor, M/s Kuvam Konstruktion Pvt. Ltd. (herein referred to as the Respondent) under section 60(5) of the insolvency and bankruptcy code 2016, for seeking direction to the IRP to decide the claim of the applicant.

- i. The resolution process of the corporate debtor company was initiated vide order dated 14.11.2019 passed by this adjudicating authority, and CA Parvinder Singh was subsequently appointed as IRP for the said company.
- ii. The applicant submitted a claim of Rs.15,08,553.60/- on account of the rent of Tool and Plants (T&P). IRP appointed Shri Vikas Chhabra, CA, for the consideration of claims and the required documents were sent via email to him and later on on the same day, the claim was limited to the IRP but till date, no response has been received from the IRP despite the last date of admission of claims being 21.02.2020. Further, no response has been received to the representation raised by the applicant on 30.04.2020.
- iii. It is also brought to the notice that the IRP appointed a forensic auditor, KS Dua and Co., without the approval of the CoC with the

price higher than the quotation provided by an equally competent auditor, Mr. Kansal Singla and Associates, despite the written request of the applicants.

17. It has been submitted by the respondent via Dairy No. 445/1 dated 05.09.2022 that:

- i. The MoU for the reconciliation of accounts on a monthly basis by both the parties, brought forward by the applicant, is questionable as the applicant has filed supporting documents from the period ranging from the year 2011 to 2018, whereas the MoU was executed on 07.06.2016. Further, no evidence reflects the reconciliation of accounts ever signed or mandated by the corporate debtor.
- ii. It is claimed that the applicant Mr Abhinav Bava does not have any proper power of attorney in his favour on behalf of Libra Associates.
- iii. No amount as claimed by the applicant has been reflected in the books of accounts of the corporate debtor, due to which the claim is not admissible and is denied entirely.

18. The applicant filed its replication vide Dairy No. 445/2 dated 22.09.2022 and denies the points raised by the respondent merely on technical objections.

IA No. 588/2020:

19. The present application has been filed by the applicant, M/s Libra Associates (herein referred to as the applicant), through its authorized representative under section 60(5) of the Insolvency and Bankruptcy Code

2016, for seeking quashing of order dated 24.03.2020 passed by the IRP, where the claim of the applicant has been declined.

20. The applicant submits as follows:

- i. The resolution process of the corporate debtor company was initiated vide order dated 14.11.2019 passed by this adjudicating authority, and CA Parvinder Singh was subsequently appointed as IRP for the said company.
- ii. The applicant submitted a claim of Rs.2,25,62,978/- as per MoU dated 07.01.2016 (Annexure A-1 of the Application) to share the proceeds from work done for NBCC and the bank account statements along with the MoU were submitted to the IRP. In compliance to the direction to the applicant as per the 1st CoC meeting dated 16.12.2019 for the submission of an audited report attested by a chartered accountant, Shri Amarinder Singh, Jassar, CA verified the claim of the applicant and approved the above-stated amount in a report dated 07.01.2020 (Annexure A-2 of the Application).
- iii. In the 4th CoC meeting dated 11.03.2020, the IRP discussed the same and decided that the claim shall be decided after a forensic audit of the accounts of the corporate debtor, However, vide order dated 24.03.2020, the IRP rejected the claim of the applicant without any report of appointed auditor (Annexure A-3 of the Application).
- iv. The applicant raised representation dated 14.04.2020 to the IRP; however, no response has been received till date and hence

seeks quashing of the order dated 24.03.2020 by the IRP and admission of claim of the applicant.

21. It has been submitted by the respondent via Dairy No. 446/1 dated 05.09.2022 that:

a) The MoU dated 07.01.2016 annexed by the applicant contains no reference with respect to the expenses or reimbursement of the expenses incurred by the claimant operational creditor. Further, clause 8 of the said MoU talks about the reconciliation of accounts on a monthly basis which has to be signed by both parties, whereas there is no evidence to reflect the reconciliation of accounts ever done or signed by the corporate debtor as mandated by the MoU. Moreover, the amount claimed by the applicant has not been reflected in the books of accounts of the corporate debtor, and hence the claim is not admissible. The respondent also raises concern regarding the authority of the applicant Mr Abhinav Bawa to file the present application as the concerned proprietary is under the control of Smt. Kanta Rani and hence the present applicant, lacks proper power of attorney in his favour.

22. We have heard the learned counsel for the parties and have also gone through the relevant records.

23. In this regard, we have noted the contents of the MOU dated 07-01-2016, which state, inter alia, that both the parties have mutually agreed to execute a Memorandum of Understanding for the purpose of securing the

interest of both for the execution of the work allotted by NBCC, to execute the work jointly and severally in the event of award of the contract.

24. It further states that “now, with mutual understanding of both the parties, they undertake in granting the rights and accepting the obligations as follows:

The work shall be executed by both the parties as per Bidding Documents, and the schedule of the work agreed to with the NBCC from time to time.

“Now this Memorandum of Understanding Witnesseth as follows:

- 1. Execution: The work would be executed in the name of Kuvam Konstruction Private Limited from its principal place of business at # 181, Sector 11, Panchkula, Haryana(India).*
- 2. Participation: The participating interest (profit and loss) of both the parties will be apportioned as under:*
 - a. First Party: 55%*
 - b. Second Party: 45%”*

25. We further note that the Chartered Accountant, in his claim filed against the corporate debtor dated 07.01.2019, has given a detailed break up of the total payments as identified by Libra Associates related to NBCC India amounting to Rs. 5,87,62,509/-. The said letter contains details of payments and receipts of the corporate debtor and also a break up of payments and withdrawals related to various parties.

26. As recorded in the minutes of the first COC meeting, against a claim amount of Rs 2.70 crores, the Resolution Professional admitted an amount of Rs. 9,07,397/-. The amount reflected in the books of the corporate debtor was Rs 1,57,397/-.

27. It is also noted that the Resolution Professional rejected the claim of Rs. 2,25,62,978/- with the following observations:

- a) In his letter dated 22.03.2020, the Resolution Professional has, with reference to the claim, informed that it is important to mention that, as per the Insolvency and Bankruptcy Code, 2016, the operational creditor is “operational creditor as a person to whom an operational debt is owed, including the debt that has been legally assigned or transferred. Operational debt is debt may arise out of the provision of goods or services or dues arising out of employment or dues arising under any law for time being in force and payable to the Centre/State Government. In common parlance, the operational creditor date emanates from transactions on operations.”
- b) After going through the responses of yourself and the corporate debtor, I would like to inform you that your claim is not maintainable and hence rejected.

28. The reason for the rejection of the claim, as recorded in the minutes of the 4th COC meeting, inter-alia, the following points were mentioned:

“(c) Further, there is a dispute between the partner engaged for the Mandi project (Libra Associates), who has also filed the huge claim of Rs. 227 Lakhs.

(d) RP has discussed the claim with the Corporate Debtor, who has submitted the Mandi Project Profitability, which is showing the Loss. In the light of above RP is of the opinion that matter needs to be further investigated as the huge amount of Rs. 354.06 Lakhs has been stuck up in NBCC and the Claims submitted and Corporate Debtor explanations are contrary, accordingly, RP has called for the quotes for the appointment of Transactional Auditor.

(e) COC has approved the name of M/s Charanjeet Singh and Associates, Ludhiana to conduct the Transaction and Forensic Audit. COC has approved the Fee of Rs. 60,000/- (Rs. Sixty Thousand Only) as Fee for the Audit...”

However, vide letter/order under reference, your goodself rejected the claim of the Applicant and that too, without informing about any such report being submitted by the appointed auditor.No reason whatsoever has been given for such an action by your goodself. It is also pointed out that as per the Bank Statement of the CD, an amount of Rs. 10,01,90,371/- is reflected to have been received upto 31.03.2017 by it from NBCC, however, the CD in its comments against the claim of the Applicant mentions that the total work done is of Rs 10,15,93,092/- upto 31.07.2017. This also goes to show that relevant entries in the books of accounts have not been checked by your goodself before rejection of the claim of the Applicant.

29. From the records, it is apparent that there has been no effective progress in the Resolution Process after the last CoC meeting. The records do not indicate the appointment of the transaction and forensic auditor as approved in the fourth CoC meeting. We, therefore, see no reason to direct the Resolution Professional to consider the claim of the applicant regarding this claim as a decision in this regard has already been taken in the CoC meeting. The Resolution Professional is directed to execute the above decision regarding the appointment of the forensic auditor, if not already done so far, within two months and the amounts payable, if any, to the applicant be crystallised and put up before the CoC for its consideration within the next one month from the receipt of the auditor's report.

30. In the result, IA Nos. 597/2020, 590/2020 and 588/2020 are allowed as above.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

June 09, 2023
JGS/SM