

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-3379/2020

In

IB-1348(ND)/2019

IN THE MATTER OF IB-1348(ND)/2019:

M/s. NISUS FINANCE & INVESTMENT LLP & Anr.

..... Financial Creditors

VERSUS

M/s. EARTHCON UNIVERSAL INFRATECH PRIVATE LIMITED

.....Corporate Debtor

IN THE MATTER OF IA-3379/2020:

Mr. Jitender Arora

..... Applicant

Order Delivered On: 18.12.2023

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Ms. Shweta Saini, Advocate along with Mr.
Jitender Arora, Erstwhile IRP

For the RP : Mr. Rishabh Jain, Advocate for RP

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Jitender Arora the Applicant (Erstwhile IRP of the Corporate Debtor) on 30.07.2020 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 before this Adjudicating Authority, for seeking the following reliefs:

“1. To direct the stakeholder(s) including the Committee of Creditors to make the payment of fees & other expenses incurred by the IRP till 12th June 2020 during the CIRP proceedings.

IA-3379/2020 In IB-1348(ND)/2019

Date of Order: 18.12.2023

Page 1 of 5

2. To order fixation of remuneration of the IRP/RP during stay period towards administering the affairs of the Corporate Debtor.
3. To direct IRP/RP to make & implement some policy/ roadmap subject to the approval of Hon'ble Adjudicating Authority for the collection of expenses towards essential services from the allottee(s)/ other stakeholder(s) so that continuous supply of essential services can be maintained to the allottees.
4. To direct the Suspended Board of Directors to disclose the Bank accounts of the Corporate Debtor other than the Punjab and National Bank and Punjab and Sindh Bank and such other directions in pursuant to Section 70.
5. To direct the Noida Power Company Limited not to disconnect the electricity connection and to provide the options for making payment on installment basis with time extension.
6. To direct the Noida Power Company Limited to provide a proper & permanent domestic electricity connection in the society.
7. To direct the Johnson Lift Company to provide their maintenance services and / or also provide the option for making the payment of Annual Maintenance Contract etc. on installment basis.
8. To direct the Suspended Directors of the Corporate Debtor to deposit such additional amount for providing illegal connection of electricity to outsiders.
9. To direct the Suspended Director / Board and personnel of the Corporate Debtor not to act on behalf of the Corporate Debtor or make any representation and such other directions in pursuant to Section 73.
10. To direct the Punjab & Sindh Bank (Banker of the Corporate Debtor) to honour the instructions of the IRP during the stay of the Corporate Insolvency Resolution Proceedings.
11. Any other directions as may be in facts & circumstances.”

2. Brief Background of the Case

- i. An application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Nisus Finance & Investment LLP, against the Corporate Debtor i.e. M/s. Earthcon Universal Infratech Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 08.11.2020 and a moratorium was declared including appointment of Mr. Jitendra Arora as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Gaurav Katiyar was confirmed as Resolution Professional.
 - ii. The Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of M/s. D S Infraheights Private Limited and M/s. Anand Buildtech Private Limited which was approved by the CoC in its 26th meeting dated 19.08.2023 by 70.18% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Gaurav Katiyar, the Resolution Professional of M/s. Earthcon Universal Infratech Private Limited submitted an IA-4466/2023 for seeking approval of Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 22.08.2023, which is pending adjudication before this Adjudicating Authority.
3. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent.
 4. We find that, since the Resolution Plan has already been approved by the CoC in its 26th meeting dated 19.08.2023 by 70.18% voting share. The Prayer Nos. 3 to 11 become infructuous and the proceedings could not continue pertaining to the appointment of Mr. Gaurav Katiyar, new Resolution Professional of the Corporate Debtor vide order dated 09.11.2020.
 5. With Respect to the Prayer No. 1 and 2, the CoC in its 2nd meeting dated 15.10.2020 approved the remuneration of Mr. Jitender Arora

(erstwhile IRP) as Rs. 4,00,000/- + Gst per month for 8 months. Subsequent to the 2nd meeting, the erstwhile IRP has received 14,16,000/- out of Rs. 41,37,867/-. Further, it is submitted by Mr. Gaurav Katiyar, new RP that the balance amount of Rs. 27,21,867/- will be paid by the Resolution Applicant as the CIRP cost.

6. This Adjudicating Authority vide order dated 21.12.2020 directed the Resolution Professional to place the unapproved expenses of erstwhile IRP before the CoC. In compliance of the order dated 21.12.2020, the Resolution Professional convened the 4th CoC meeting on 21.01.2021 wherein, inter-alia, the agenda for approval of expenses of the IRP was placed before the CoC meeting. The CoC by 68.8% majority rejected the expenses of IRP.
7. This Adjudicating Authority vide order dated 20.10.2021 again directed the Resolution Professional to place the unapproved expenses of erstwhile IRP before the CoC. In compliance of the order dated 20.10.2021, the Resolution Professional convened the 9th CoC meeting on 09.11.2021 and convened the 10th CoC meeting on 14.12.2021, inter-alia, the agenda for approval of expenses of the IRP was placed before the CoC meeting. The 9th CoC meeting was concluded without any decision. The CoC again by 79.32% majority rejected the expenses of IRP in the 10th CoC meeting.
8. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable.
9. In light of the above-quoted judgement, it is clear that the "Commercial wisdom of CoC" is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The CoC in its Commercial wisdom has not approved the agendas of the 4th, 9th and 10th CoC meetings, this Adjudicating Authority cannot interfere in the same.
10. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-3379/2020** filed by the Applicant is **dismissed.**
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**