

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**KOLKATA BENCH, KOLKATA**

**CP(IB) No. 1062/KB/2019**  
**CA(IB) No. 66/KB/2020**

In the matter of:

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016  
("IBC, 2016) read with Rule 11 of the NCLT Rules, 2016

And

In the matter of:

Dipak Bhadra ... Financial Creditor  
-Vs.-  
RCBS Realty Private Limited, represented by the Interim Resolution Professional, Mr. Rajat Mukherjee ... Corporate Debtor  
And

In the matter of:

Brainer Realty (India) Private Limited ... Applicant  
-Versus-  
Mr. Rajat Mukherjee, Interim Resolution Professional ... Respondent

Date of Hearing : 10 January, 2020

Order Delivered on : 14 January, 2020

**Coram:**

**Madan B Gosavi, Member (Judicial)**  
**Virendra Kumar Gupta, Member (Technical)**

For Applicant : 1. Mr. Abhrajit Mitra, Senior Advocate  
2. Ms. Sonam Agarwal, PCS

For IRP : 1. Mr. Debashis Karmakar

Mr. Rajat Mukherjee, IRP

Sd

Sd

**ORDER**

**Per Virendra Kumar Gupta, Member (T)**


1. This application under section 60 (5) of IBC, 2016 has been filed by RCBS Realty Private Limited, one of the Financial Creditors for inclusion of Applicant in Committee of Creditors (“COC”).


2. The facts, in brief, are that the the Corporate Debtor has been put under CIRP vide order of this Tribunal dated 13<sup>th</sup> December, 2019. The Financial Creditor lodged a claim with IRP on 26/12/2019. Insolvency Resolution Professional (“IRP”) asked the Applicant to disclose its relationship with the Corporate Debtor in view of the provisions of section 5(24) of IBC, 2016. The Applicant replied on 4<sup>th</sup> January, 2020 stating that it was not a related party of Corporate Debtor in terms of provisions of section 5(24) of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”).

3. The Ld. Counsel for the Applicant appeared and Resolution Professional also appeared along with his Counsel. Both submitted their points of view having regard to the Joint Venture Agreement, wherein the Financial Creditor is a partner with the Corporate Debtor. They also drew our attention to relevant clauses of the Joint Venture Agreement and status of both these persons therein. Our attention was also drawn to provisions of section 5 (24) of the IBC, 2016. However, we are of the considered view that this application is premature as it is based upon the apprehension that IRP may classify the Financial Creditor as a related party and may not include it in COC. During the course of hearing, a pointed query was raised to the IRP also as to why he was seeking a direction from us at this stage. The IRP is empowered to take legal assistance in this regard as per the provisions of IBC, 2016, hence, in our considered view, first IRP should take a view on the subject in a judicious manner and in case necessity is felt for an expert opinion, the same may be obtained. It should be done within a week from the date of receipt of this order so that CIRP implementation is not delayed. We also direct the IRP to not take any

crucial / substantial decision in COC till this matter attains finality. Thus, in terms of the above directions, this application stands disposed of.

4. Application **CA(IB) No. 66/KB/2020** is disposed of.
5. Registry is hereby directed to communicate the order to the Operational Creditor and the Corporate Debtor by Speed Post as well as through E-mail.
6. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Virendra Kumar Gupta)  
Member (Technical)

  
(Madan B. Gosavi)  
Member (Judicial)

Signed on 14<sup>th</sup> January, 2020.

cbn