



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 3720/ND/2023

IN

Company Petition No. (IB) 987/ND/2019

(Under section 27 of Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

Ms. Rita Kapur

...Petitioner

Versus

M/s. Invest Care Real Estate LLP.

... Corporate Debtor

AND IN THE MATTER OF

Committee of Creditors of Invest Care Real Estate LLP
Through Mr. Vivek Sinha

At: -

C-4/38, LGF, Safdarjung Development Area,
New Delhi-110016

....Applicant

Versus

Mr. Rakesh Bhatia
RP of Corporate Debtor

...Respondent



CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER
(JUDICIAL)**

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant: Adv. Manish Kumar Srivastava, Adv. Yash Srivastava

For the Resolution Professional: Adv. Sunder Khatri, Adv. Puja Chaurasia, Mr. Rakesh Bhatia, IRP in person

ORDER

PER- MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Order Pronounced on: 29.11.2023

1. This is an application filed for replacement of Resolution Professional by the Committee of Creditors under section 27 of the Insolvency and Bankruptcy Code, 2016.
2. The Applicant has prayed for the following relief(s)
 - a. Allow the present Application and Replace Mr. Rakesh Bhatia as the Resolution Professional with Mr. Pankaj Khetan as the Resolution Professional for Invest Care Real Estate LLP; and/or*
 - b. Pass any such orders, which this Hon'ble Tribunal may deem*

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fit and proper to pass in the circumstances of the case.

3. The facts in brief stated in the application is as under: -

- I. That the Corporate Insolvency Resolution Process of the Corporate Debtor was initiated by this Adjudicating Authority vide order dated 24.04.2023 and Mr. Rakesh Bhatia was appointed as Interim Resolution Professional (IRP) in the matter.
- II. The IRP made public announcement on 27.04.2023 and the Applicant i.e., Operational Creditor filed its claim on 02.05.2023 with the IRP and the claim of the Applicant was admitted by the IRP and was thereafter made the member of the Committee of Creditors with 100% voting rights.
- III. The First Meeting of CoC was held on 24.05.2023 wherein Mr. Rakesh Bhatia, Interim Resolution Professional was appointed as Resolution Professional in the matter.
- IV. That subsequently, the Committee of Creditors, in exercise of their power conferred under Section 27 of the Insolvency and Bankruptcy Code, 2016 replaced the existing



Resolution Professional, Mr. Rakesh Bhatia with Mr. Pankaj Khetan.

- V. That the proposed Resolution Professional has provided his written consent to act as a Resolution Professional of the Corporate Debtor as per the Code.
 - VI. That the third meeting of CoC was held on 04.07.2023 wherein the COC decided to replace the RP Mr. Rakesh Bhatia with Mr. Pankaj Khetan. The aforesaid resolution was approved with 100% votes in favour of replacing the present Resolution Professional. Hence, the present application for replacement of Resolution Professional has been filed.
4. The Respondent, Resolution Professional has filed its reply to the application and made the following submissions: -
- a. That this Adjudicating Authority vide order dated 24.04.2023 admitted the section 7 IBC Petition and the Respondent was appointed as IRP in the matter.
 - b. The IRP made public announcement on 27.04.2023 and constituted the CoC with sole Operational Creditor.



- c. That first CoC meeting was held on 24.05.2023, wherein the Respondent was appointed as RP in the matter.
- d. That on 03.07.2023, IRP received email from member of CoC proposing agenda for replacement of RP with IP Pankaj Khetan and RP accordingly issued notice of the 3rd CoC meeting.
- e. In the 3rd CoC meeting of CoC held on 05.07.2023, the CoC approved the resolution of replacement of RP.
- f. The RP sent email to the members of CoC to conduct meeting to discuss the further course of action of CIRP but the members of CoC expressed their intention to not attend the meeting explaining that an application for replacement of RP is pending adjudication before this Adjudicating Authority.
- g. The RP till last date of filing of claim received claims from some stakeholders and accordingly the RP reconstituted the CoC and filed reconstitution of COC vide IA 4306/2023 on 06.08.2023. In view of the reconstitution the RP prayed to dismiss the application filed for replacement of RP since the CoC has now been reconstituted.



5. We have gone through the application filed by the applicant (CoC). It is pertinent to refer to section 27 of the Code which is reproduced as under: -

27. Replacement of resolution professional by committee of creditors. –

(1) Where, at any time during the corporate insolvency resolution process, the committee or creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

[(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.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

6. The IRP Mr. Rakesh Bhatia was appointed by this Adjudicating Authority from the panel of Insolvency Professional(s) (IPs) issued by IBBI in terms of Section 16(4) of the Code. The CoC was constituted by the Respondent RP and the members of CoC decided to replace the RP in its 3rd CoC meeting held on



04.07.2023 with 100% voting shares. Subsequently, the CoC was reconstituted however, it does not change the fact that the CoC with 100% voting shares decided to replace the RP Mr. Rakesh Bhatia with IP Mr. Pankaj Khetan. Even the Respondent RP does not deny the fact that in the 3rd meeting of CoC the RP was replaced by another RP i.e., Mr. Pankaj Khetan. Further, the reconstituted CoC has not passed any resolution as such to continue with the Respondent RP.

7. In view of the above facts and circumstances, we are of the considered view that the resolutions of the CoC in its 3rd CoC meeting dated 04.07.2023, including the resolution replacing the present Resolution Professional, are in conformity with the provisions of IB Code (especially section 27(1) of the Code) and the relevant Regulation of IBBI, hence we accord our approval. Accordingly, we pass the following directions in IA 3720/2023.

- (i) Mr. Pankaj Khetan bearing IP No. IBBI/IPA-002/IP-N00010/2016-2017/10014, will immediately take over charge from the outgoing RP, MR. Rakesh Bhatia, who shall forthwith hand over all the records and all the



documents, records and statements pertaining to the Corporate Debtor to the newly appointed RP Mr. Pankaj Khetan.

- (ii) Mr. Pankaj Khetan, the newly appointed RP, upon taking charge shall discharge the functions enshrined in the provisions of IB Code and the Regulations of IBBI.
- (iii) The CoC is directed to reimburse the expenses incurred by the RP during the CIRP of the CD, if any.
- (iv) Compliance report of handing/taking over charge, besides all the necessary records shall be submitted to the Adjudicating Authority by 08.12.2023.

8. IA 3720/2023 stands allowed in terms of the above.

Let a copy of this order be served to the parties concerned and IBBI for records.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)