

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

**I.A No. 1023/2021 & I.A. No. 2865/2023
IN
Company Petition No. (IB) – 415/(PB)/2019**

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

UNIMAX INTERNATIONAL

.... OPERATIONAL CREDITOR

VERSUS

M/S SOHO INFRASTRUCTURE PRIVATE LIMITED

.... CORPORATE DEBTOR

AND IN THE MATTER OF IA 1023/ND/2021-

M/S SOHO INFRASTRUCTURE PRIVATE LIMITED
CORPORATE DEBTOR
THROUGH ITS RESOLUTION PROFESSIONAL
SHRI VIJAY KUMAR

.... APPLICANT

VERSUS

BANK OF MAHARASHTRA & ORS.
(MEMBERS OF COC)

.... NON-APPLICANT

AND IN THE MATTER OF IA 2865/ND/2023-

M/S SOHO INFRASTRUCTURE PRIVATE LIMITED
CORPORATE DEBTOR
THROUGH ITS RESOLUTION PROFESSIONAL
SHRI VIJAY KUMAR

.... APPLICANT

VERSUS

BANK OF MAHARASHTRA & ORS.
(MEMBERS OF COC)

.... NON-APPLICANT

Order Pronounced on: 30.09.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the RP : Mr. Vijay Kumar, RP
For the Bank of : Mr. Nishant Awana, Ms. Parul Yadav, Advs.
Maharashtra
For the PNB : Ms. Nishi Chaudhary, Mr. Yashartha Gupta, Advs.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 by M/s Soho Infrastructure Private Limited ("Corporate Debtor") through the Resolution Professional Mr. Vijay Kumar seeking appropriate direction to discharge him from the Resolution Professional's duty.
2. The applicant in the present application has prayed for the following reliefs: -
 - a) *Allow the present application under the Application on behalf of the Corporate Debtor through its Resolution Professional under Section 60(5) of the Insolvency Bankruptcy Code, read with rule 11 of the National Company Law Tribunal Rules for seeking direction to discharge from the Resolution Professional's duty.*
 - b) *This Hon'ble Tribunal may decide the fees of the Resolution Professional.*
 - c) *Pass any other order as the Hon'ble Tribunal may think fit in favor of the applicant and in the interest of justice.*

3. Briefly stated the facts of the case as mentioned in the instant application i.e. IA No. 1023 of 2021, which are just and necessary for adjudication, are as follows: -
- i. This Adjudicating Authority vide order dated 30.09.2019 allowed the Petition C.P. NO. IB-415(PB)/2019 and appointed Mr. Punkaj Jain as Interim Resolution Professional by initiating the Corporate Insolvency Resolution Process. However, due to unfortunate demise of Late Punkaj Jain on 06-09-2020, this Adjudicating Authority appointed Mr. Vijay Kumar as Resolution Professional on 08-09-2020 under Section 22 of the Insolvency and Bankruptcy Code, 2016 to forthwith take the charge of the Corporate Debtor. The present application is filed by the Resolution Professional for seeking direction to discharge from the present Resolution Process of the Corporate Debtor as ever since from taking charge of the present Resolution Process, the COC is not able to take any decision regarding fixation of Professional Fees of the Resolution Professional.
 - ii. The 6th COC meeting was held on 20-10-2020, wherein the Resolution Professional discussed the Agenda 6 "*To Ratify the remuneration or professional fees of the Resolution Professional appointed by the Hon'ble NCLT, New Delhi, due to sudden and untimely demises of late Shri Punkaj Jain (Erstwhile Resolution Professional)*". And further resolution to the effect COC may hereby approves the Resolution Professional fees of Rupees 2,25,000/- per month plus applicable taxes plus all additional costs at actual for appointing Legal Counsel for the RP, NCLT filing, appointment of Senior Counsel, appointment of company secretary for the day of the compliance of the CIRP Process etc., if required, the COC meeting expenses amounts due to the suppliers of essential goods & services and other out of pocket expenses to be paid to the Resolution Professional as per the details produced during CIRP process at the time of meeting of the COC. However, the COC members differed the Voting of the Fees of the erstwhile Resolution Professional and the Present Resolution Professional.
 - iii. Further, in the 7th CoC meeting the same agenda was discussed, and only Bank of Maharashtra (i.e. Non -Applicant No. 1) voted in negative/Not approve with remuneration of the Resolution Professional. Thereafter, in the 8th CoC meeting agenda before the COC members was to decide the remuneration of the Resolution Professional and also to approve and release the Corporate Insolvency Resolution

Process expenses occurred by the erstwhile RP Late Punkaj Jain and again the CoC members did not respond to E-voting to confirm the fees of the RP. Despite of the three COC meeting held on 20-10-2020, 19-11-2020 & 24-12-2020 no resolution was ever approved or disapproved in terms of IBC, 2016. Therefore, the Resolution Professional has filed this application seeking discharge from Resolution Professional's duty and is seeking direction regarding the fees of the Resolution Professional.

4. We have gone through the documents on record filed and arguments advanced by counsel for the Applicant.
5. This Adjudicating Authority vide order dated 28.04.2023, had directed the Resolution Professional in regard to his prayer (a) and prayer (b) in IA- 1023 of 2021 to furnish a special progress report clearly detailing the progress achieved in this matter as on date. In compliance of the order dated 28.04.2023, an IA bearing IA-2865 of 2023 was filed by the applicant detailing the progress achieved in this matter and the same is taken on record. Further, with respect to the prayer in IA-2865 of 2023 seeking direction to COC to release the CIRP cost immediately, at this stage this Adjudicating Authority is not inclined towards granting the same, however, the COC is directed to consider the same. Therefore, **IA 2865 of 2023** stands disposed off.
6. In the present case, Mr. Vijay Kumar, the Resolution Professional of the Corporate Debtor is seeking discharge from his duty and is seeking that the fees of the Resolution Professional be fixed by this Adjudicating Authority, as no resolution regarding the same has been approved or disapproved by the CoC in several meetings. The Resolution Professional is unable to perform his duties due to the same.
7. Therefore, considering the fact and circumstance of the instant case, we deem it just to discharge the Resolution Professional from his duties. Therefore, Mr. Vijay Kumar, the Resolution Professional shall stand discharged from his duties from the date of this order. Further, with respect to the fees of the Resolution Professional, we direct the CoC to consider the same in accordance with the law, and the same may be provided to the Resolution Professional in accordance with the decision taken by the CoC.
8. Further, from the panel of Insolvency Professional(s) (IPs) valid for the period – July 1, 2024 – December 31, 2024 issued by IBBI, this Adjudicating Authority, hereby

appoints Mrs. Santosh Goel, Email – casantoshgoel@gmail.com, Reg. No: IBBI/IPA-001/IP-P00823/2017-18/11399, as the Resolution Professional in the matter. The Resolution Professional is directed to give his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration certificate as well as a valid AFA within 5 days of receipt of this order.

9. The Applicant is directed to handover all the documents related to the Corporate Debtor to Mrs. Santosh Goel (“Resolution Professional”) within 7 days from the date of this order.

10. In light of the above observations, this Adjudicating Authority is of the view that, the instant Application bearing **IA 1023 of 2021** stands disposed off.

Let a copy of the order be served to the parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)