



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

**IA NO. 6673/ND/2023
IN
CP IB NO. 1529/ND/2019**

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

COL. C.D. SHARMA (RETD.) & ORS.

...FINANCIAL CREDITOR

VERSUS

M/S ORIOR DEVELOPERS AND INFRASTRUCTURE PVT. LTD.

...CORPORATE DEBTOR

AND IN THE MATTER OF:

**PRABHAKAR KUMAR,
RESOLUTION PROFESSIONAL**

IBBI Reg. No.: - IBBI/IPA-002/IP-N00774/2018-2019/12373

Add: B-5/41, Ground Floor,

Vivekanand Apartment, Sector 8,

Rohini, North West, Delhi-110085

...APPLICANT/ RP

VERSUS

1. MR. ASHISH SHASHIKANT KATARIYA AND ANR.

S/o Mr. Shashikant Zumbarlal Katariya (SRA)

Add: - A-101, Mudra Society,

Pune Satara Road, Pune City,

Pune, Maharashtra- 411037

...RESPONDENT NO. 1

2. MR. VINAY KUMAR SINGHAL

Authorised Representative (AR)

IBBI Reg. No.: IBBI/IPA-002/IP-N00624/2018-2019/11880

Add: - 411, Fourth Floor, Essel House,

Asif Ali Road, Near Turkman Gate,

National Capital Territory of Delhi- 110002

...RESPONDENT NO. 2



Order Delivered on: 12.12.2024

CORAM:

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

APPEARANCES

For the Applicant/ RP	: Mr. Ishwar Mohapatra, Adv.
For the Respondent(s)	: Ms. Ranjita Kumari, Adv. for R-1 Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Shashwat Hooda, Advs. for R-2

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present I.A. No. 6673 of 2023 is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") along with Rule 11 of the NCLT, Rules, 2016. The present application is preferred by Mr. Prabhakar Kumar, Resolution Professional of Corporate Debtor ("**Applicant**"), seeking appropriate direction for substitution of legal heir of SRA consequent upon approval of COC by 100% voting.
2. The Applicant has made the following prayers in the application:
 - a) *Allow the present Application;*
 - b) *Pass necessary order(s)/directions(s) for substitution of legal heir Mr. Ashish Shashikant as Resolution Applicant in place of original SRA consequent upon death of Mr. Shashikant Zumbarlal Katariya and after approval of COC by 100% voting on 11th COC meeting held on 23rd November 2023, and was rescheduled for 24th November 2023 and concluded on 05.12.2023 in compliance of Order dated 08.11.2023 passed by this Hon'ble Tribunal for the purpose of implementation of Plan; and*
 - c) *Pass such other necessary order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper.*



Contentions of the Applicant

Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows:

- (i) The CIRP against the Corporate Debtor was initiated by this Adjudicating Authority vide its Order dated 28.01.2022 in CP IB No. 1529/ND/2019, whereby, Mr. Prabhakar Kumar was appointed as the Interim Resolution Professional, who was later confirmed to act as the Resolution Professional by the CoC in its first meeting and approved by this Adjudicating Authority vide its Order dated 16.03.2022.
- (ii) The Applicant published the Form-G in newspapers on 16.04.2022 and the last date for submission of Expression of Interest (EoI) was 01.05.2022, whereby, the Applicant (RP) had received only 3 EoIs, therefore, in view of the approval by the CoC in its 3rd meeting, the Applicant re-published the Form G on 08.07.2022, whereby, the Applicant received EoIs from 6 Prospective Resolution Applicants (PRAs) and the last date for submission of Resolution Plan was 05.09.2022.
- (iii) Upon the extended last date for submission of Resolution Plan up to 03.11.2022, Applicant had received only one Resolution Plan from Mr. Shashikant Zumbarlal Katariya and the same was put for deliberation by the CoC in its 8th meeting adjourned to 13.11.2022.
- (iv) In the 9th CoC meeting concluded on 12.12.2022, the CoC advised the SRA to submit the addendum to the Resolution Plan within 15 days. The Applicant received the Final Addendum to Resolution Plan from PRA on 17.01.2023 which was circulated by the Applicant to the CoC members.
- (v) As per the e-voting results of 10th CoC Meeting, the Resolution Plan including addendum to Resolution Plan submitted by Mr. Shashikant Zumbarlal Katariya had been approved by 100% members who presented and voted and an application bearing I.A. No. 1367/2023 was filed before this Adjudicating Authority for approval of Resolution Plan.
- (vi) Subsequently, the Applicant received mail on 16.06.2023 from Mr. Ashish Shashikant Katariya, son of Mr. Shashikant Zumbarlal Katariya intimating death of his father on 22.04.2023. In the said mail, Mr. Ashish Shashikant



Katariya also expressed his interest to continue as SRA being legal heir of deceased SRA.

- (vii) The Applicant file an application bearing IA/5998/2023 before this Adjudicating Authority seeking direction for substitution of legal heir Mr. Ashish Shashikant Katariya as Resolution Applicant in place of original SRA consequent upon his death. This Adjudicating Authority vide its order dated 08.11.2023 directed the Applicant to hold a CoC meeting in this regard.
- (viii) The 11th CoC meeting was convened on 23.11.2023, which was rescheduled on 24.11.2023 and concluded on 03.12.2023, wherein, the CoC with 100% voting approved for substitution of legal heir Mr. Ashish Shashikant Katariya as Resolution Applicant in place of original SRA consequent upon death of Mr. Shashikant Zumbarlal Katariya for the purpose of implementation of Plan.
- (ix) Hence, the present application has been filed seeking substitution of Mr. Ashish Shashikant Katariya as Resolution Applicant in place of original SRA consequent upon his death.

Contentions of the Respondents

4. The Respondent No. 1, Mr. Ashish Shashikant Katariya, S/o Mr. Shashikant Zumbarlal Katariya (SRA) has filed reply to the averments of the Applicant. The submissions made by the Respondent No. 1 are stated in brief as follows:
- (i) The Respondent No. 1 submits that the original SRA, Mr. Shashikant Zumbarlal Katariya passed away on 22.04.2023 and the death certificate of his death is placed on record. Further, Late Shashikant Zumbarlal Katariya is survived by three legal heirs, namely, Mrs. Sangita Shashikant Katariya (his wife), Mr. Ashish Shashikant Katariya (his son), and Ms. Nupur Shashikant Katariya (his daughter).
- (ii) All the legal heirs of the SRA have executed a Joint Agreement dated 03.10.2023, unanimously authorizing Mr. Ashish Shashikant Katariya to be substituted as the Resolution Applicant in place of Late Shashikant Zumbarlal Katariya in order to ensure the smooth continuation of the CIRP and in the interest of all the stakeholders.



- (iii) As per Report of M/s Dev & Dev, Advocates, Mr. Ashish Shashikant Katariya is not disqualified under Section 29A of the Code to submit Resolution Plan.
 - (iv) The Respondent No.1 has duly executed a “Declaration cum Affidavit”, wherein, Mr. Ashish has confirmed his acceptance of, and commitment to, the continuation and implementation of the Resolution Plan.
 - (v) The Respondent No. 1 holds a degree in Civil engineering and Post Graduate in Real Estate and Urban Infrastructure Management from esteemed construction management college in India i.e. NICMAR.
 - (vi) The Respondent No. 1 submits that the Respondent No. 1 undertook experiences with some builders in Pune like EIFFEL- XRBIA group, DREAMS Realtors and has also worked with consultants like CBRE and AMS Project Management Consultants, Pune.
 - (vii) The Respondent No. 1 has expressed its professional profile and credentials during a meeting held on 01.12.2023 with the Authorized Representative and the Plot Buyers and further reaffirms its willingness and capability to execute the Resolution Plan in accordance with the terms approved by the CoC.
 - (viii) The CoC in its 11th meeting unanimously approved the Resolution to substitute Mr. Ashish Shashikant Katariya, the legal heir of Late Shashikant Zumbarlal Katariya, as the Resolution Applicant, with 100% voting in favour.
 - (ix) The Respondent No. 1 proposes no modifications in the Resolution Plan and undertakes to implement the Resolution Plan in the same manner and in accordance with the terms and conditions originally approved by the CoC.
5. The Respondent No. 2, Mr. Vinay Kumar Singhal, Authorised Representative (AR) of the Financial Creditors in class has filed reply to the averments of the Applicant. The submissions made by the Respondent No. 2 are stated in brief as follows:
- (i) This Adjudicating Authority appoints the Respondent No. 2 to act as the AR of the Financial Creditors in Class vide its order dated 15.03.2022.
 - (ii) On 17.11.2023, the Respondent No. 2 received from the Applicant (RP) the notice of the 11th CoC meeting to be convened on 23.11.2023 which was duly circulated to all the Financial Creditors in Class.



(iii) The 11th CoC meeting was rescheduled for 24.11.2023, wherein, the Respondent No. 2, being the AR, discussed the agenda items with the Resolution Professional and after several discussions and meetings with the AR, the Financial Creditors in Class casted their respective votes.

(iv) The Respondent No. 2 received the summary of the voting results on 12.12.2023 from the Resolution Professional which was duly circulated to the Financial Creditor in Class i.e. Plot Buyers on 12.12.2023 and as per the voting results, the Resolution proposing the substitution of legal heir i.e. Mr. Ashish Shashikant Katariya, of the SRA i.e. Late Shashikant Zumbarlal Katariya for the implementation the Resolution Plan was approved by the Financial Creditors in Class with 99.963%.

6. We have gone through the documents on record filed by the Applicant and the Respondents and further heard the arguments advanced by counsels of the Applicant as well as the Respondents.

7. Pertaining to the facts of the present case, it is observed that the Resolution Plan submitted by Shashikant Zumbarlal Katariya (SRA) was approved by the CoC in its 10th CoC meeting concluded on 16.01.2023 with 100% votes in favour. Consequently, an application bearing IA No. 1367/2023 for approval of Resolution Plan was filed and same is pending for adjudication before this Adjudicating Authority. However, during the pendency of such an application, Mr. Shashikant Zumbarlal Katariya passed away, therefore, Mr. Ashish Shashikant Katariya (Respondent No. 1 herein), son of Late Shashikant Zumbarlal Katariya (SRA) proposed to step into the shoes of the original SRA in order to protect the interest of all the stakeholders and to implement the Resolution Plan approved by the CoC in accordance with the law.

8. It is further observed that the CoC in its 11th CoC meeting convened on 23.11.2023, rescheduled on 24.11.2023 and concluded on 03.12.2023 approved and passed a Resolution for substitution of legal heir, Mr. Ashish Shashikant as Resolution Applicant in place of original SRA, consequent upon the death of Mr. Shashikant Zumbarlal Katariya for the purpose of implementation of the Plan, with 100% votes



in favour. The relevant extract of the Resolution passed by the CoC in its 11th meeting is reproduced hereunder as:

*“RESOLVED THAT pursuant to applicable Provisions of the Insolvency and Bankruptcy Code, 2016 read with Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 including any statutory modification or re-enactment thereof for the time being in force, **the consent of members of the CoC of Orior Developers and Infrastructure Private Limited be and is hereby accorded to approve the substitution Mr. Ashish Shashikant Katariya, being the legal heir, who have expressed willingness to act as the Successful Resolution Applicant in place of Late Shashikant Zumbarlal Katariya the Successful Resolution Applicant for the purpose of implementing the resolution plan under the provisions of the Insolvency and Bankruptcy Code, 2016.***

RESOLVED FURTHER THAT the legal heirs of the original resolution applicant Late Shashikant Zumbarlal Katariya shall implement the resolution plan submitted by Late Shashikant Zumbarlal Katariya “as it is” basis without any modification or changes.

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorised to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.”

9. The issue that arises for consideration is whether on the death of the Resolution Applicant before approval of the Resolution Plan by the Adjudicating Authority, his liabilities and obligations will pass on to his legal heirs or not. In order to examine this issue, we may refer to the definition of the ‘Resolution Applicant’ as laid down under Section 5(25) of the Code which states as under:

“Resolution Applicant” means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25] [or pursuant to section 54K, as the case may be].



Further, Section 30(1) of the Code states as under:

“A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum”.

Analyzing the present facts in light of the aforesaid sections, it is observed *that any person who submits a Resolution Plan* to the Resolution Professional has to be eligible to be considered as a Resolution Applicant, however, in the instant case, the Resolution Plan was not submitted by the Applicant herein, rather by the original SRA i.e. Late Mr. Shashikant Zumbarlal Katariya. Further, as per the requirement of Section 30(1) of the Code, an affidavit declaring that the person who submits the Resolution plan is not disqualified under Section 29A of the Code is required to be filed, however, in the instant case, neither the Resolution Plan has been submitted by the Applicant herein nor any affidavit as to non-disqualification under Section 29A has been filed.

10. It is further observed that Regulation 38(3)(e) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 mandates that a Resolution Plan shall demonstrate that *the resolution applicant has the capability to implement the resolution plan*. In view of the same, it is observed that in the present case, it is the original SRA i.e. Late Mr. Shashikant Zumbarlal Katariya, whose capability to implement the Resolution Plan was proved, in accordance of which, the Resolution Plan submitted by the original SRA stood approved by the CoC in its 10th meeting concluded on 16.01.2023 with 100% votes in favour, however, there is nothing on record to prove the capability of the Applicant herein, to implement the Resolution Plan. Mere the fact that the Applicant herein undertakes to step into the shoes of the original SRA, nowhere proves its capability to implement the Resolution Plan as submitted by the original SRA.

11. The above provisions demonstrates that when a Resolution Plan is submitted by a Resolution Applicant, who is an individual, then all his liabilities and rights under the Resolution Plan is of that person individually. These rights arise out of



contractual obligations. Further, the rights and obligations of such an individual also depend upon his individual skills and expertise, which cannot be performed by his legal representatives.

12. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in the matter of **Vinayak Purshottam Dube Vs. Jayashree Padmakar Bhat and Others (2024) 9 SCC 398**, whereby, the Hon'ble Supreme Court has observed as under:

“27. On a reading of the above, it is clear, when it comes to **personal rights (as opposed to a proprietary rights) are rights arising out of any contractual obligations or the rights that relate to status. Such personal rights are not transferable and also not inheritable. Correspondingly, Section 306 of the Succession Act, 1925 (for short “the 1925 Act”) applies the maxim “actio personalis moritur cum persona” (a personal right of action dies with the person) which is limited to a certain class of cases and would apply when the right litigated is not heritable. By the same logic, a decree-holder cannot enforce the same against the legal representatives of a deceased judgment-debtor unless the same survives as against his legal representatives.**

The Hon'ble Supreme Court further discussed Sections 37 & 40 of the Indian Contract Act, 1872, thereby observing that the representatives of a promisor are not personally liable under the contracts of the deceased and are also not liable for personal contracts of the deceased. Therefore, when personal considerations are the basis of a contract, they come to an end on the death of the either party. Further, the Hon'ble supreme Court in Vinayak Purshottam Dube (supra) observed as under:

“31. Thus, a contract can be performed vicariously by the legal representatives of the promisor depending upon the subject-matter of the contract and the nature of performance that was stipulated thereto. But a contract involving exercise of individual's skills or expertise of the promisor or which depends upon his/her personal qualification or competency, the promisor has to perform the contract by himself and not by his/her representatives. A contract of service is also personal to the promisor. This is because when a person contracts with another to work or to perform service, it is on the basis of the



individual's skills, competency or other qualifications of the promisor and in circumstances such as the death of the promisor he is discharged from the contract.

32. Correspondingly, duties or obligations which are personal in nature cannot be transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives. Just as a right is uninheritable and the right personal to him dies with the owner of the right, similarly, a duty cannot be transferred to the legal representatives of a deceased if the same is personal in nature.

34. Further, Section 2(11) of the Code of Civil Procedure, 1908 (for short "CPC") defines a "legal representative" to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Thus, the legal representatives of a deceased are liable only to the extent of the estate which they inherit.

40. But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased."

13. Further, the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in the matter of **Swan Energy Ltd. Vs. Chandan Prakash Jain, RP of E-Complex Pvt. Ltd. & Ors. [Company Appeal (AT) (Insolvency) No. 313 of 2024]**, has also held that after approval of the Resolution Plan by the CoC, no new Resolution Applicant can be substituted even after approval by the CoC. The Hon'ble NCLAT further observed that after approval of the plan, the CoC has no jurisdiction or authority to pass a Resolution for modification of approved Resolution Plan by substituting another Resolution Applicant as new Resolution Applicant. The relevant extract of the judgment is reproduced hereunder as:

"48.

(i) After approval of the Resolution Plan of Respondent No.3 by the CoC on 21.10.2021 and after filing of the application for approval of the plan before the



Adjudicating Authority, the CoC has no jurisdiction to substitute the SRA with another SRA who was not part of the CIRP process”

14. Hence, in view of the provisions of the IBC as discussed above and in the light of the abovementioned judgments of the Hon’ble Supreme Court in Vinayak Purshottam Dube (supra) and Hon’ble NCLAT in Swan Energy (supra), respectively, we are of the view that the Resolution Plan for the Corporate Debtor in the main matter i.e. M/s Orior Developers and Infrastructure Pvt. Ltd. was submitted by the original SRA i.e. Late Mr. Shashikant Zumbarlal Katariya in his individual capacity based on his knowledge, skills and availability of funds and as such cannot be transferred. Further, in view of the observations made hereinbefore, it is clarified that the SRA cannot be substituted.
15. Resultantly, the present application i.e., **I.A./6673/ND/2023 in CP IB No. 1529/ND/2019**, stands **dismissed** and is accordingly, disposed off.
16. Furthermore, in view of the death of the SRA and in view of the dismissal of the present application bearing I.A. No. 6673/ND/2023, the Resolution Professional is directed to explain as to how the Interlocutory Application bearing I.A. No. 1367/ND/2023 filed before this Adjudicating Authority for Approval of Resolution Plan be proceeded further. The Resolution Professional is directed to intimate the concerned parties about this recent development. No orders to cost.

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

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)