

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) 1781 (ND)/2018
(In I.A 2286/2021)

IA/2365/2021

In the matter of:

IDBI Trusteeship Services Limited
1009, Ansal Bhawan, KG Marg,
New Delhi-110001

.... APPLICANT

VERSUS

Saha Infratech Private Limited
Through Shiv Nandan Sharma
Interim Resolution Professional
129, Ground Floor, Navjeevan Vihar,
New Delhi-110017

.... RESPONDENT

AND

In the matter of

Aashray Social Welfare Societies & others----- Applicants

(IB) 1781 (ND)/2018
(In I.A 2275/2021)

IA/2366/2021

In the matter of:

Assets Care & Reconstruction Enterprise Ltd.
2nd Floor, Mohan Dev Building,
13, Tolstoy Marg,
New Delhi-110000

.... APPLICANT

VERSUS

**Saha Infratech Private Limited
Through Shiv Nandan Sharma
Interim Resolution Professional
129, Ground Floor, Navjeevan Vihar,
New Delhi-110017**

.... RESPONDENT

AND

In the matter of

Aashray Social Welfare Societies & others----- Applicants

SECTION: U/S 60 (5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016

Order delivered on: 21.10.2021

CORAM:

**MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)
MR. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

PRESENT: -

**Adv. Ashish Makhija and Adv. Akanksha Vasudeva for the Resolution
Professional**

**Mr. Krishnendu Dutta, Sr. Adv. Mr. Raghavendra M Bajaj and Mr.
Agnish Aditya, Advocates for Applicant in IA No. 2365/2021 and
2366/2021**

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. By filing the application **IA/2365/2021**, the applicant has prayed
for the following reliefs:

a. Implead the applicants as respondents in IA No. 2286/2021;



b. Pass such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

2. By filing the application **IA/2366/2021**, the applicant has prayed for the following reliefs:-

- a. Implead the applicants as respondents in IA No. 2275/2021;*
- b. Pass such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case*

3. We have heard the Ld. Counsels for the applicants of both the IAs and perused the averments made in the applications.

4. On perusal of the averments made in both the applications, we notice that the applicants in both the IAs are the same persons and the averments made in both the applications are also almost similar/identical except the prayer portion. In IA/2365/2021, prayer is to permit the applicants to implead as respondents in IA/2286/2021, whereas the prayer made in IA/2366/2021 is to permit the applicants to implead as a respondent in IA/2275/2021.

5. The arguments advanced by the Ld. Counsel for the applicant in both the applications are common. Therefore, we would like to dispose of both these applications together by this common order.

6. Ld. Counsel for the applicants have submitted that the applicants, being the members of the CoC, will be directly and substantially affected by outcome of IA No. 2275/2021, which will decide the status of financial creditors and the composition of the CoC. He further submits that, in fact, Assets Care & Reconstruction Enterprise Limited (ACRE) and IDBI Trusteeship Services Limited (hereinafter referred as ITSL) have admitted that the members of the Applicant no. 1 and the Applicants no. 2 to 5 are financial creditors and members of the CoC. He further submits that, as admitted by the IRP himself, the verified claims of the allottees are of Rs. 149 Crores (approx.) and that of the members of the Applicant No. 1 Society are of Rs. 125 crores (approx.). The claims to the extent of Rs. 14 crores (approx.) of the allottees are pending verification.

7. He further submits that so far as the prayer made in IA No. 2275/2021 of ACRE is concerned, the IRP has admitted a partial claim of Rs. 55,06,45,056.52 and also held them to be a related party of the corporate debtor.

8. He further submits that so far as the prayer made by the IDBI in IA/2286/2021 is concerned, the ITSL has filed this application against the rejection of its claim and for being categorised as a related party of the corporate debtor.

9. He further submits that although the applicants are not added as a party in those applications, but during the course of hearing, several misleading statements were made by the Ld. Counsels for the ACRE and ITSL about the applicants. Therefore, the applicants are the necessary and proper party in these proceedings.

10. He further submitted that it is a settled law that the applicants, being a financial creditor, are entitled to be heard before the status of the applicants of both the IAs are decided by this Adjudicating Authority.

11. He further submitted that when the ACRE and ITSL had filed an appeal before the Hon'ble NCLAT against the rejection of the prayer of the stay, then the Hon'ble NCLAT had permitted these applicants to appear and place their point. So, the applicants may be added as respondents in these proceeding along with IRP.

12. Before considering the prayer of the applicants of both the applications, we would like to refer to the prayer of the applicants of IA/2275/2021 & IA/2286/2021 i.e. ACRE and ITSL respectively and the same are quoted below. *The applicants of IA/2286/2021 have prayed for the following reliefs :*

- a. *Allow the present application and set aside the decision of the IRP dated 16.05.2021 rejecting the entire claim of the applicant and fastening a liability of Rs. 12,60,77,970/- on the applicant;*
- b. *Pass an order directing the IRP Mr. Shiv Nandan Sharma to admit the entire claim amount of Rs.*



130,96,46,399.24/- of the applicant as Financial Creditors of the Corporate Debtor.

- c. Hold that the applicant is not a related party of the Corporate Debtor under Section 5 (24) of the IBC.
- d. Pass an order thereby directing the IRP Mr. Shiv Nandan Sharma to include the applicants in the list of Financial Creditors of the Corporate Debtor for the constitution of the CoC and grant its proportionate voting in the CoC.
- e. Pass an order of stay restraining the IRP from conducting CoC meeting until admission of claims of applicants and their inclusion in the CoC.
- f. Pass ad-interim orders in terms of Prayer clause (d) and (e) above;
- g. Pass any other order as this Hon'ble Adjudicating Authority may deem fit in the interest of justice.

The applicants of IA/2275/2021 have prayed for the following reliefs:

- a. Allow the present application and set aside the decision of the IRP dated 16.05.2021 partially admitting the claim of the applicant of Rs. 55,06,45,056.52/- out of total claim of Rs. 143,54,59,900/- and rejecting the remaining claim of the applicant;
- b. Pass an order directing the IRP Mr. Shiv Nandan Sharma to admit the entire claim amount of Rs. 143,54,59,900/- of the applicant as Financial Creditors of the Corporate Debtor.
- c. Hold that the applicant is not a related party of the Corporate Debtor under Section 5 (24) of the IBC.
- d. Pass an order thereby directing the IRP Mr. Shiv Nandan Sharma to include the applicants in the list of Financial Creditors of the Corporate Debtor for the constitution of the CoC and grant its proportionate voting in the CoC.

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- e. *Pass an order of stay restraining the IRP from conducting CoC meeting until admission of claims of applicants and their inclusion in the CoC.*
- f. *Pass ad-interim orders in terms of Prayer clause (d) and (e) above;*
- g. *Pass any other order as this Hon'ble Adjudicating Authority may deem fit in the interest of justice.*

13. On perusal of the prayers made in both the applications, we observe that the ACRE has filed the application for setting aside the decision of the IRP dated 16.05.2021 by which the IRP had partially admitted the claim of the ACRE and also declared the ACRE as a related party of the corporate debtor under Section 5(24) of the IBC. ITSL has filed the application against the rejection of their claim by the IRP, which was communicated to them on 16.05.2021.

14. Hence, we notice that both the applications filed by the ACRE and ITSL are against the rejection of their claims in full or part by the IRP.

15. Therefore, at this juncture, before considering the prayer of the applicants to implead them as respondents in IA/2275 & 2286/2021, we would like to refer to the provisions relating to submission of claim under Regulation 8, 8A, 12, 13, 14 of INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016 (**hereinafter referred to as 'IBBI Regulations'**) These provisions are quoted below:-

8. Claims by financial creditors.

(1) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the interim resolution professional in electronic form in Form C of the Schedule:

Provided that such person may submit supplementary documents or clarifications in

support of the claim before the constitution of the committee.

(2) The existence of debt due to the financial creditor may be proved on the basis of -

(a) the records available with an information utility, if any; or

(b) other relevant documents, including -

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been repaid; or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

8A. Claims by creditors in a class.

(1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule.

(2) The existence of debt due to a creditor in a class may be proved on the basis of-

(a) the records available with an information utility, if any; or

(b) other relevant documents, including any-

(i) agreement for sale;

(ii) letter of allotment;

(iii) receipt of payment made; or



(iv) such other document, evidencing existence of debt.

(3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.]

12. Submission of proof of claims.

(1) Subject to sub-regulation (2), a creditor shall submit 21[claim with proof] on or before the last date mentioned in the public announcement.

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.]

(3) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

13. Verification of claims.

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of

creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be –

- (a) available for inspection by the persons who submitted proofs of claim; (b) available for inspection by members, partners, directors and guarantors of the corporate debtor;
- (c) displayed on the website, if any, of the corporate debtor;
- (d) filed with the Adjudicating Authority; and
- (e) presented at the first meeting of the committee.

14. Determination of amount of claim.

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him. (2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

At this juncture, we would also like to refer to the duties of the IRP/RP as provided under Section 18 and 25 of the IBC, 2016, and Section 25A. Rights and

duties of authorised representative of financial creditors. which are quoted below:-

IBC Section 18 - Duties of interim resolution professional.

The interim resolution professional shall perform the following duties, namely: —

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—



(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation.—For the purposes of this sub-section section, the term “assets” shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

IBC Section 25 - Duties of resolution professional.

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate



debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to



the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.

Section 25A. Rights and duties of authorised representative of financial creditors.

(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to insure that the appropriate voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he



represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.- For the purposes of this section, the “electronic means” shall be such as may be specified.

16. The conjoint reading of Section 18 & 25 of IBC shows that the duty of the IRP is to receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15 of IBC, 2016. Whereas the duty of the RP is to maintain an updated list of claims, which means, if the IRP has received and collated all the claims submitted by the creditors to him those claims can be updated by the RP as the duty cast upon the RP under Section 25(2)(e) of IBC, 2016. is to maintain an updated list of claims. The IBBI Regulations referred (supra) deal with the provisions for submission of claims by the different categories of the creditors and filing of the proof in support of the claim. When the different classes of creditors have submitted their claims as well as the proof of claims as referred to in Regulation 12 of IBBI Regulations, then the IRP or the RP is authorized under the law to verify the every claim within seven days from the last date of receipt of the claim, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them and the amount of their claims admitted.

17. It is further seen that as per Regulation 13 (2) of the IBBI Regulations, the IRP or the RP shall make a list of creditors available for inspection by the persons, who have submitted proofs of claim or by the members, partners, directors and guarantors of the corporate debtor.

18. It is further seen that as per Regulation 14 of IBBI Regulations, the IRP or the RP is also authorized under the regulation to determine the amount of claim or revise the amount of claim admitted including the estimates of the claims made under Sub Regulation 1, when she/he comes across additional information warranting such revision.

19. At this juncture, we would also like to refer to Regulation 16A Sub Regulation 5 of the IBBI Regulations and the same is quoted below: -

16A(5). The interim resolution professional or the resolution professional, as the case may be, shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.

Clarification: The authorised representative shall have no role in receipt or verification of claims of creditors of the class he represents.

20. A bare perusal of this provision shows that although the IRP or the RP shall provide an updated list of creditors in each class to the respective authorised representative as and when, the list is updated but *the authorized representative shall have no role in receipt or verification of claims of creditors of the class he represents.*

21. Since, the authorized representative is appointed under Section 21(6A) of the IBC, 2016 and his rights and duties are defined under Section 25A of IBC, 2016 referred to Supra, we observe that under Section 21(6A)(b), the authorized representative is appointed, if the class of creditors exceeds the number specified under the law.

22. In view of the provisions referred to Supra, when we consider the prayer of the applicants, we find that the applicant no. 1 has claimed themselves to be a Registered Association, whereas other applicants have claimed themselves to be allottees under the project of the corporate debtor, therefore, the number of allottees as averred in para 5 of the application of IA/2365/2021 is 104.

23. As we have already referred to Section 21(6A) and 25A of the IBC, 2016 under which, the class of creditors shall appoint the authorized representative and we have also referred to the Regulation 16A (5) of the IBBI Regulations, which shows that the authorized representative shall have no role in receipt or verification of claims of creditors of the class, he

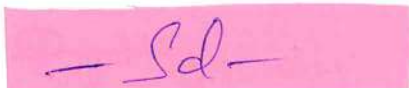
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represents. If the authorized representative shall have no role in receipt or verification of claims of creditors of the class, he represents, then the association or the allottees who come under the class of creditors, in our considered view, shall also have no role in receipts or verification of claims of creditors rather it is the IRP or the RP, who is to decide the claims submitted by the creditors.

24. Here, the ACRE and ITSL have filed the applications against the rejection of their claims by the IRP. Therefore, we are of the considered view that the applicants in both the IAs under consideration are not a necessary party to the respective proceedings.

25. *Hence, we have no option but to reject the prayer made in IA/2365/2021 to permit the applicants to implead as respondents in IA/2286/2021 and the prayer made in IA/2366/2021 to permit the applicants to implead as respondents in IA/2275/2021.*

26. **Accordingly, both the applications i.e. IA/2365/2021 and IA/2366/2021 are hereby dismissed.**



(L.N. GUPTA)
Member (T)



(ABNI RANJAN KUMAR SINHA)
Member (J)