

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item 1

IA 2621/2021 IA 1304/2022 IA 3537/2022 IN C.P. (IB)/494(MB)2019

CORAM:

SH. SHYAM BABU GAUTAM
HON'BLE MEMBER (T)

JUSTICE P.N. DESHMUKH (Retd.)
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING ON **28.11.2022**

NAME OF THE PARTIES: -

SREI EQUIPMENT FINANCE LIMITED

V/s

SHREE RAM URBAN INFRASTRUCTURE LIMITED

Appearance (via video-conference):

For Applicant in IA 2621/2021 : Adv. Rohan Agrawal

IA 3537/2022 : Adv. Vikram Nankani

IA 1304/2022 : Adv. Abhijeet Sinha

For Respondent : None present

Section 60(5), 7 of the IBC, 2016

ORDER

Order pronounced in Open Court and All IA's are allowed. With regard to the name of the RP, Ld. Counsel appearing for the Applicants present and are directed to decide the name of RP mutually, and submit the same by way of Affidavit/Memo on record during the course of the day, failing which the Bench shall appoint suitable RP considering the facts of the case.

In compliance to above Order Applicants in IA No.3537/2022 and IA No.2621/2021 have jointly mentioned the names of three RPs, which are as follows:

Sr. No.	Name	Registration Number
1.	Ms. Preeti Gandhi	IBBI/IPA-001/IP-P-02751/2022-2023/14185
2.	Mr. Neehal Mahamulal Pathan	IBBI/IPA-001/IP-P-01561/2018-2019/12406
3.	Mr. Sapan Mohan Garg	IBBI/IPA-002/IP-N00315/2017-2018/10903

Applicant in IA No.1304/2022 has mentioned name one Mr. Avil Jerome Menezes, having Reg. No. IBBI/IPA-001/IP-P00017/2016-2017/10041, in its application itself.

We have noticed that there is no consensus of the applicants on any one name to be appointed as RP. In the circumstances we appoint Mr. Sapan Mohan Garg, having Reg. No. IBBI/IPA-002/IP-N00315/2017-2018/10903 as an RP of Shree Ram Urban Infrastructure Limited in place of Mr. Srigopal Choudhary who is directed to be discontinued with immediate effect.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
JUSTICE P.N. DESHMUKH
Member (Judicial)

SAM/Jagdish

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

**IA No. 2621/MB/2021, IA No. 1304/MB/2022 &
IA No. 3537/MB/2022**

**In
C.P. (IB) No. 494/MB/C-I/2019**

An application under Section 27 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the NCLT
Rules, 2016.

Filed by
**IA No. 2621/MB/2021
SREI Equipment Finance Limited**
...Applicant

**Versus
Mr. Srigopal Choudary
RP of Shree Ram Urban Infrastructure Limited**
...Respondent

**IA No. 1304/MB/2022
IIRF India Realty XII Ltd. & Anr.**
...Applicant

**Versus
Mr. Srigopal Choudhary, RP of Shree Ram Urban
Infrastructure Ltd & Ors.**
...Respondent

**IA No. 3537/MB/2022
India Bulls Housing**
...Applicant

**Versus
Mr. Srigopal Chaudhary
RP of Shree Ram Urban Infrastructure Limited**
...Respondent

In the matter of
SREI Equipment Finance Limited

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IA No. 2621/MB/2021, IA No. 1304/MB/2022 & IA No. 3537/MB/2022
In
C.P. (IB) No. 494/MB/C-I/2019
...Financial Creditor

Versus

Shree Ram Urban Infrastructure Limited
... Corporate Debtor

Order Pronounced on: 28.11.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing):

IA 2621 of 2021

For the Applicant : Mr. Rohan Agarwal, Advocate

For the Respondent : Mr. Gopal Chaudhari, Liquidator in person a/w Ms. Vaishnavi Maheshwari.

IA 1304 of 2022

For the Applicant : Mr. Abhijeet Sinha, Counsel

For the Respondent : Mr. Gopal Chaudhari, Liquidator in person a/w Ms. Vaishnavi Maheshwari.

IA 3537 of 2022

For the Applicant : Mr. Vikram Nankani, Sr. Counsel.

For the Respondent : Mr. Gopal Chaudhari, Liquidator in person a/w Ms. Vaishnavi Maheshwari.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

Submissions made by Applicant by way of IA 2621 of 2021:

1. The present Application is filed seeking replacement of the Respondent

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i.e. Mr. Srigopal Choudary the Resolution Professional.

2. The Ld. Counsels appearing for the Applicants have explained in detailed the conduct of the Respondent due to which the Applicant is constrained to file the present Application.
3. At the outset, the Applicant submits that the Company Petition under section 7 of the Code against the Corporate Debtor Shree Ram Urban Infrastructure Limited was admitted on 06.11.2019. Consequently, the Respondent herein was appointed as the Interim Resolution Professional.
4. The Respondent has conducted the 1st CoC meeting on 19.04.2021 i.e. after elapse period of 1 Year and 6 Months from the date of initiation of CIRP. Apart of this, the CoC had resolved in the 2nd meeting held on 11.06.2021 to raise interim finance to the tune of Rs.32 Crore for the functioning of the Corporate Debtor. The Respondent has not tried to raise the finance.
5. Further, the Applicant states that one Kalpataru Properties Limited filed an IA No. 1921 of 2021 seeking to execute conveyance deed on behalf of the Corporate Debtor to transfer the decreed property in terms of the Arbitral Award dated 29.08.2016 in favor of Kalpataru Properties Limited. The Respondent had consented to the same despite of ongoing moratorium period and without consultation with the members of the

CoC. The said act of the Respondent is in clear contravention of Section 28 of the Code.

6. The Respondent was under an obligation to hold a CoC meeting before consenting for conveyance of the Land. Further, the Respondent has received Rs.17,00,000/- as CIRP costs from the Applicant for the period of 06.11.2019 to 05.04.2021. The Respondent has filed an Interlocutory Application No. 1492 of 2021 for CIRP costs and fees of the Respondent. The Applicant in this regard has relied upon the circular dated 12.06.2018 wherein the IBBI has prescribed certain factors qua manner in which the insolvency process is to be conducted by the Resolution Professionals.
7. The Respondent has failed to provide a list of creditors and prepare an Information Memorandum under Regulation 13(2)(e) and Regulation 36 (1) of CIRP Regulations respectively. The Applicant states that on account of such conduct of the Respondent, the Insolvency process has been taken for a ride.
8. Moreover, the Respondent has not provided the CoC details with respect to the assets of the Corporate Debtor. The Applicant submits that Respondent has filed an Application before this Tribunal seeking exclusion of 493 days from the CIRP as the Respondent was unable to perform his duties.

9. The Applicant submits that the Respondent in 4th meeting of CoC failed to seek a vote of the members by way of electronic voting and further cancelled the meeting. The Applicant vide email dated 29.09.2021 requested the Respondent to fix a date for the meeting. Accordingly, the Respondent adjourn the meeting on any convenient date.
10. In view of the aforesaid backdrop, the Applicant vide email dated 03.10.2021 requested the Respondent to conduct the CoC meeting under the agenda for Replacement of the RP. However, till date the Respondent has not replied to the aforesaid email or conducted the CoC meeting.

Submissions advanced by the Respondent by way of Reply to IA 2621 of 2021:

11. The primary defence taken by the Corporate Debtor is that the instant Application is counterblast to an Application filed by the Respondent Bearing IA No. 1492 of 2021 *inter alia*, seeking directions that the Applicant herein meet CIRP Costs, for the period of 06.11.2019 to 05.04.2021, to the tune of Rs. 226,19,051/-. Further, the Respondent has placed reliance upon Regulation 33 of the CIRP Regulations.
12. The Respondent submits that the interim finance could not be raised owing to the plethora of the litigations in the CIRP, which resulted in disinclination of the financiers.
13. The Respondents submits that decision taken by him qua the claims of

“Kalpataru Properties Private Limited” is presently sub judice before the Hon’ble NCLAT. On the issue of breach of CIRP timelines, the Respondent submits that this Adjudicating Authority in IA No. 1425 of 2021 vide order dt. 15.09.2021, has allowed the exclusion of 493 days from the total time period of CIRP.

Submissions made by Applicant by way of IA 1304 of 2022:

14. The present Interlocutory Application is filed by IIRF India Realty XII Ltd. and Anr. ("the Applicant") against the present Resolution Professional of the Corporate Debtor under Section 60(5) of the Insolvency Bankruptcy Code, 2016 seeking the following:
 - (a) To pass an order for removal of Resolution Professional, Mr. Sri Gopal Choudhary.
 - (b) To appoint Mr. Avil Jerome Menezes as the new Resolution Professional of the Corporate Debtor.
 - (c) Pending the disposal of the present application, direct the Resolution Professional, Sri Gopal Choudhary to not take any coercive actions.
15. The Applicant submits that on 06.01.2022, this Tribunal confirmed the appointment of Mr. Sri Gopal Choudhary as Resolution Professional of the Corporate Debtor. In the present application, the Applicants are seeking the removal of the RP on the basis of the following grounds: -
 - i. RP has violated the interim Order dated 17.12.2021 ("Interim Order") of the Hon'ble National Company Law Appellate

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Tribunal, New Delhi ("NCLAT") by reconstituting the Committee
of Creditors ("CoC") of the Corporate Debtor. The Hon'ble
NCLAT, vide the Interim Order passed in certain company
appeals filed by the Resolution Professional and Applicants,
directed that the CoC shall not take any further steps. The Interim
Order is currently in operation. However, the Resolution
Professional on 23.04.2022 informed the CoC members that the
CoC has been reconstituted as four (4) new homebuyers have been
inducted in the CoC. Needless to say, the Resolution Professional
has acted in contempt of the Interim Order.

- ii. The Resolution Professional has concealed material information from the members of the CoC.
- iii. Resolution Professional's inaction has resulted in breach of the mandatory timelines for Corporate Insolvency Resolution Process ("CIRP") as prescribed in the Insolvency and Bankruptcy Code, 2016 ("IBC").
- iv. Till date, the Resolution Professional has not taken any concrete steps towards the CIRP process of the Corporate Debtor. In fact, the Resolution Professional has not taken out an Expression of Interest to gauge the interest of prospective resolution applicants.
- v. Resolution Professional's conduct is arbitrary, whimsical, and

lacks transparency.

- vi. Considering the above, the majority of the CoC members (with an aggregate voting share of 69.86%) have lost faith in the functioning of the Resolution Professional. In fact, one (1) other CoC member, SREI, has previously approached this Tribunal seeking removal of the Resolution Professional. For this, SREI has filed I.A No. 2691 of 2021 for removal of the RP. I.A 2691 is pending adjudication before this Tribunal.
16. Hence, the Applicants have preferred the present application seeking removal of the Resolution Professional, namely, Mr. Sri Gopal Choudhary.

Submissions made by Applicant by way of IA 3537 of 2022:

17. The present Interlocutory Application is filed by India Bulls ("the Applicant") against the present Resolution Professional of the Corporate Debtor under Section 27 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the following:
- (a) Remove the Respondent no.1 as Resolution Professional of the Corporate Debtor (Shree Ram Urban Infrastructure Limited), and to appoint in his place, such appropriate person as this Adjudicating Authority may deem fit;
- (b) Direct the person so appointed by this Adjudicating Authority as the

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new Resolution Professional of the Corporate Debtor (Shree Ram Urban Infrastructure Limited), to reconstitute the CoC as per the directions issued by this Hon'ble Tribunal vide its order dated 20.10.2021;

(c) Pass any further order or orders that this Hon'ble Tribunal may deem fit in the interest of justice.

18. The Applicant is one of the principal Financial Creditors of the Corporate Debtor and the Applicant has an outstanding claim of Rs.1401,86,95,476/- along with TDS amount of Rs.12,16,56,404/- from the Corporate Debtor and is awaiting reconstitution of the Committee of Creditors in terms of order dated 20.10.2021 passed in IA No. 925/2021 in Company Petition No. (IB) 494 of 2019. However, in spite of the clear directions of the Adjudicating Authority to reconstitute the CoC, the Respondent No. 1 has deliberately and contumaciously refused to do the same. In this regard, it is pertinent to mention that, initially, the Respondent no. 1 had not admitted the claim of the Applicant in full. However, this Tribunal vide its order dated 20.10.2021 passed in IA925/2021 filed by the Applicant directed the Respondent no. 1 to admit the claim of the Applicant and to reconstitute the CoC accordingly. Instead of reconstituting the CoC the Respondent No. 1 chose to assail the order dated 20.10.2021 passed by the Adjudicating Authority, by way of CA. No. (AT) (INS) 982/2021. The Hon'ble

NCLAT, by its order dated 17.12.2021 passed in the said appeal was inter alia, pleased to direct that "in the meanwhile, the Committee of Creditors shall not take any further steps in the matter." No impediment was created on the reconstitution of the CoC, as directed by the Adjudicating Authority. However, the Respondent No. 1 has refused to comply with the directions passed by the Adjudicating Authority.

19. It is brought to attention that even in terms of the orders passed by this Adjudicating Authority, the Respondent No. 1 has not done the same. The Respondent no. 1 has not been conducting the CIRP of the Corporate Debtor in a fair and transparent manner. It seems that the Respondent no. 1 is guided by vested interests and has lost the trust of the Financial Creditors. Further the inability of the Respondent No. 1 to efficiently conduct the CIRP is at huge costs to the stakeholders and members of the CoC of the Corporate Debtor.
20. The members of the CoC have lost total faith in the conduct of the Respondent no. 1 which is also evident from the fact that an Application bearing IA No. 2621 of 2021 is pending before this Tribunal which has been filed by one of the Financial Creditors of the Corporate Debtor namely, SREI Equipment Finance Ltd. seeking replacement of the Respondent no. 1 as the Resolution Professional of the Corporate Debtor.

21. Further, the Applicant herein has also filed an Appeal bearing Company Appeal (AT) (INS) No. 1237 of 2022 challenging the order dated 05.09.2022 passed by this Tribunal by which a special bench of the Adjudicating Authority did not deem it fit to recall the order dated 06.01.2022 in IA. No. 391/2022 whereby the Respondent no. 1 was inadvertently confirmed as the "RP" of the Corporate Debtor. It is extremely pertinent to note that all parties to the said IA. No. 391/2022 have conceded to the fact that the order dated 06.01.2022 was erroneously passed.
22. It is further submitted that the abuse of power by the Respondent No. 1 is evident from the fact, that one of the Financial Creditors has also preferred a Contempt Petition bearing Contempt Case (AT) No. 17/2022 and Contempt Case (AT) No. 21/2022 before the Appellate Tribunal against the Respondent No. 1.
23. The Hon'ble Supreme Court of India passed an order in Civil Appeal 7050 of 2022 whereby it directed that an amount of Rs.75.30 Crores (approx.) be deposited by one Kalpataru Properties into the accounts of the Corporate Debtor so that the Respondent no. 1 can execute a sale deed.
24. However, it is pertinent to mention that The Respondent No. 1 rather than complying with the directions of the Hon'ble Supreme Court went

on to address an email dated 19.11.2022. The Respondent no. 1 vide his email dated 19.11.2022 is trying to create impediments in the implementation of the directions as passed by the Hon'ble Supreme Court vide its order dated 19.11.2022. Clearly, the conduct of the Respondent No. 1 is reproachable and demonstrates his complete disregard of judicial authority.

25. Therefore, whereas the CoC has not been reconstituted in terms of the orders passed by this Adjudicating Authority on 20.10.2021 in IA. 925/2021, the Financial Creditors of the Corporate Debtor have lost faith in the Respondent No. 1. Further, the reconstitution of the CoC itself, is being made subject to the whims and fancies of the Respondent No. 1. Therefore, an extraordinary situation has occurred, wherein even though a vast majority of the Financial Creditors (entitled to be members of COC) desire to replace the Respondent No. 1 as Resolution Professional, the absence of the reconstituted CoC makes it impossible to pass the requisite resolutions. Given the same, the Applicant herein has filed the present Application, inter alia, for replacement of the Resolution Professional, under Rule 11 of the NCLT Rules, 2016 read with Section 27 of the Insolvency and Bankruptcy Code, 2016 (IBC), i.e., for replacement of Mr. Srigopal Chaudhary, the incumbent Resolution Professional of the Corporate debtor with any other suitable Resolution

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Professional as may be deemed fit by the Adjudicating Authority in
exercise of its inherent powers.

Findings:

26. We have perused the records and heard the arguments of Applicants and Respondent.
27. We note that the Resolution Professional has wrongly breached the order passed by the Hon'ble NCLAT dated 17.12.2021 vide which Hon'ble NCLAT had directed to reconstitute the CoC. In addition to the current RP had not complied with the directions passed by this Adjudicating Authority on 20.10.2021 in IA. 925/2021.
28. It is also brought to our attention that the CIRP order was passed on 06.11.2019, 1st CoC meeting on 19.04.2021 i.e. after a elapse period of 1 year and 6 months from the date of initiation of CIRP. The CoC mandatorily is required to constituted within a period of 30 days from the date of initiation however, the Respondent herein has miserably failed to adhere to the timelines stipulated in the Code. Therefore, this action of RP proves that the RP acting on his whims and fancies and brought the CIRP of the Corporate Debtor to stalemate.
29. In the backdrop of the application made it is observed that the timelines of the IBC Code, 2016 were not adhered by the RP, to secure the ends of Justice Adjudicating Authority deems it fit to replace the RP by

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exercising inherent power under Rule 11 of the NCLT Rules, 2016. This
bench relies upon the Judgement of Hon'ble NCLAT, New Delhi
Company Appeal (AT) (Insolvency) no. 786 of 2020 in Anil Kumar Vs
Allahabad Bank & Ors in para 11 held as follows:

“

- i. *We are of the considered view that so far statutory provision as contained in Section 22 of the I&B Code which contemplates appointment of Resolution Professional and further 19 Company Appeal (AT) (Insolvency) No. 786 of 2020 replacement is concerned, this power can only be used when the ingredients of Section 22 is met.*
- ii. *Further, so far as the provision of Section 27 of 'IB Code' is concerned it contemplates with the Replacement of Resolution Professional by CoC. This power can only be used when the ingredients of Section 27 is met.*
- iii. *In the facts of this case neither the ingredients of Section 22 & 27 of the Insolvency & Bankruptcy Code, 2016 ('I&B Code') is made out.*
- iv. *So, the Learned Adjudicating Authority have rightly invoked inherent jurisdiction in the fact of this case and passed the Impugned Order.*
- v.
- vi. *So, the Learned Adjudicating Authority in order to shape the CIRP proceedings on an Application under Rule 11 filed by Respondent No. 1/ Allahabad Bank, taking note of the fact that there is conflict between the Secured and Unsecured Creditors and no commencement reached by majority of voting share to appoint the Company Appeal (AT) (Insolvency) No. 786 of 2020 Appellant herein as IRP/RP invoked thereunder part in Rule 11 and rightly have passed the Impugned order.”*

Thus, from the above Hon'ble NCLAT's order inference can be drawn

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that the Hon'ble NCLAT has upheld power of Adjudicating Authority
to change RP exercising power under Rule 11 of NCLT Rules, 2016.

30. Modus Operandi of the RP is deteriorating to the spirit of the Code and scheme of Resolution of Corporate Debtor, having considered the facts stated as aforesaid and totality of the circumstances this Bench is of the view that there is no alternative but to remove the present Resolution Professional with immediate effect.
31. The erstwhile RP is directed to hand over all the records/documents and effects to the newly appointed RP.
32. CoC is directed to pay the fees of the outgoing RP as per the Code. Also directed to decide the fees of newly appointed RP.
33. With the aforesaid observation present **IA No.2621/MB/2021, IA No.1304/MB/2022 & IA No.3537/MB/2022 In C.P. (IB) No.494/MB/C-I/2019** stands disposed of as allowed in above terms.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)
28.11.2022
SAM

Sd/-

JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)