

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**Sections 21 of Insolvency and Bankruptcy
Code, 2016 read with Regulation 4A and
16A of the Insolvency and Bankruptcy
Board of India (Insolvency Resolution
Process for Corporate Persons)
Regulations, 2016**

I.A. NO. 1144 OF 2020

In the matter of

C.P. (IB) No. 4513 OF 2018

Mr. Ram Ratan Kanoongo,

Resolution Professional for M/s D. Thakkar
Constructions Private Limited,
03, Prince Tower, LBS Marg, Ghatkopar
(West), Mumbai 400086

...Applicant

In the matter of

M/s. S.K. Ganguli

...Operational Creditor

versus

**D. Thakkar Constructions Private
Limited**

...Corporate Debtor

Order Pronounced on: 19.08.2020

Coram:

Hon'ble Shri H. V. Subba Rao (Member Judicial)

Hon'ble Shri Shyam Babu Gautam (Member Technical)

Appearance:

For the Applicant: Mr. Ayush J. Rajani, AKR Advisors LLP

Per:

Shri H. V. Subba Rao, Member (Judicial)

Shri Shyam Babu Gautam (Member Technical)

ORDER

1. This is an Interlocutory Application filed by the resolution professional of M/s D. Thakkar Constructions Private Limited (hereinafter called as the “Corporate Debtor”), Mr. Ram Ratan Kanoongo under Section 21 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as the “Code”) read with Regulation 4A and 16A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter called as the “Regulations”) seeking express orders from this Bench for confirmation of appointment of Authorised Representative who is the choice of highest number of financial creditors (“Unsecured financial creditors”) in their class.
2. This Bench had on 27.03.2019 admitted the Section 9 petition filed by M/s S. K. Ganguli (hereinafter called as the “Operational Creditor”) and the corporate debtor was put into CIRP. Later Mr. Nimit Kalsi was appointed to perform duties as the Resolution Professional after a unanimous decision of the Committee of Creditors (hereinafter called as “CoC”) and approval of this Bench vide an order dated 28.05.2019. To replace him with the current resolution professional i.e. the applicant in this application, one of the members of CoC i.e.

Axis Bank had filed an application numbered 156 of 2020 before this Bench and this Bench vide an order dated 19.03.2020, replaced him with the current resolution professional.

3. The professional appearing for the applicant submitted that upon appointment of the applicant as the resolution professional, being his fiduciary duty, he sought for possession of all the documents and information with regard to the CIRP of the corporate debtor from Mr. Kalsi on numerous occasions which was reciprocated with no response from his side initially and minimal and piecemeal information thereafter. There were several e-mails sent by him to Mr. Kalsi.
4. The applicant further submitted that to his unpleasant surprise, he received three boxes filled with documents from the erstwhile RP Mr. Kalsi on 16.07.2020 and was shocked to see that at this stage of CIRP which is a time bound process, there were a number of claim forms and related documents in the boxes which were claimed as “financial creditors” with an aggregate claim of over Rs. 100 crores. Not only these claims were unattended/unverified by Mr. Kalsi but also some of the claim forms and related documents were still inside “sealed envelopes” which indicates that these claims were not considered by him for the reasons best known to him.
5. The professional appearing on behalf of the RP further stated that understanding it as his duty, he has now undertaken the complete exercise of analysing the above-mentioned claims and their verification in terms with the provisions of the Code. And upon perusal of these claims, it is clear that as per Section 21(6A) of the Code read with Regulation 16A the IBBI (CIRP)

Regulations, these creditors form a “class of creditors” and require appointment of an “authorised representative” (who is a qualified “insolvency professional” other than the IRP/RP) for such “class of creditors”.

Accordingly, the applicant created a dedicated email account for seeking votes from the “class of creditors” on or before 11 a.m. of 04.08.2020. The applicant mentioned that the total number of such creditors is 26 out of which 17 have voted. He further stated that Form AB were obtained from the nominated Authorised Representative in terms of the provisions of the Code and the IBBI (CIRP) Regulations.

Subsequently, the votes of the class of financial creditors have been collated and the Authorised Representative with the highest number of votes of the financial creditor has been selected. Details of the voting results along with a sample email which was sent out to each of the financial creditors with the class and having voting rights of the financial creditors within the class and having voting rights which is attached at Annexure 5.

6. The professional appearing on behalf of the applicant stated that one Mr. Rajendra Ram Narain Agrawal bearing registration number IBBI/IPA-001/IP-P01209/2018-19/11923 has received maximum votes from the financial creditors in terms of Regulation 16A of CIRP Regulations. The copy of the Form AB is attached as Annexure 6 with the copy of application. Mr. Rajendra Ram Narain Agrawal is therefore, selected as the Authorised Representative for the “Unsecured Financial Creditors” of the Corporate Debtor.

FINDINGS

The applicant seeks two prayers in this application, the first one for allowing of this application and the second for appointing Mr. Rajendra Ram Narain Agrawal as the Authorised Representative for “Unsecured Financial Creditors”.

We have heard the professional appearing on behalf of the applicant and perused all the documents presented before us. We are of the opinion that the applicant has, in his capacity and to perform his duties filed this application before us. There has been approval by the Class of Creditors with the required majority. Also, we find it necessary to appoint the Authorised Representative for the Class of Creditors to expedite the CIRP process of the Corporate Debtor. Thus, we believe that the application fulfils all the conditions hence deserves to be allowed.

We therefore allow this application and hereby appoint Mr. Rajendra Ram Narain Agrawal as the Authorised Representative for “Unsecured Financial Creditors” as sought by the applicant. Application allowed and disposed of.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H. V. SUBBA RAO
Member (Judicial)

Date: 19.08.2020

/SSB/