

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

Interlocutory Application No.241 of 2019 in  
CP (IB) No.37/10/NCLT/AHM/2017

**In the matter of:**

**Edelweiss Asset Reconstruction Co. Ltd.**

A Company incorporated under the Companies Act, 1956 and registered as an Asset Reconstruction Company, pursuant to Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as a Trustee of EARC Trust-SC-18, SC-30, SC-27 and SC-233 and having its registered office at Edelweiss House, Off CST Road, Kalina, Santacruz (East), Mumbai-400 098.

..... Applicant/  
Financial Creditor

***Versus***

**PSL Limited**

Kachigam, P.B. No.25  
Daman-396 210  
UT of Daman and Diu

.... Respondent/  
Corporate Debtor

Order delivered on 26<sup>th</sup> July, 2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)**

**And**

**Hon'ble Ms. Manorama Kumari, Member (J)**

**Appearance:**

Mr. Baiju Bhagat, Advocate, for the Committee of Creditors.

Mr. Saurabh N.Soparkar, Sr. Advocate with Mr. Monaal J. Davawala, Advocate, for the Interim Resolution Professional.

Mr. Navin Pahwa, Sr. Advocate with Ms.Himani Chhabra, Advocate, for the Respondent/Corporate Debtor

**ORDER**

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

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1. The case is taken up for pronouncement of order in respect of IA No.241 of 2019 in CP (IB) No.37 of 2017, filed by the Financial Creditor, viz., Edelweiss Asset Reconstruction Co. Ltd on behalf of Committee of Creditors (CoC), under Section 22(3) (B) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred as 'I & B Code'), seeking for appoint of **Mr. Kuresh Hatim Khambati** as Resolution Professional by replacing the existing Interim Resolution Professional, Shri Nilesh Sharma.
2. The applicant, in its application, has stated that on 09.04.2019, a meeting of CoC was convened and decided by passing a Resolution with majority of 74.87% voted to replace Mr. Nilesh Sharma, IRP, from new RP. The CoC, in the very same meeting further authorized the present applicant to move the present application on behalf of the other members of the CoC.
3. The Respondent/Suspended Management of the Corporate Debtor Company filed a reply to aforesaid application by pointing out to this Adjudicating Authority that there seems a conflict of interest in appointment of Mr. Anish Niranjana Nanavaty as Resolution Professional. Further, Deloitte Touche Tohmatsu India LLP is appointed for two purposes, viz., for providing comprehensive services and infrastructure

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to the RP and to act as process advisor for the CoC. Moreover, this RP is having link and interest with Deloitte Touche Tohmatsu India LLP. Therefore, the RP and Deloitte Touche Tohmatsu India LLP may have dual and conflicting roles in the corporate insolvency resolution process of the corporate debtor company.

4. In view of the above stated objection raised by the respondent-corporate debtor, the applicant and other members of the CoC reconsidered their decision by taking afresh decision and proposed another RP and, thus, filed an application seeking for suitable amendment in para-2 and para-3 and substitution in the prayer clause of the present IA by incorporating para-2A and 3A and further substitution in its relief clause Para-V, which reads as under;

*2-A "The Applicant submits that on 23<sup>rd</sup> May, 2019 the 3<sup>rd</sup> Committee of Creditors meeting was convened of the creditors of the Corporate Debtor and it was decided by the Members of the CoC representing 75.24% voting share that the present applicant would file the present application on behalf of itself and the other members of the CoC to appoint a new Resolution Professional (RP) in place of Shri Nilesh Sharma, Director of IRR Insolvency Professionals Private Limited since 75.24% members of COC voted in favour of the appointment of Mr. Kuresh Hatim Khambati, (IBBI registration No.IBBI/IPA-001/IP-P01521/2018-19/12454) as the new Resolution Professional (RP)".*

*3-A The applicant submits that as on 23.05.2019 the 3<sup>rd</sup> CoC meeting was convened of the creditors of the Corporate Debtor and it was decided by the members of CoC representing 75.24% to approve new RP in place of Mr. Nilesh Sharma since 75.24% members*

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*voted in favour of appointment of Mr. Kuresh Hatim Khambati?*

V-1 *That the proposed name of Shri Kuresh Hatim Khambati be accepted as RESOLUTION PROFESSIONAL in the corporate resolution process filed by the PSL Limited under Section 10 of IBC, 2016.*

It is a matter of record that these Amendments have been allowed by this Adjudicating Authority and taken on record.

5. Consequent thereto, the Respondent/Suspended Management of the Corporate Debtor Company raised further objection to the proposed appointment of Mr. Kuresh Hatim Khambati as Resolution Professional by opposing that the applicant did not file a formal application before this Adjudicating Authority in the prescribed format under the provisions of the Insolvency and Bankruptcy Code, 2016, seeking for appointment of new RP. Hence, such application cannot be entertained nor it is maintainable before this Court till another formal application in prescribed format is filed before this Adjudicating Authority. In alternate, the Suspended Management of the corporate debtor company has opposed the IA on merits also by alleging such that the proposed RP, Mr. Kuresh Hatim Khambati, is allied with one Insolvency Professional Entity (IPE), i.e. M/s. G.T. Restructuring Services LLP. However, this IPE is not yet registered with the IBBI.

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6. The respondent-corporate debtor has raised another objection to the rate of fee being charged by the proposed RP stating, inter alia, that he shall be paid Rs.2 Lakhs per month towards his professional fees. That apart, he shall take assistance of M/s.G.T. Restructuring Services LLP, as an IPE, for providing comprehensive services and infrastructure so as to perform his duties properly. This IPE has also been proposed to be paid a huge amount of Rs.18 Lakhs per month towards its consulting fee and which is on higher side and unreasonable looking the financial condition of the corporate debtor company.
7. It is further alleged that the proposed RP, Mr. Kuresh Hatim Khambati, is allied with G.T. Restructuring Services LLP, which is unregistered Insolvency Professional Entity and has not yet been registered with the IBBI under the IP Regulations.
8. Therefore, the proposed RP would not be in a position to discharge his duty legally and properly. In view of this, the name of newly proposed RP need not be approved and the IRP appointed by this Adjudicating Authority should be allowed to be continued with the CIRP of the Corporate Debtor Company.
9. We heard the submissions of the Ld. Counsels of both the parties at length.

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10. It is a matter of record that the CoC in its 2<sup>nd</sup> meeting, dated 9<sup>th</sup> April, 2019, took a decision to replace the IRP Mr. Nilesh Sharma, by majority of more than 74.87% voted and proposed earlier the name of Mr. Anish Niranjana Nanavati to be appointed as RP, later on the CoC in its subsequent 3<sup>rd</sup> meeting dated 23<sup>rd</sup> May 2019 took a conscious decision to propose an other name i.e. Mr. Kuresh Hatim Khambati, to be appointed as RP in place of Mr. Anish Niranjana Nanavati with its majority of 75.24% voting.
  
11. It is also reported that newly proposed RP, through its communication dated 30.05.2019, duly expressed his willingness and forwarded his consent in Form AA to act as RP in respect of the corporate debtor company., viz., PSL Limited. Such letter/written consent bears his IBBI registration number as IBBI/IPA-001/IP-P01521/2018-2019/12454. Thereafter, the applicant and CoC sought for necessary amendment to be carried in the present application. The same was also allowed by this Adjudicating Authority, vide its order dated 12.06.2019. Thus, the proposed name of the RP has been taken on record. Therefore, we do not find any reason to disagree with same to reject the candidature of Mr. Kuresh Hatim Khambati, merely on technical ground /reasons that the application is not filed in the prescribed format. While the earlier application was filed as per the procedure to convey the

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decision of the CoC for replacing the IRP, in our view, it is the wisdom and discretion of CoC to be exercised as per the provisions of the I & B Code, and it should not be interfered by this Adjudicating Authority until the same is not Arbitrary exercise of power or the RP is not qualified at all or ineligible to be fairly considered for the RP in conformity with the provisions and procedure of the I & B Code, which is not the case here.

12. Moreover, it is matter of record that the Financial Creditors had earlier opposed the appointment of Mr. Nilesh Sharma as IRP by filing objection in the main petition itself, which the corporate applicant debtor filed under Section 10 of the Insolvency and Bankruptcy Code, 2016. However, this Adjudicating Authority in its admission order, referring to the relevant provisions of Section 10(3) (b) of the I& B Code, has already held that it is mandatory on the part of the applicant to propose a name of the IRP in the main application, failing which its application may not be found complete. While observing so, this Adjudicating Authority also gave due weightage and considered the objection of the secured creditors in respect of the admission or otherwise of the present IB Petition, wherein the secured creditor, **Edelweiss Asset Reconstruction Co. Ltd**, (the main objector) had filed its objection, through an affidavit in reply and contended that the secured creditors are not objecting to the

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admission of the present IB Petition, but their objection is only to the extent of appointment of IRP as nominated by the corporate debtor company. Thus, they have expressed their reservation only for the appointment of Mr. Nilesh Sharma as IRP.

13. Therefore, this Adjudicating Authority having discussed the above stated issue, observed and held that the corporate applicant has properly proposed the name of Mr. Nilesh Sharma as an IRP, in conformity with the provisions of the I & B Code. Hence, at this stage, it would not be appropriate to replace such IRP, because after formal constitution of the CoC, within 30 days, from the date of declaration of Moratorium, it is always open to the CoC either to keep continue with the same person or to replace him with another IRP/RP, through necessary resolution passed by the CoC. Thus, this Adjudicating Authority kept open this issue to the wisdom of the CoC by observing such the present appointment of the IRP is provisional and only time gap arrangement. Hence, there can be no serious prejudice to the secured creditor/financial creditor, as it is always open to them after formation of CoC to change the IRP by substituting with another RP, if they pass appropriate resolution therein.

*Attorney*

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14. For the sake of convenience, the paragraph 18 and 19 of our order dated 15.02.2019, passed in main IB Petition, i.e. CP (IB) 37 of 2017, are being reproduced hereinbelow;

*"18 We duly considered the above stated factual aspects and legal position of the present case. It may be seen that under the provisions of Section 10(3)(b) of the Code it is mandatory on the part of the applicant to propose the name of the IRP in the main application, failing which such application may be found as incomplete.*

*19 Therefore, we are of the view that it is mandatory on the part of the Corporate Applicant to propose the name of a willing IRP in the application itself in the prescribed format, to be appointed by this Adjudicating Authority, failing which such application may not be found complete. Therefore, the Corporate Applicant has rightly proposed the name of Mr.Nilesh Sharma as IRP under the provisions of the Code. Hence, at this stage, we do not feel appropriate to replace such IRP, because after constitution of the CoC within 30 days from the date of declaration of Moratorium, it will always open to the CoC either to keep continue with the present IRP or to replace him with another IRP/RP by passing necessary Resolution. Therefore, we leave this issue to be considered by the CoC. Since this being provisional and time gap arrangement, there can be no serious prejudice to the Financial Creditors. Because, it is always open to them after formation of CoC to change the IRP by substituting with another RP. If they feel appropriate, they may pass necessary resolution"*

15. It is also matter of record that the corporate applicant did not assail our order or above stated findings before a Higher Forum. Hence, it is now binding upon the parties.

16. In the light of the above stated findings given and observations made by this Adjudicating Authority, we are of the view that the IRP can have no vested right to keep continue with as IRP/RP in the process of Corporate Insolvency Resolution of the corporate debtor company, until the Committee of Creditors recommends and approves his name and candidature with requisite majority of its members, which is not the case here.

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17. It is matter available on record that the CoC in its subsequent resolution/decision has confirmed and reiterated its view for replacement of Mr.Nilesh Sharma with another one Mr.Kuresh Hatim Khambati as the RP, who is already registered with IBBI. Hence, such objection of the respondent-suspended management of the corporate applicant/debtor company is not legally sustainable to derecognise the candidature of Mr. Kuresh Hatim Khambati as RP, because he is registered well with the IBBI.

18. We, also went through the relevant provisions of the I&B Code to examine the issue in hand and to decide it as per Law. The Section 22 of the I & B Code reads as follows;

***“Appointment of resolution professional.***

**22.(1)** *The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.*

(2) *The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.*

(3) *Where the committee of creditors resolves under sub-section (2)*

(a) *to continue the interim resolution professional as resolution professional it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or*

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- (b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.
- (4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.
- (5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.”

Section 27 of the Code goes further by prescribing the procedure for **“Replacement of resolution professional by the committee of creditors, which reads as under;**

- 27.(1) **Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.**
- (2) The committee of creditors may, at a meeting, by a vote of sixty six per cent of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.
- (3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
- (4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for

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*its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.*

*(5) Where any disciplinary proceedings are pending against the proposed resolution professional under subsection (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section."*

19. In the light of above stated discussion and by following the above stated provisions, we find that the decision of CoC to replace the IRP with another RP, i.e. Mr. Kuresh Hatim Khambati is bonafide and in conformity with the above stated procedure. Hence, it is found to be in order and is hereby approved.

20. In addition to the above, we are expected to keep in mind that the time is the essence of the Code, a period of 270 days for a CIRP are very sacrosanct even exemption/exclusion of certain days from CIRP period may not be permissible beyond 330 days. Hence, we cannot give more weightage to technical objection to the present IA and we feel that the present IA still can be considered on its merits and deserves to be allowed partly. So far as the appointment of Mr. Kuresh Hatim Khambati as RP is concerned, with regard to the corporate debtor company, with such observation and some condition that he is not supposed to hire service from unregistered IPE, i.e., G.T. Restructuring Services LLP, until this Insolvency

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Professional Entity is not formally registered with the IBBI. Further, RP and CoC are advised to take appropriate decision towards quantum of fee payable to such IPE to be hired/engaged with such IPE and it should be reasonable by looking to the present financial condition of the corporate debtor company.


21. That apart, we feel that the proposed RP, Mr. Kuresh Hatim Khambati, is equally required to submit proof/credential of registration with the IBBI to the CoC by making necessary declaration to this effect that there is no any disciplinary proceeding pending with <sup>cor</sup>~~cor~~ being contemplated by the IBBI against him such exercise to be completed within two weeks from the date of receipt of an authentic copy of this order.
22. The Registry is directed to communicate a copy of this order to the IBBI seeking confirmation of the name of Mr. Kuresh Hatim Khambati proposed RP and its report from disciplinary/vigilance angle.
23. The appointment of new RP is subject to confirmation received from IBBI as well as necessary declaration received from the RP, till then the IRP is required to keep continue with CIRP in accordance with the provisions of I & B Code.


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24. The Registry is also directed to inform Mr. Kuresh Hatim Khambati, to file his declaration as directed above within two weeks, from the date of receipt of authentic copy of the present order.
25. With the aforesaid observations and directions, IA 241 of 2019 in CP (IB) No. 37 of 2017 is partly allowed.

List the matter on 20.08.2019

  
**Manorama Kumari**  
**Adjudicating Authority &**  
**Member (Judicial)**

  
**Harihar Prakash Chaturvedi**  
**Adjudicating Authority &**  
**Member (Judicial)**

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