

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH (Camp at Chandigarh)
(Through web-based video conferencing platform)

CORAM: SHRI AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 192/JPR/2020
In CP No. (IB)- 131/9/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

PUNJAB NATIONAL BANK

...APPLICANT

In Re:

SANWAR MAL TIWARI

...OPERATIONAL CREDITOR

VERSUS

AESTHETIC STONE ARTS INDIA PRIVATE LIMITED

...CORPORATE DEBTOR

IA No. 192/JPR/2020

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In CP No. 131/9/JPR/2019



MEMO OF PARTIES

Punjab National Bank
(Sole Member of CoC of M/s Aesthetic Stone Arts India Private Limited)
Head Office at Plot No. 4, Sector 10,
Dwarka, New Delhi- 110075
Branch Office at:
MCC, PNB House Nehru Place,
Tonk Road, Jaipur

...Applicant

In Re:

Shri Sanwar Mal Tiwari
(Sole Proprietor of M/s Rajasthan Steel Corporation)
66, Bhagwan Bahubali Nagar,
Niwaru Road, Jhotwara,
Jaipur- 302012 (Rajasthan)

...Operational Creditor

VERSUS

M/s Aesthetic Stone Arts India Private Limited
Registered Office at: Plot No. 9,
22 Godown Circle, Behind Nehru Sahkar Bhawan,
Jaipur- 302001, Rajasthan

...Corporate Debtor

Present Through Video Conferencing:

For the Applicant: Vikas Jain, Adv.

Order Pronounced On: 15.10.2020

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ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application, bearing IA No. 192/JPR/2020, is filed by Punjab National Bank (sole member of Committee of Creditors of the Corporate Debtor, i.e. M/s Aesthetic Stone Arts India Pvt. Ltd.) under Section 22(3)(b) of Insolvency and Bankruptcy Code, 2016 ('IBC, 2016') read with Rule 11 of National Company Law Tribunal Rules, 2016 ('NCLT Rules, 2016') on behalf of the CoC for replacement of the Interim Resolution Professional ('IRP') Ms. Anuradha Gupta with Mr. Vijendra Bangar (IBBI/IPA-002/IP-N00688/2018-2019/12205) as Resolution Professional ('RP') of the Corporate Debtor.
2. The Insolvency Petition was filed by Mr. Sanwar Mal Tiwari under Section 9 of IBC, 2016 for initiating Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and the same was admitted by this Adjudicating Authority vide order dated 04.03.2020, wherein Ms. Anuradha Gupta was appointed as the IRP, as had been proposed by the Operational Creditor.
3. The Applicant stated that after submissions of claims which were duly received by the IRP, it was ascertained that the Applicant Bank is the sole Financial Creditor and therefore, the sole voting member of the CoC. As

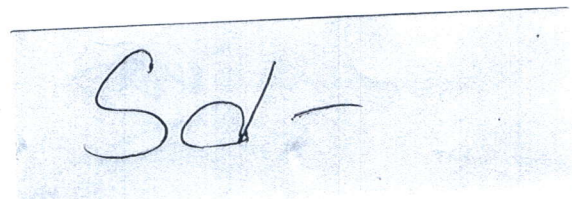
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per Section 22(2) of IBC, 2016 if the CoC is of the opinion that the appointed IRP is required to be replaced, it may replace the IRP with another RP. Section 22(2) of the Code is reproduced hereunder-

“(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.”

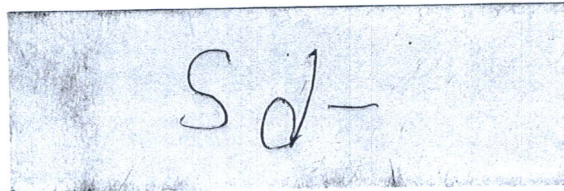
4. It is further stated that pursuant to the aforesaid order dated 04.03.2020, the IRP conducted the first meeting of CoC which took place on 15.07.2020 to discuss various agendas, the intervening delay perhaps caused by COVID-19 pandemic. As per Agenda no. 8, which was moved for the purpose of appointment of the Resolution Professional of the Corporate Debtor, the CoC, while exercising its right as enshrined under Section 22(2) of the IBC, 2016 resolved that Ms. Anuradha Gupta, who was appointed as the IRP of the Corporate Debtor, shall be replaced by Mr. Vijendra Bangar (IBBI/IPA-002/IP-N00698/2018-19/12205), to perform the duties of RP as mandated under IBC, 2016 and the rules made thereunder. Insolvency Professional Mr. Vijendra Bangar proposed to be appointed as Resolution Professional has given the consent in Form AA, as per statutory requirement. Further, it has been stated and verified



that no disciplinary proceedings have been initiated or are pending against the said RP.

5. The Applicant further stated that as per Section 22(2) of IBC 2016, the decision of the CoC with respect to the continuation of IRP as the RP and/ or appointment of RP is final and binding. Since the Applicant Bank is the sole Financial Creditor, it is duly empowered to replace/ change the IRP by another RP. Therefore, the Applicant resolved to replace the IRP in the first meeting of CoC held on 15.07.2020.
6. The Applicant has also stated that being the sole member of the CoC, it suggested certain changes to the IRP with respect to the CIRP of the Corporate Debtor but the same were not incorporated by the IRP in the minutes of the first meeting, as held on 15.07.2020. However, on perusal of the copy of the minutes of the first meeting of CoC held on 15.07.2020, it is seen that the IRP had incorporated suggestions of the CoC.
7. The Applicant has referred to the judgement of the Hon'ble Supreme Court in the matter of *K. Sashidhar vs Indian Overseas Bank* (AIR 2019 SC 1329), wherein it was held that:

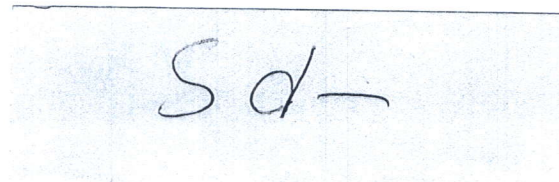
"The commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code..."



...The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.”

8. On perusal of the documents filed, this Bench is of the view that the power of CoC, to replace the IRP with RP in the first CoC meeting as provided under Section 22 of IBC, 2016 or the power to replace the RP at any time during the CIRP proceedings as provided under Section 27 of IBC, 2016, cannot be ordinarily interdicted. In the insolvency resolution mechanism, the RP acts as a bridge between the CoC and the prospective investors and other stakeholders of the Corporate Debtor. Hence, the appointed RP should be the one in active engagement with the CoC.
9. Placing reliance on Section 22 of IBC, 2016, the decision of replacing the IRP with a new RP solely lies with the CoC and the Applicant Bank being the sole member of the CoC, the decision of the CoC to replace the IRP Ms. Anuradha Gupta with the proposed RP Mr. Vijendra Bangar, as prayed in this application, is hereby approved.
10. In the circumstances, the instant IA is allowed and Mr. Vijendra Bangar (IBBI/JPA-002/IP-N00698/2018-19/12205) with email id : bangarv@gmail.com, is appointed as the Resolution Professional by

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replacing Ms. Anuradha Gupta, IRP, for continuing the insolvency resolution process in respect of the Corporate Debtor, M/s Aesthetic Stone Arts Pvt. Ltd. Till any other/ further orders in this respect, the Resolution Professional shall send his progress reports fortnightly to this Adjudicating Authority. It is directed that:

- i. Ms. Anuradha Gupta, the IRP shall hand over the entire records and the assets of the company which have been taken over by her in course of the corporate insolvency process to the Resolution Professional forthwith; and
- ii. Mr. Vijendra Bangar, Resolution Professional shall take over the charge of the aforesaid records and the assets and perform his duties as required under IBC, 2016 and the relevant Rules and Regulations thereunder.

11. Copy of this order be supplied to the learned counsel for the Applicant and the same be also sent immediately to the e-mail address of the IRP and the Resolution Professional now appointed.

12. IA 192/JPR/2020 stands allowed and disposed of accordingly.

Sd-

Raghu Nayyar,
MEMBER (TECHNICAL)

Sd-

Ajay Kumar Vatsavayi,
MEMBER (JUDICIAL)