

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 691 of 2019 in C.P.(I.B) 397/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.07.2020**

Name of the Company: Allahabad bank
V/s
Anil Kumar IRP For KSL & Industries Ltd

Section : Section 60(5) of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER
(through video conferencing)**

Learned lawyer, Mr. Tarak Damani appeared for the Applicant.

Learned lawyer, Mr. Monaal J Davawala appeared for the Respondent.

The Order is pronounced in the open court vide separate sheet.

Manorama Kumari
**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 28th day of July, 2020

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

**IA No. 691 of 2019
In
C.P. No.(IB) 397 of 2018**

&

**IA No. 90 of 2018
In
IA No. 691 of 2019
In
C.P. No.(IB) 397 of 2018**

In the matter of:

Allahabad Bank

... Applicant

Versus

Anil Kumar,
Interim Resolution Professional (IRP)
Of KSL and Industries Limited

... Respondent

And in the Original matter between:

M/s. Abhinandan Multitrade Pvt. Ltd. & Anr.

... Corporate Applicant

Versus

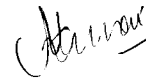
M/s. KSL and Industries Limited

... Corporate Debtor

Order delivered on 28th July, 2020

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

Appearance: Advocate Mr. Tarak Damani for Applicant and Advocate Mr. Monaal J Davawala for Respondent.



COMMON ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. The Instant Application IA 691 of 2019 in CP (IB) 397 of 2018, is filed by the Applicant, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with prayer to appoint new Interim Resolution Professional.

2. The brief facts of the case are:
 - 2.1 CP(IB) 397 of 2018 was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") by M/s. Abhinandan Multitrade Pvt. Ltd. & Anr. which was admitted vide order dated 06.09.2019 whereby Interim Resolution Professional (hereinafter referred as "IRP") was appointed. After taking the charge, IRP made public announcement and thereafter, Committee of Creditors (hereinafter referred as "CoC") was constituted.

 - 2.2 In the 1st CoC meeting held on 16.10.2019, IRP provided the list of Financial Creditors along with the voting share for each credit or as prepared by him. It is submitted by the IRP that out 37 creditors, only 7 were Financial Institutions and 30 were Non Financial Institutions and Corporates. Consequent upon which, the total voting share of Financial Institutions in CoC was 36.53% whereas the total voting share of Non Financial Institutions/ Corporates was 63.47%.

 - 2.3 The Applicant and the other creditors that are Financial Institutions, being alarmed with respect to the list of creditors, raised their concern in relation to the eligibility of the Corporates mentioned in the list of creditors. The Applicant is of the view that the correct classification of the creditors is critical to the constitution of CoC. The Applicant along with the other creditor requested the IRP to provide clarity on whether the verification for all these creditors, who are Non Financial Institutions, has been completed. The IRP/RP responded that this is merely a provisional

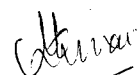


list. Meanwhile the Applicant and the other secured creditors were also informed that it has not been verified whether the relevant money from the said 30 Financial Creditors have actually been received in bank account of the Corporate Debtor.

2.4 The Applicant thereafter, requested the IRP/RP to provide the basis on which the claim of 30 Non Financial Institutions were admitted and how they were classified as Financial Creditors but IRP/RP replied that the said verification of the claims was still under process. Thus, IRP has not only admitted the claim without the same being verified completely but has also assigned voting rights to the creditors which caused the voting share of secured Financial Creditors to be reduced to only 36.53%.

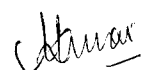
2.5 In view of such situation, the whole problem has aroused with regard to the appointment of IRP/RP as no majority could be reached into for appointment of IRP/RP. Consequently, the instant application was filed apart from other miscellaneous applications. The Applicant along with other creditors has apprehended that IRP has not conducted any diligence on whether the 30 Non Financial Institutions are in anyway related to promoters or part of the promoter group. While putting queries to this issue by the Applicant, IRP/RP merely suggested that he does not believe that the parties are related. However, no information or justification has been provided for this issue.

2.6 The Applicant submitted that on the request of the Applicant and consortium of Banks, a forensic audit report have been prepared by Mr. Haribhakti & Co. LLP on Tayal group of companies, of which the Corporate Debtor is a part (Forensic Report). It is indicated in forensic report that certain entities such as Rajdeep Clothing & Advisory Private Limited, Tanvish Trading Private Limited and Express Suiting Private Limited, all of whom are included in the list of creditors are related / interested parties of the Corporate Debtor.



2.7 It is further submitted that from the information available on Ministry of Corporate Affairs website, it is seen that the Express Suiting Private Limited, Avery Procon Private Limited and Shakti Procon Private Limited have substantial shareholding of 1,18,577 shares, 52,375 shares and 1,05,074 shares respectively in Corporate Debtor. In spite of such entity being related parties and shareholders of the Corporate Debtor, the IRP/RP have admitted the claim of such creditors and assigned voting rights to such creditors which is in gross violation of provisions of the IB Code i.e. Section 21(2) of IB Code.

3. On behalf of Respondent, on receipt of notice, IRP appeared and filed his affidavit in reply denying each and every averment, submissions and statements made by the Applicant, save and except which is expressly admitted to be true and correct.
4. The Respondent submitted that the unsecured loan raised from the other Financial Creditors are duly reflected in the Annual Balance Sheets of the Corporate Debtor which have been in a public domain and is available with the Applicant/ other consortium Banks, who have considered credit facilities. Hence, the allegation with regard to 1st CoC meeting is redundant. The voting share is determined on the basis of the claim value, duly supported by the documents filed by the Financial Creditors along with their claim. The Respondent further submitted that IRP/RP has limited role in such cases as contained under Regulation of CIRP Regulations 2016.
5. Further, during the pendency of the instant application, Charms Holding Private Limited filed an affidavit in reply submitting that he is also one of the Financial Creditors and there is no reason as to why Charms Holding Private Limited is not required to be included in the list of Financial Creditors,



particularly when the entire claim was duly supported with all the required documents. It is further submitted that the allegation made in the application is false as the same is not supported by any documentary evidences. It is submitted that the Applicant is trying to bring his own IRP/RP and therefore, filed the instant application.

6. One M/s. Abhinandan Multitrade Private Limited has also filed the reply claiming himself to be the financial creditor. The IRP/RP after scrutinizing, admitted his claim to the tune of Rs. 127.42 crores and accordingly, he has attended 1st CoC meeting held on 16.10.2019. It is further submitted that despite having confirmed/clarified by the IRP/RP that all claims based on the documents submitted by Financial Creditors along with their claim form. The secured Financial Creditors raised several issues with prejudice mindset and obstructed the proceedings.
7. Similarly, M/s. Anukaran Contruction Pvt. Ltd. filed their reply denying the allegations so made by the Financial Creditors with regard to the related parties.
8. Notwithstanding anything above, the main dispute is with regard to the appointment of IRP/RP and for which there is a conflict between the secured Financial Creditors and unsecured Financial Creditors. Consequent upon which at the time of voting for the appointment of IRP/RP, the majority of 66% of voting share could not be achieved which is the main root cause of conflict.
9. On perusal of the record, it is found that secured Financial Creditors has proposed the name of Mr. Sanjay Gupta as the new IRP of the Corporate Debtor to which the Respondent i.e. IRP as well as some of the Financial Creditors did not agree, which is the main cause of stalemate.



10. It is pertinent to mention herein that the CP(IB) 397 of 2018 was admitted on 06.09.2019 and after the 1st CoC meeting, the dispute with regard to the appointment of IRP arose because of difference in voting share. Consequent upon which, multiple miscellaneous applications have been filed. The 180 days of CIRP period has already expired somewhere in 1st week of March 2020. Thereafter, there was Lockdown and the instant application was heard De- novo on the request of the other Financial Creditors. Thereafter, another 90 days has also been expired, if lockdown period is not considered.
11. Under such circumstances, when there is a conflict and no consensus is reached by the majority of voting share to appoint the IRP/RP so proposed by the Applicant, it is expedient to appoint an independent IRP/RP to break any kind of stalemate between the Financial Creditors. Moreover, the very object of IB Code is to complete the CIRP in the time bound manner and if the dispute with regard to the IRP will continue, in that event, the very object of the IB Code will get frustrated. The IB Code prescribes timelines for various activities of the CIRP. It is mandatory to complete a CIRP within 180 days, extendable by a one-time extension of up to 90 days [***M/s. Surendra Trading Company v. M/s. Juggilal Kamlapat Jute Mills Company Limited & Ors.***].
12. Though as per Section 7 of the IB Code, the Financial Creditor has the prerogative to propose the name of the IRP/RP and thereafter, they may change it by filing an application under Section 22 of the IB Code. However, to resolve this issue and to end the stalemate between the secured and unsecured Financial Creditors, this Bench in exercise of power under Rule 11 of the NCLT Rules 2016, do hereby appoint Mr. Kiran Shah as the new IRP/RP and direct him to convene the CoC meeting and complete the CIRP as early as possible. Further, the period which is consumed in deciding this



Application as well as the lockdown period i.e. from 25.03.2020 to 31.05.2020, is exempted.

13. During the pendency of this application, one IA 90 of 2020 with the prayer to appoint a new IRP and to stay the 3rd CoC meeting held on 06.02.2020 was filed by one of the Financial Creditor, which now becomes infructuous on appointment of new IRP/RP.

14. Interim order, if any, passed earlier is vacated.

15. Accordingly, the instant IAs stand disposed of with the above observations.



Manorama Kumari
Adjudicating Authority
Member (Judicial)

Shreya