

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, COURT-III**

IA-882/2023  
In  
(IB)-113(ND)/2021

Order under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.

**IN THE MATTER OF: (IB)-113(ND)/2021:**

M/s. Vistra ITCL (India) Limited .... Financial Creditor  
Vs.  
M/s. Ansal Urban Condominiums Private Limited .... Corporate Debtor

**AND IN THE MATTER OF: IA-882/2023:**

M/s. Katra Realtors Private Limited .... Applicant  
Vs.  
Mr. Rajesh Ramnani .... Respondent

**Order delivered On: 24.01.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For Applicant : Mr. Gaurav H Sethi, Mr. Deepanshu Chandra, Advs.  
For the RP : Ms. Maanya Chandok, Ms. Ekssha Kashyap, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present application is being filed by the Applicant i.e. M/s. Katra Realtors Private Limited, under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking appropriate directions to remove and replace the Respondent who has been appointed as the Resolution Professional of the Corporate Debtor, on the ground of gross bias, unprofessional

and unlawful conduct meted out by the Respondent towards the Corporate Debtor and its stakeholders.

- 2.** The application under Section 7 of the Insolvency and Bankruptcy Act, 2016 was preferred before this Adjudicating Authority by the Financial Creditor, M/s. Vistra ITCL (India) Limited ("Vistra"), which was admitted ex parte vide order dated 10.03.2022. As proposed by the Financial Creditor, the Respondent herein, Mr. Rajesh Ramnani, having registration number IBBI/IPA-002/IP-N00993/2020-21/13187, was appointed as the Insolvency Resolution Professional. Subsequently, he was confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors ("COC") held on 09.04.2022, wherein the purported Debenture Holder i.e. M/s. Palm Products Private Limited (of whom Vistra is the purported trustee) was the only COC member. The COC comprises only two members M/s. Palm Products Pvt. Ltd. holds 81.73% voting share and is representative of homebuyers holding 18.27%.
- 3.** The Applicant is a minority shareholder, having a shareholding of 8.785% in the Corporate Debtor-Company. The other shareholders of the Corporate Debtor are M/s. Ansal Properties and Infrastructure Limited holding 16.215% shareholding, M/s. Ansal Landmark Townships Private Limited holding 49.995% shareholding, M/s. Ansal Landmark (Kamal) Townships Private Limited holding 25% shareholding and M/s. Ansal Landmark Townships Private Limited jointly with Mr. Mohd. Nasir holding 0.005% shareholding in the Corporate Debtor-Company.

4. It is contended that the Applicant has filed this application in view of the fact that the Resolution Professional is acting on instructions of and in collusion and connivance with the Financial Creditor and thereby breaching his professional duties towards the interests of the Corporate Debtor and its stakeholders.
5. The Applicant has raised various issues with regard to the illegal conduct of Vistra (Financial Creditor) and M/s. SREI Infrastructure and Palm Products who is the Debenture Holder.
6. It is submitted that the Resolution Professional filed an application under Section 19(2) of the Code, bearing IA No.3304/2022 alleging non-cooperation and seeking directions for providing relevant documents and information of the Corporate Debtor. The Applicant had provided various documents and information as available with the Applicant to the Respondents.
7. The Applicant further sent an Email dated 08.04.2022 to the Respondents informing that an FIR bearing No. 1442 dated 22.10.2021 has been lodged by one Mr. Pratap Mehta, Authorized Signatory of the Applicant before P.S. Vijay Nagar, Ghaziabad against the directors and representatives of M/s. Vistra, Palm Products Pvt. Ltd. and M/s. SREI Infrastructure alleging various frauds committed by them with respect to the Non-Convertible Debentures issued by AUCPL and also requested the Resolution Professional to take up this issue in the CoC Meeting since the transaction has caused huge losses to the Corporate Debtor.

8. It is also submitted that a complaint has been preferred before the Joint Commissioner, Economic Offences Wing by Mr. Pranav Ansal, one of the parties to the Direct Selling Agents (DSA), on 25.03.2021 against the Directors and representatives of M/s. Vistra, Palm Products Pvt. Ltd. and M/s. SREI Infrastructure alleging various frauds carried out by them with respect to the Non-Convertible Debentures issued by AUCPL.
9. It is alleged in the said complaint that M/s. Palm Products which has a paid-up capital of merely Rs.47.63 Lakhs and a turnover of Rs.16 lakhs, has acquired Debentures worth Rs.300 Crores from M/s. SREI Infrastructure.
10. The Applicant has contended that the Respondent did not take any action and did not place these facts before the CoC and thereby failed in his professional duties and admitted the claims without due diligence.
11. It is further alleged that the Respondent appointed one Mr. Rajeev Kumar Srivastava as a Consulting Architect of the Corporate Debtor ignoring the past relationship of the said Mr. Rajeev Kumar Srivastava with the Corporate Debtor Company.
12. The Applicant has alleged that the Respondent-Resolution Professional is hand in glove with the Financial Creditor and not acting impartially as is mandated under the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
13. The Resolution Professional in its reply affidavit has denied the allegations made by the Applicant and contended that the

Applicant who is minority shareholder of the Corporate Debtor has no locus to file the present application seeking removal of the Resolution Professional.

- 14.** The Resolution Professional has further submitted that the Applicant is controlled by one of the Erstwhile Promoters of the Corporate Debtor i.e. M/s. Ansal Properties and Infrastructure Limited and as per the annual report for the Financial Year 2021-22, 69% of the shareholding in the Applicant Company is held by the Companies associated with the M/s. Ansal Properties and Infrastructure Limited. Further one of the Directors of the Applicant Company, Mr. Harendra Singh is also a Director in other Companies closely related to M/s. Ansal Properties and Infrastructure Limited and the Ansal Group.
- 15.** These facts merely show that the Applicant is acting in collusion with and at the instance of M/s. Ansal Properties and Infrastructure Limited as well as its Promoter Mr. Pranav Ansal. It is further submitted that the present application filed under Section 60(5) of the Code is not maintainable as none of the parameters prescribed under this Provision are fulfilled by the Applicant.
- 16.** It is further submitted that the power of replacement of the Resolution Professional is solely vested with the CoC under Section 27 of the Code. No shareholder or other person related to the Corporate Debtor can be permitted to seek removal/substitution of the Resolution Professional duly appointed under the Code.

17. The Respondent No. 2 i.e. M/s. Palm Products Private Limited has also filed a reply affidavit supporting the contentions raised by the Resolution Professional.
18. We have heard the submissions made by the Ld. Counsel appearing for the parties and perused the records.
19. The only prayer made in this application is to replace the Resolution Professional appointed by this Adjudicating Authority under the provisions of the Code and to appoint a new Resolution Professional. It becomes imperative to see the provisions of Section 27 of the Code which deals with the replacement of the Resolution Professional is as follows:

*“27. Replacement of resolution professional by Committee of Creditors.*

*(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 percent voting shares, resolve to replace the Resolution Professional appointed under Section 22 with another Resolution Professional, subject to a written consent from the proposed Resolution Professional in the specific form.*

*(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 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 sub-section (3), the Resolution Professional appointed under Section 22 shall continue till the appointment of another Resolution Professional under this section.”*

- 20.** Section 27 of the Code provides that the Insolvency Resolution Professional may be replaced by a 66% voting share of the Committee of Creditors of the Corporate Debtor. Admittedly, the Applicant is not a member of the Committee of Creditors and therefore has no locus to seek replacement of the Respondent No.1. The present Application is therefore contrary to the express provisions of the Code.
- 21.** Further Section 60(5) of the Code is a residuary power of this Adjudicating Authority to adjudicate upon the disputes concerning the CIRP of the Corporate Debtor. The power under Section 60(5) cannot be exercised in the instant case. Particularly, in view of the fact that an express provision has been provided under Section 27 of the Code for replacement of the Resolution Professional. This Application is inconsistent with settled position of law that inherent or residuary powers cannot be exercised in a case where specific provisions are prescribed.
- 22.** The Hon'ble Supreme Court in a catena of judgments including **“Gujarat Urja Vikas Vs. Amit Gupta & Ors.** reported in (2021) 7 SCC 209 and **“Tata Consultancy Services Ltd. Vs. Vishal Ghisulal Jain, RP, SK Wheels Pvt. Ltd.** in Civil Appeal No. 3045/2020 has clarified the scope of applications under Section 60(5) of the Code. Any application raising issues dehors the CIRP

or Insolvency of the Corporate Debtor is not maintainable before this Adjudicating Authority.

- 23.** A bare perusal of the Provisions contained in Section 27 of the Code makes it amply clear that a proposal for replacement of the Resolution Professional has to be initiated and approved by the CoC by a vote of 66% of voting shares. However, in the instant case, the proposal has not been moved by the CoC and the Applicant who is a minority shareholder having 8.785% has moved this application which according to our considered view is not maintainable, therefore, IA **dismissed**.

Sd/-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**