

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
22-03-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**IA No 931/2020,
IA(IBC) 27, 176, 193/2022
CP(IB) No.219/7/HDB/2017
U/s 7 of IBC, 2016**

IN THE MATTER OF:

Asset Reconstruction Company (India) Limited

...Financial Creditor

Vs

Viceroy Hotels Limited

...Corporate Debtor

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA No.176/2022,

Learned Counsel Shri Yogesh Jagia, for applicant appeared via video conference, Learned counsel Shri A.Chandra Shekar, for RP appeared via video conference.

Heard both sides. **List matter for orders on 31.03.2022.** Meanwhile both sides are directed to file short note of written submissions within a week.

IA No. 193/2022

Learned Counsel Shri K.V.S.Sharma, for applicant and Learned counsel Shri A.Chandra Shekar, for RP appeared via video conference.

It is stated that already an application has been filed with the same prayer before the Hon'ble NCLAT and the same is pending. Hence this Application is dismissed without prejudice to the contentions as put forth by the petitioner.


MEMBER (T)


MEMBER (J)

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SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders pronounced vide separate sheets. In the result, the application is partly allowed as follows:

- i. The RP is hereby directed to forthwith convene a meeting of the Members of the COC;
- ii. The COC shall finalise its Agenda for the proposed meeting having regard to the fact of pendency of Appeal No.325 of 2021, before the Hon'ble NCLAT, Chennai.
- iii. The resolutions passed, if any, in the Meeting of Members of COC shall be placed before this Tribunal well before 31.03.2022.

List the matter on 31.03.2022.


MEMBER (T)

Syamala


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I**

**IA No.27 of 2022
in
CP(IB) No. 219/7/HDB/2017**

[U/s.60(5) of IBC Code, 2016 r/w Rule 11 of NCLT Rules, 2016]

**In the matter of Asset Reconstruction Company (India) Limited vs.
Viceroy Hotels Limited**

Between:

Asset Reconstruction Company (India) Limited (ARCIL)
(Member of COC in the CIRP of Viceroy Hotels Limited)
Having its Registered Office at The Ruby, Senapati Bapat Marg
Dadar (W), Mumbai – 400 028
Represented by its Authorised Signatory

...Applicant

Vs.

Mr. Karuchola Koteswara Rao
(Resolution Professional of Viceroy Hotels Limited)
Having its place of Office at Plot No.20
Sector-I, Survey No.64, 4th Floor
HUDA Techno Enclave
Hyderabad – 500 081

... Respondent

Date of Order:22.03.2022

Coram:

Hon'ble Dr. Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Applicant :Mr. Shabbeer Ahmed, Mr. V. Aneesh, Mr. P. Vinay
Kumar, Advocates
For Respondents :Mr.A.Chandra Shaker, Mr. G. Gautam Krishna
Advocates



PER : BENCH

ORDER

- I. The present application is filed by one of the Members of the Committee of Creditors (COC) of M/s. Viceroy Hotels Limited, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for short 'IBC' r/w Rule 11 of NCLT Rules, 2016, seeking to direct the RP to convene a COC meeting with the following Agenda:
- i. To enable RP to present the statement of accounts in relation to running of Corporate Debtor, CIRP costs, along with all material documents thereto before the COC and updating the status of the Corporate Debtor;
 - ii. To discuss on changing the RP in the present matter and appoint another RP to run the corporate debtor as a going concern, if required; and
 - iii. To take decisions on the items envisaged under Regulations 39B, 39C and 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the event of liquidation of corporate debtor.
- II. The gist of the Applicant's brief is –
1. This Adjudicating Authority, vide its Order dated 12.03.2018 admitted the Company Petition CP (IB) No. 219/7/HDB/2017 filed under Section 7 of I&B Code, 2016 initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed the Respondent herein as Interim Resolution Professional and later



confirmed as Resolution Professional (for short ‘RP/Respondent’) at the COC meeting held on 09.04.2018.

2. The COC at its 18th meeting held on 11.03.2019 and 12.03.2019 evaluated the Resolution Plans submitted by ARCIL, Unison Hotels Private Limited and CFM Asset Reconstruction Private Limited (“CFM ARC”) and approved the Resolution Plan submitted by CFM ARC by 88% voting.
3. The RP had filed an application IA No.281 of 2019 before the Hon’ble Tribunal seeking approval of the Resolution Plan submitted by CFM ARC, which was *dismissed* by this Hon’ble Tribunal on 01.09.2021. Aggrieved by the said order, the RP preferred an Appeal before the Hon’ble NCLAT, Chennai, vide Company Appeal No.325 of 2021, which is pending for adjudication. During this interregnum, the RP has been running the Corporate Debtor as a going concern, pursuant to the specific direction by Hon’ble, NCLAT, Chennai Bench.
4. It is stated that the applicant issued various emails requesting the RP to provide monthly cash flow statements for the period from March 2018 to August 2019, CIRP expenses, reasons for increase in expenditure, status of forensic audit, financial statements for the year 2019-20, expenses for the financial year 2020-21 etc. Copies of emails sent by the Applicant are filed as Annexure-2, 3 & 4 at page nos. 16 to 27 of the application. As per the provisions of Section 20(10) of IBC,



the Resolution Professional shall make available any financial information as required by the COC within a period of 7 days of such requisition, however, the RP has violated the same.

5. In the 4th COC meeting, the Applicant along with other COC members have raised issues in the financial statements and conduct a forensic audit but RP tried to convince the COC members to avoid a Forensic Audit citing frivolous reason. In the 5th meeting, majority of COC members have resolved for conducting the forensic audit of the corporate debtor and RP put the resolution pertaining to conduct of forensic audit for e-voting on 19.07.2018. However, till date RP failed to conduct the *forensic audit* after continuous follow up with various emails, which is involved various investigations initiated by CBI and ED. Despite the Order dated 26.02.2019 passed by this Hon'ble Tribunal, the RP has been delaying the forensic audit. Accordingly, the Applicant issued a Legal Notice to RP 19.03.2021. A copy of the Legal Notice along with enclosures are filed as Annexure-5 at page nos.28 to 55 of the application.

6. The CFM ARC, whose resolution plan was approved by the COC, preferred a Writ Petition WP No.12381 of 2021 before the Hon'ble High Court of Telangana, which was stayed all further proceedings in IA No.281/2019, vide its order dated 13.05.2021. Subsequently, the applicant sent an email dated 26.05.2021 requesting the RP to convene a meeting of the COC to deliberate on the future course of action. A



copy of the email dated 26.05.2021 is filed as Annexure-6 of the application.

7. CRM ARC withdrew the aforesaid writ petition and again filed a writ petition W.P.No.22667 of 2021, vide its order dated 16.09.2021 suspended the operation of the order passed by this Hon'ble Tribunal in IA No.281 of 2019. The applicant once again sent an email dated 23.11.2021 (Annexure-7 of the application) requesting the RP to convene a meeting of the COC to discuss the way forward and renewal of bank guarantee furnished by CFM ARC but the requests of the applicant deliberately fallen on the deaf ears of the RP.
8. In terms of Regulations 39(B) and 39(C) of the IBBI, the COC has to make a best estimate of the amount required to meet liquidation costs in consultation with the RP and the COC has the option to recommend the RP to first explore the sale of the corporate debtor as a going concern or sale of its business as a going concern respectively. In the present case, neither has the COC made an estimation of the liquidation costs nor has it been able to make any recommendation to the RP.
9. The RP has failed to call for a meeting despite the multiple requests by the COC members and not presented the details of the CIRP cost to the COC after the submission of the Resolution Plan.



10.It is stated that the Company Appeal No.325 of 2021 is pending before the Hon'ble NCLAT. The COC is not desirous of continuing the RP as the Liquidator in case the Corporate Debtor is ordered to be liquidated in this case. The Applicant requested the Adjudicating Authority to replace the RP and also to convene a meeting of the COC to enable the stakeholders to decide the way forward in the CIRP /Liquidation of the Corporate Debtor.

11. It is pertinent to mention that IBBI issued an Order dated 20.04.2019 against the RP, regarding the conduct of the Respondent in the course of conducting the CIRP of the Corporate Debtor

III. The gist of the Respondent's brief is –

- i. It is denied that the claim of applicant that he is representing the COC and filed the present application on behalf of the other COC members. It is stated that it is false and there is no such document authorizing the applicant to represent the other members of the COC.
- ii. The application is liable to be dismissed as applicant is seeking a direction to convene the COC which is non-existence as on today by virtue of the order passed by this Adjudicating Authority vide order dated 01.09.2021 rejecting the successful resolution plan approved by the COC and putting an end to the CIRP process of the Corporate Debtor. The terms of the COC expires when the CIRP period is



completed and the CIRP proceedings are closed before the Hon'ble Adjudicating Authority.

- iii. The instant application is also liable to dismissed on the ground that the order passed by the Hon'ble Tribunal vide order dated 01.09.2021 is filed before the Hon'ble NCLAT in IA No.675 of 2021 in Company Appeal (AT)(CH)(Ins.) No.325 of 2021 and is pending adjudication before the Hon'ble NCLAT, which is held as follows:

“In the interregnum, the IRP/RP will ensure that the company remains a going concern. He will pay salary and wages to the officers/employees/workers etc.

He will ensure that the person who is authorized to sign the Bank Cheques, may issue the same after securing the approval of the IRP/RP, as the case may be. The Bank will also the Company (Corporate Debtor) to withdraw the amount(s) in terms of the approval of the IRP/RP for its day-to-day function.

The Learned Counsel for the Appellant is allowed to hand over a copy of this order to “Interim Resolution Professional/Resolution Professional”.

- iv. It is denied that in the last meeting of COC, no discussions have taken place on the liquidation costs and fee of liquidator in the event the company goes into liquidation which have to be mandatorily decided after introduction of Regulation 39B to D of the CIRP Regulations, vide amendment dated 25.07.2019. As the matter is pending consideration before the Hon'ble NCLAT and as on today no COC is in existence in the eyes of law, as such, the same cannot be demanded for by one party.



- v. The aforesaid provisions were brought into force from 25.07.2019 i.e. after submission of approval of resolution plan to Adjudicating Authority i.e. on 25.03.2019. When the resolution plan is pending for approval, Resolution Professional cannot initiate any action without a specific direction from this Hon'ble Tribunal. If this Hon'ble Tribunal directs the RP for conducting a COC, it will be complied.
- vi. RP has been furnishing information from time to time. However, the petitioner is in the habit of asking same information again and again and issuing reminders daily. Since the Corporate Debtor is a listed company all the data is available on the website.
- vii. It is stated that there was a divided opinion among the COC members that the scope of Forensic Audit as discussed in 5th COC meeting was revised and the RP is not to conduct the Forensic Audit for revised scope. In this connection, a Joint Lender Meeting has been convened in which M/s. GT has been appointed as Forensic Auditor (Annexure-IV). Accordingly, RP has been obtained legal opinion about the Forensic Auditor, in which, it is stated that the Joint Lenders cannot appoint Forensic Auditor.
- viii. Since the 330 days CIRP period is over, convening of the COC meeting needs approval from the Adjudicating Authority. It is stated that IBC Code did not provide for conducting of Forensic Audit for a period of



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about 10 years prior to commencement of CIRP, as such, the action of the petitioner is outside the purview.

- ix. The Petitioner has filed a complaint No.BGJD/AR/FY22/068, dated 19.04.2021 on the same subject of forensic audit with IBBI against RP and the same is pending. Right from the beginning, the petitioner is harassing the RP in different ways. It is stated that for the same cause of action, multiple remedies are not to be permitted and this IA needs to be dismissed.
- x. Order of IBBI dated 20.04.2019 imposing penalty on RP is concerned, it is not on the conduct of the RP but for verification of claims by an IPE recognized by IBBI with the approval of the COC. The said Order has been challenged before the Hon'ble High Court of Telangana vide Writ Petition No.12012 of 2020, which is pending for adjudication. It is stated that the RP is not suffering from any disqualification and the petitioner only trying to tarnish the image of the Respondent.

IV. The gist of the Applicant's brief in Rejoinder is –

- i. Pursuant to the order of this Hon'ble Tribunal rejecting the Resolution Plan submitted by CFM ARC, a Joint Lenders Meeting (JLM) was conducted on 20.11.2021 with 85% voting share of the COC, unanimously agreed and decided to file the present application. A



Copy of the Minutes of the Meeting of the JLM is filed as Annexure-1 at page nos. 12 to 18 of the Rejoinder.

- ii. It is stated that the applicant sought information vide its email dated 23.09.2019 are neither provided on any website nor have they been provided by the RP in its email dated 04.10.2019.
- iii. It is in the knowledge of public domain that the erstwhile promoter was involved in several fraudulent and avoidance transactions due to which ED and CBI have initiated proceedings against him and the assets of the corporate debtor under PMLA Act. It is suspected that significant amounts are siphoned off by the erstwhile promoters and relevant parties. The resolution of the COC to conduct a forensic audit was already taken by requisite majority of COC members as has also been upheld by this Hon'ble Tribunal in IA No.344 of 2018, dated 26.02.2019. A copy of the same is filed as Annexure-3 of the rejoinder.
- iv. The COC during its 18th meeting had decided that the Applicant herein will be finalizing the scope of work for forensic audit and further on 12.03.2019, the COC had resolved to appoint M/s. Grant Thornton as the forensic auditor. The applicant finalized the scope of work on 15.03.2019, which is mentioned as page nos.6 to 7 of the rejoinders. In this connection, on 16.04.2019, RP had forwarded the concerns expressed by three individual members of COC, who do not even hold



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1% of the voting share in COC and produced a legal opinion wherein it was mentioned that –

“As on date, with effect from 26.03.2019 CIRP has come to an end and in the absence of the revised scope being put to vote, it is not advisable to the RP to have the Forensic Audit conducted for the revised scope”.

It is stated that the RP on his own sent an email dated 27.03.2019 i.e. after the end of CIRP period to finalise the scope of work of forensic auditor and within next few days he changed his stand stating that the revised scope of work cannot be put up for voting now. This is totally an afterthought on the part of the RP.

- v. It is stated that on 11.01.2022, the RP has issued an email to the applicant and other members of the COC that he obtained a legal opinion and that a forensic auditor appointment at this stage can be done only on the direction of the Hon'ble NCLT/NCLAT, which is also marked to the ex-promoters of the corporate debtor. It reflects the RP is colluding with the ex-promoter(s) of the corporate debtor. In response, the applicant issued an email dated 13.01.2022. Copies of the emails dated 11.01.2022 and 13.01.2022 between the applicant and the RP are filed as Annexure-5 (colly.) of the rejoinder.
- vi. It is stated that order of the Hon'ble NCLAT dated 17.12.2021 will not come in the way of the COC to discuss and replace the RP by another RP and also stated that the COC being an interested stakeholder is concerned about the recovery of its dues and the resolution of the



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corporate debtor has a right to insist for a meeting of the COC to take necessary decisions and decide the future course of action. In appropriate cases, the Hon'ble Tribunal and even the NCLAT, Chennai have directed the COC to reconvene a meeting to take necessary decisions, in spite of the expiry of the CIRP period.

- V. In the light of the context put forth by the parties, the point that arises for consideration by this Adjudicating Authority is;

Whether the RP can be directed to convene a meeting of the Members of the COC, notwithstanding the order rejecting the resolution plan approved by the COC, which order is under appeal?

We have heard Shri Shabbeer Ahmed, Learned Counsel for applicant and Shri. K .V. Simhadri, Ld. Senior Advocate for Shri A. Chandrasekhar, Learned Counsel for RP, perused the record, written submissions.

- V. Ld. Counsel for the Applicant, Shri Shabbeer Ahmed submitted that this application has been filed, pursuant to the unanimous resolution passed by the Joint Lenders with 85% voting share in their meeting held on 20.11.2021, alleging that their multiple requests to the Resolution Professional to convene the meetings of the members of COC have turned futile. A copy of the Minutes of the said Meeting of JLM also has been filed as Annexure-I at page nos. 12 to 18 of the Rejoinder.



VI. Ld. Counsel would further submit that the RP in this case is not implementing the decisions of the COC besides failed to provide the monthly cash flow statements for the period from March 2018 to August 2019, statement of CIRP expenses, reasons for increase in expenditure, status of forensic audit, financial statements for the year 2019-20, expenses for the financial year 2020-21 etc. In support of this plea, the applicant filed copies of emails as Annexure-2, 3 & 4 at page nos. 16 to 27 of the application. It is stated that the RP though bound to provide financial information required by the COC within a period of seven days, in terms of Section 20(10) of IBC, the RP failed to provide the same to the COC. It is stated that the decision of the members of the COC for conducting the Forensic Audit of the Corporate Debtor has not been implemented. A Legal Notice dated 19.03.2021 has also been issued to the RP in this case, *inter alia*, stating that despite direction of this Tribunal in IA No.344 of 2018 wherein the Resolution passed by the COC for conducting of Forensic Audit has been approved, the directions were not carried out. A copy of the Legal Notice dated 19.03.2021 has also been filed.

VII. Ld. Counsel further stated that after 18th COC meeting held on 11.03.2019 and 12.03.2019, the RP has not convened any meeting despite repeated requests of the members of the COC, dated 26.05.2021 whereunder the COC intended to deliberate on the future course of action and the email dated 23.11.2021 requesting the RP to convene a meeting of the COC to discuss the way forward and renewal of bank guarantee furnished by CFM

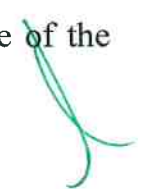


ARC but the requests of the applicant deliberately fallen on the deaf ears of the RP. The said emails are filed as Annexures-6&7.

- VIII. Learned Counsel for the petitioner further submitted that not only total noncooperation but also defiance in implementing the decisions of COC, non-convening of the meetings of the members of the COC despite repeated requests and passing of over one year time since the last meeting of the members of the COC by the RP, being apparent on the face of the record placed before this Tribunal, the COC was compelled to seek directions as prayed in this petition from the Tribunal, and the Tribunal may therefore grant the relief, as prayed for in the interest of justice.
- IX. *Per contra*, Ld. Senior Counsel for the RP. Sri K.V.Simhadri submitted that since the 330 days CIRP period is over, COC became *functus officio*, hence for convening the COC meeting approval from the Adjudicating Authority is required. It is stated that IBC Code did not provide for conducting of Forensic Audit for a period of about 10 years prior to commencement of CIRP, as such, the action of the petitioner is outside the purview. The Petitioner has filed a complaint No.BGJD/AR/FY22/068, dated 19.04.2021 on the same subject of forensic audit with IBBI against RP and the same is pending. Right from the beginning, the petitioner is harassing the RP in different ways. It is stated that for the same cause of action, multiple remedies are not to be permitted and this IA needs to be dismissed.



- X. Ld. Senior Counsel placing reliance on the Order of the Hon'ble NCLAT dated 17.02.2021, also urged that, since one of the items in the agenda to be discussed in the proposed meeting of the Members of the COC is to replace the present RP, since amounts to violation of the orders of the Hon'ble NCLAT dated 17.02.2021, no direction to call for the proposed meeting can be issued by this Tribunal and the application is liable to be dismissed at the threshold. It is further submitted that from time to time, the RP has been responding to the queries of the Members of the COC and made it clear on several occasions that after CIRP process ended, COC can be convened only upon the direction of this Tribunal. In this context, Learned Sr. Counsel placed reliance on Section 28 of IBC which is stated that once the Resolution Plan approved by COC it is to be submitted with the Adjudicating Authority for approval then COC becomes *functus officio*. Hence the COC now cannot call upon the RP to convene a meeting of the members of the COC.
- XI. Having heard the Ld. Counsels for both sides besides considering the scope of this application, we hereby, hold that the CoC is entitled to call upon the Resolution Professional to convene the meeting of the members of the COC, in as much as the Resolution Professional is bound by the decisions of the COC and cannot act as per his whims and fancies or detrimental to the interest of the COC. That apart, the RP is also answerable to the COC for all his acts and actions under IBC, which he has so far performed and now *supposedly* performing by virtue of the



interim order passed by the Hon'ble NCLAT, *supra*. Moreover, the order of this Tribunal dated 01.09.2021, rejecting the approval of the resolution plan approved by the COC, has been under challenge before the Hon'ble NCLAT, Chennai Bench, and the said Appeal is pending. In this back drop, we hold that the CoC, in the present case, has neither become *extinct* nor functus *officio*, especially as the resolution process has not come to an end.

XII. We, also find fault with the Resolution Professional for not convening the meeting of the members of the COC for over a year without any valid reason. If permission of this Adjudicating Authority for convening the meeting of the COC is the requirement, then nothing prevented the RP from seeking permission from this Adjudicating Authority. In fact, at no stage, the RP has informed the members of COC that unless the permission of the Tribunal is obtained, he will not be able to convene the meetings of the members of the COC. Thus, the said plea is nothing but an afterthought. In fact, when this Adjudicating Authority has not accorded approval to the Resolution Plan, it was the bounden duty of the RP to call for the meeting of the COC in order to discuss further course of action, which the RP has failed.

XIII. Be that as it may, the Resolution Professional himself in his counter has stated that "If this Hon'ble Tribunal directs the RP for conducting a COC, it will be complied". Therefore, taking into consideration the above

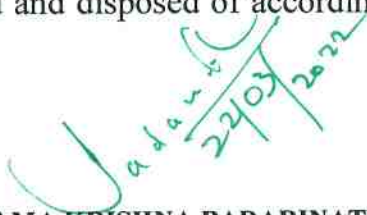


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statement of the resolution Professional, besides the submissions made on behalf of the both parties, we pass the following order:

- i. The RP is hereby directed to forthwith convene a meeting of the Members of the COC;
 - ii. The COC shall finalise its Agenda for the proposed meeting having regard to the fact of pendency of Appeal No.325 of 2021, before the Hon'ble NCLAT, Chennai.
 - iii. The resolutions passed, if any, in the Meeting of Members of COC shall be placed before this Tribunal well before 31.03.2022.
- X. Accordingly, IA 27/2022 is partly allowed and disposed of accordingly. No costs.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


Dr.N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)

Syamala