

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(through web-based video conferencing platform)

I.A. Nos.276 & 349 of 2021 in
C.P. (IB) No.02/BB/2020

IN THE MATTER OF:

Canara Bank
96, South End Road,
South End Circle,
Bangalore - 560 004.

... Applicant in I.A. No.276 of 2021/
Respondent in I.A. No.349 of 2021

VERSUS

Mr. S. Viswanathan
Interim Resolution Professional of
Mylari Agro Products Ltd.
10, 6th A Cross,
Ramaswamy Palya,
Vgnana Nagara,
Bangalore - 560 037.

... Applicant in I.A. No. 349 of 2021/IRP/
Respondent in I.A. No.276 of 2021

Order delivered on 30.11.2021

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant in I.A. No.276 of 2021/
Respondent in I.A. No.349 of 2021 : Mr. Hemanth R. Rao

For the Respondent in I.A. No.276 of 2021
/IRP/ Applicant in I.A. No.349 of 2021 : Mr. S. Viswanathan

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COMMON ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

I.A. No.276 of 2021

1. The main Company Petition No. C.P.(IB)No.02/BB/2020 filed by Shree Ratna Farm Products against the Corporate Debtor i.e. M/s. Maylari Agro Products Ltd. was admitted by this Adjudicating Authority wide order dated 08.03.2021. Wide the said order itself, this Adjudicating Authority appointed Shri S. Viswanathan a qualified Insolvency Professional, as the IRP to conduct the insolvency resolution against the Corporate Debtor i.e. M/s. Maylari Agro Products Ltd.
2. The present Application has been filed by Canara Bank who is a Financial Creditor and a Member of CoC with 84.6% voting share against Mr. S. Viswanathan, Interim Resolution Professional of M/s. Mylari Agro Products Ltd. under Section 27(3), r/w Section 60(5) of the IBC, 2016 and r/w Rule 11 of the NCLT Rules, 2016 for replacement of the Respondent as Interim Resolution Professional and to appoint Ms. Shirley Mathew as Resolution Professional to conduct the CIRP against the Corporate Debtor.
3. Heard Mr. Hemanth R. Rao, learned Counsel for the Applicant and Mr. S. Viswanathan, learned Respondent/Existing IRP. We have carefully perused the pleadings on record and extant provisions of the Code, and the Rules made thereunder.
4. The Applicant/Canara Bank submits that after his appointment as IRP by this Adjudicating Authority, the Respondent/IRP shared the agenda for the first CoC meeting to be conducted on 09.04.2021. Amongst other agendas for the meeting, one of the agenda item was replacement/appointment of Resolution Professional. In the said meeting held on 09.04.2021, the Applicant who is one of the Financial Creditor and having the voting share of 84.6% in the CoC had neither consented for the appointment of the Respondent as a Resolution Professional nor consented for the fee proposed by the Respondent.

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5. It is further submitted that the Respondent has not conducted any physical/electronic voting on the various agendas of the meeting dated 09.04.2021. However, he sent a draft Minutes of the meeting on 11.04.2021. In the said minutes, it was stated that the Applicant/Canara Bank had consented to the appointment of the Respondent as Resolution Professional and that the CoC has unanimously agreed to his appointment.
6. On noticing the discrepancies, the Applicant Bank while disputing the fact of giving consent to the appointment of the Respondent as Resolution Professional and conducting of any physical/electronic voting on the said issue, requested for furnishing the voting sheet, if any. The Respondent failed to furnish the same till date and also failed to file any copy of the said voting sheet before this Adjudicating Authority, in this IA or any other IA. On the other hand, levelled various allegations against the Applicant and its officials and not conducted any CoC meeting thereafter. Hence, the I.A.
7. The Respondent/IRP instead of filing the voting sheet pertaining to the first CoC meeting dated 09.04.2021 contended that there is no need of maintaining any voting sheet which is unacceptable and against to the Code and Regulations made thereunder. This Adjudicating Authority on 17.09.2021 directed the Respondent to hold the CoC meeting within one week and to submit a Resolution immediately. In spite of the said specific direction of this Adjudicating Authority, the Respondent has not conducted the CoC meeting within the specified time. Finally, a meeting of the CoC was conducted on 21.10.2021 where under it was resolved with 84.6% voting share to replace the Respondent, namely, Mr. S. Viswanathan and to appoint Ms. Shirley Mathew as the Resolution Professional in his place. A copy of the minutes of the said second meeting of the CoC dated 21.10.2021 is filed as annexure A-1 along with memo dated 13.11.2021 filed vide diary 3054 dated 15.11.2021 by the Applicant.

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8. Section 27 of the IBC, 2016 reads as under:

“(1) Where, at any time during the corporate insolvency resolution process, the committee of creditor 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 seventy-five per cent of voting shares, propose to replace the resolution professional appointed under Section 22 with another resolution professional.

(3) The committee of creditor 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.”

9. We find force in the submission made on behalf of the Canara Bank. The Applicant/Canara Bank having 84.6% voting share in the CoC is entitled to pass a Resolution to replace the Respondent and to seek appointment of another Insolvency Professional as the Resolution Professional in place of the Respondent, if in its opinion, he is not discharging his duties, in accordance with law. We do not find any merit in the submission made by the Respondent.

10. In the circumstances, and in view of the clear mandate of Section 27 of the IBC and in view of the failure in conducting the CIRP by the Respondent in accordance with the Code and Regulations made thereunder, the instant IA is allowed. Accordingly, the Respondent is replaced as the IRP of the Corporate Debtor i.e. M/s. Mylari Agro Products Ltd. and Ms. Shirley Mathew is appointed as the Resolution Professional in place of the Respondent. The Law Research Associate of this Tribunal has checked the credentials of Ms. Shirley Mathew and there is nothing adverse against her. The existing IRP is directed to handover all the records to the new Resolution Professional. The above new RP is directed to take

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immediate steps to complete the CIRP process in question, within stipulated period, in accordance with the Code and Regulations made thereunder.

11. Accordingly, I.A. is disposed of.

I.A. No.349 of 2021

1. The present Application has been filed by Mr. S. Viswanathan, Interim Resolution Professional of M/s. Mylari Agro Products Ltd. against Canara Bank who is a Financial Creditor and a Member of CoC with 84.6% voting share under Section 27(2), r/w Section 60(5) of the IBC, 2016 and r/w Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:
 - a. The arbitrary exercise of powers by Canara Bank in the 2nd CoC meeting of Maylari Agro Products Ltd. be countermanded and that he be reconfirmed as the Resolution Profession of the CD on the basis of the judgment in re Torque Automation of NCLT Ahmedabad of 12.07.2021.
 - b. That the IA 276/2021 be dismissed since the IA has been filed by Canara Bank in its individual capacity u/s 27(3) of IBC without the backing of a CoC resolution as u/s 27(2) of IBC etc.
2. Heard Shri S. Viswanathan, learned Applicant/IRP and Mr. Hemanth R. Rao, learned Counsel for the Respondent. We have carefully perused the pleadings on record and extant provisions of the Code, and the Rules made thereunder.
3. In view of the order passed in I.A. No.276 of 2021 in C.P. (IB)No.02/BB/2020, and for the identical reasons the instant I.A. is liable to be dismissed. Accordingly, I.A. is dismissed.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)