

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Application No.225/2018

in
Company Petition No.(IB)77/ALD/2017
*(Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016 seeking
appropriate directions as regard
compliance with Regulation 13(2) of
Insolvency and Bankruptcy Board of
India (Insolvency Resolution Process
for Corporate Persons) Regulations,
2016)*

ANUJ JAIN,
INTERIM RESOLUTION PROFESSIONAL
FOR JAYPEE INFRATECH LTD.

..... APPLICANT

IN THE MATTER OF

IDBI BANK LTD.

.....FINANCIAL CREDITOR

VERSUS

JAYPEE INFRATECH LTD.

.....CORPORATE DEBTOR

ORDER DELIVERED ON 10.12.2018

CORAM : Hon. Mr. Bikki Raveendra Babu, Member (Judicial)
: Hon. Ms. Saroj Rajware, Member (Technical)

For the Applicant : Sh. Sanjay Bhatt, Adv. Along with
Ms. Janhvi Bhasin, Advocate.

For the Financial Creditor : Sh. Bishwajit Dubey, Adv. Along with
Ms. Ruchi Chaudhary, Sh. Aditya Marwah &
Sh. Rahul Agarwal, Advocates.

For the Home Buyers : Sh. Anand Grover, Sr. Adv. Along with
Sh. Amit Mishra, Sh. Shivam Pandey, Sh.
Samyak Gangwal & Sh. Yash Tandon,
Advocates.

PER SE : Hon. Mr. Bikki Raveendra Babu, Member (Judicial).

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ORDER

1. Interim Resolution Professional (IRP) filed this application under Section 60(5) of Insolvency and Bankruptcy Code, 2016 seeking certain directions regarding compliance with Regulation 13(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
2. It is stated that in compliance of the order of Hon'ble Supreme Court of India vide order dated 09.08.2018 passed in Writ Petition (Civil) No.744/2017 read with order dated 14.08.2018 passed by this Authority in CA No.126/2018 in CP No.(IB)77/ALD/2017 IRP issued Public Announcement in the revised Form A on 17.08.2018, constituted Committee of Creditors (COC) on 30.08.2018.
3. It is further stated as per the Regulation 13 of the CIRP Regulations, IRP shall verify the claims.

Regulation 13 of the CIRP Regulations reads as follows:

"13. Verification of claims.

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors alongwith the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be –

- (a) available for inspection by the persons who submitted proofs of claim;*
- (b) available for inspection by members, partners, directors and guarantors of the corporate debtor;*
- (c) displayed on the website, if any, of the corporate debtor;*
- (d) filed with the Adjudicating Authority; and*
- (e) presented at the first meeting of the committee."*

4. IRP is maintaining the list of creditors containing the amount claimed by the creditors, the amount admitted and the security interest, if any, in respect of the claims and also updating it from time to time. IRP displayed the list of creditors on the website of the Corporate Debtor. However, while displaying the details of allottees of real estate project of Corporate Debtor on the website, IRP has mentioned the unique code number assigned to the allottees instead of giving their names.
5. According to the IRP, the investment in flats or plots of land by allottee is information private to the allottees and displaying the name and other personal details of allottee without his permission may amount to breach of privacy of any allottee. It is also stated by the IRP that the unique code is in the nature of a name and satisfies the purpose and requirements of Regulation 13(2)(b) of the CIRP Regulations. It is also stated by the IRP that the claimant is identified by the unique code and the amount of claim admitted. It is further stated that providing the name and other personal details of the allottees would serve no additional purpose.
6. IRP stated that the judgment of the Hon'ble Supreme Court of India in the case titled as Justice K S Puttaswamy (Retd.) & Anr. v/s Union of India and Ors. have held that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. It is further stated that the informational privacy is a facet of the right to privacy. IRP further stated that although the right to acquire, hold and dispose of property is no longer a fundamental right by virtue of the 44th amendment to the Constitution, however in terms of Article 300(A) of the Constitution, it continues to be a statutory right. IRP apprehends that the disclosure of names of allottees along with the amount claimed by them on the

website of the Corporate Debtor may invite breach of right to privacy and may result in harassment or unnecessary public speculations on account of similarity of names with those holding high offices or constitutional posts.

7. IRP stated that he approached the IBBI, but IBBI expressed its inability to create any exception in the regulatory framework and directed the IRP to seek appropriate orders or directions from this Authority. IRP prayed for a direction that displaying of unique code of allottees of real estate projects of Corporate Debtor (JIL) on the website, with claims made and admitted is in compliance of requirement under regulation 13(2)(c) of CIRP Regulations.
8. IRP also sought permission to file the list of creditors alongwith the names of the allottees in a sealed cover before this Authority.
9. IDBI Bank on its behalf and on behalf of following lenders who are the members of COC, filed reply:-
 - a. ICICI Bank Limited.
 - b. India Infrastructure Finance Company Limited.
 - c. Union Bank of India.
 - d. IFCI Limited; and
 - e. Axis Bank
10. It is stated that IRP is attempting a backdoor constitutional challenge to Regulation 13 of CIRP Regulations without challenging its vires. It is stated that, the applicant without challenging the vires of Regulation 13 cannot seek exemption from Regulation 13(2). It is further stated that Regulation 13 is a mandatory regulation and it is the duty of IRP to follow Regulation 13 in its true letter and spirit. It is further stated that there is no rationale behind non-disclosure of names of home buyers.
11. It is stated that out of 24,000 home buyers only 9,500 home buyers had taken part in voting process and it reflects that substantial number of home buyers

have not exercised their right to vote and have chosen to abstain from voting. The lenders further stated that seeking exemption from publication of names of allottees on the website of the Corporate Debtor gives rise to reasons to believe that some of the home buyers may not be genuine. It is also stated that by publishing the names of the allottees, the privacy of the allottees is not being infringed.

12. It is also pointed out that non publication of the names of the allottees is circumventing the Regulations and it is in violation of the order of Hon'ble Supreme Court of India in Chitra Sharma and Ors. v/s Union of India and Ors. In W.P. (C) 744 of 2017. The relevant paragraph of the order of Hon'ble Supreme Court is as follows:-

“Moreover, this Court should follow the discipline of the IBC which has been enacted by Parliament specifically to streamline the resolution of corporate insolvencies.... The legislature has made specific provisions which are conceived in public interest and to facilitate good corporate governance.... Once we have taken recourse to the discipline of the IBC, it is necessary that its statutory provisions be followed to facilitate the conclusion of the resolution process... During this period, the IRP shall follow the provisions of the IBC afresh in all respects.”

(Emphasis Supplied)

13. Nine Home Buyers Association filed objection on this application with the permission of this Authority. It is stated that statutory requirement under Regulation 13 of the CIRP Regulations, clearly mandates that the IRP should “maintain a list of creditors containing the names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.”

14. Home Buyers Association also stated that Regulation 13 further mandates, that such list of creditors should be displayed on the website of the Corporate

Debtor. Any deviation of such requirement, would be a clear violation of CIRP Regulations.

15. It is further stated that Regulation 13 is a mandatory Regulation. In such similar cases, in respect of the home buyers relating to AMR Infrastructures Limited and Amrapali groups, the list of names of home buyers were published in the website of the respective companies.
16. It is stated that IRP had earlier published the following lists, wherein the Names, Email IDs and Mobile numbers of large numbers of home buyers were published on the company website.
 - A. *A 12 pages long list of Home buyers whose details were missing, was published by IRP on August 18th, 2018. A copy of the list published on August 18th, 2018 is annexed as Annexure C.*
 - B. *A 51 pages' list of FD holders and Home buyers with incorrect e-mail Ids were published by IRP on August 21st, 2018. A copy of the list published on 21st August, 2018 is annexed as Annexure D.*
 - C. *A 10 pages' list of Home buyers of cancelled units was published by IRP on August 22nd, 2018. A copy of the list published on August 22nd, 2018 is annexed as Annexure E.*
17. It is stated that Regulation 13 of the CIRP Regulations is fair, just and reasonable, which would provide effective resolution of the insolvency of JIL, leading to the benefit of approximately 25000 home buyers, various lenders, FD holders and thousands of employees and workers, working with JIL and in turn their families.
18. It is stated that the names and assets of the MLAs, MPs, and judges are already available in public domain and publishing the names of allottees would lead to chaos is not correct. IRP fail to file the minutes of the Board, wherein IRP was directed to approach this Authority.

19. This is a case where large number of home buyers relating to JIL are treated as Financial Creditors and they are included as members of COC. The IRP after constitution of COC including the home buyers did not choose to follow the Regulation 13(2) of the CIRP Regulation, only on the ground that it effects the privacy of the allottees who are holding constitutional positions..
20. First of all, it is not even the case of the IRP that he received any request from any of the allottee not to disclose his or her name in the website of the Corporate Debtor while publishing the list of claims along with verified amounts of the claims. Therefore, it is not known what made the IRP to take such a view of not publishing the names of the allottees of the plots and flats on the website of the Corporate Debtor. The home buyers who are members of COC and that are attending the COC meeting objected the request of the IRP. It is not even the case of IRP that COC has permitted him to approach this Authority to seek a clarification. It is not even the case of the IRP that the COC permitted the IRP not to publish the names of the allottees of plots & flats (home buyers) of JIL in the website of the Corporate Debtor. IRP failed to place any material on record in order to show that IBBI directed the IRP to approach this Authority seeking a clarification or direction in the matter compliance of Regulation 13(2) of CIRP Regulations. Therefore, this application filed by IRP is only based on his apprehension and without any basis.
21. In the CIRP, the crucial stage is verification of the claims of all the categories of the creditors. Among the creditors, it is only the Financial Creditors that are eligible to be the members of COC in this case. Home buyers are the Financial Creditors. They are said to be 24,000 in number. They are all included as members of the COC according to the IRP. That means the interest of every

home buyers is there in the process. Each home buyer has got a voting share depending upon his claim amount verified by the IRP. Therefore, what are the claims verified in respect of each home buyer must be made known to the other claimants also. Similarly, the claims of the Financial Institutions must also be made known to all other home buyers and other classes of creditors such as depositors, operational creditors etc.

22. The object of directing the IRP to publish the list of the creditors containing the names of the creditors along with the amount claimed by them, is to maintain transparency in respect of their claims and to determine their voting share. Therefore, such an information must be made available not only to the members of COC and to the other creditors who are not members of the COC and to the whole world. That is why the Regulation 13(2) enjoins on the IRP to publish the list of creditors containing the names of the creditors along with the amount claimed by them on the website of the Corporate Debtor.

23. The next contention of the IRP is that, the privacy of some of the allottees that are holding constitutional posts, is going to be affected because of the publication of the list of creditors along with their names and it is against the judgment of Hon'ble Supreme Court of India in the case titled as Justice K S Puttaswamy (Retd.) & Anr. v/s Union of India and Ors., wherein it is recognized that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedom guaranteed by Part III of the Constitution.

24. In the case on hand, Regulation 13(2)(b) is not going to affect the right to life and personal liberty of any of the allottees. Moreover, it is also not going to affect the freedoms guaranteed by Part III of the Constitution.

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25. Moreover, the right to acquire hold and dispose of property is no longer a fundamental right, it is only a statutory right. Therefore, allottees have got a right to acquire their flats & plots from the Corporate Debtor and when such is the case, publication of their names in the list of creditors is not going to affect their privacy or fundamental right, especially when they became part of Committee of Creditors that mainly take part in taking various crucial and vital decisions as part of CIRP process in respect of Corporate Debtor.
26. The details of immovable properties owned and possessed by Govt. employees and persons holding the constitutional posts are available in public domain or in election affidavits. Therefore, publishing the names of allottees of plots/flats of the Corporate Debtor is not going to effect the Right to Privacy of allottees. Moreover, the Regulation 13(2)(b) is a fair, just and reasonable regulation that would help to have effective resolution process. Further, the Hon'ble Supreme Court in *Chitra Sharma & Ors. v. Union of India and Ors.* held as follows:-

“Moreover, this Court should follow the discipline of the IBC which has been enacted by Parliament specifically to streamline the resolution of corporate insolvencies.... The legislature has made specific provisions which are conceived in public interest and to facilitate good corporate governance.... Once we have taken recourse to the discipline of the IBC, it is necessary that its statutory provisions be followed to facilitate the conclusion of the resolution process... During this period, the IRP shall follow the provisions of the IBC afresh in all respects.”

(Emphasis Supplied)

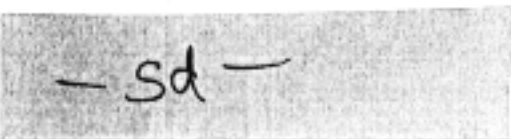
27. Therefore, the IRP should follow Regulation 13(2) of CIRP Regulations, irrespective of the issue that said regulation is mandatory & directory. It is noticed that only around 9,000 home buyers out of around 24,000 home buyers attended the COC meeting and voted and as a result the required voting percentage for passing various resolutions in the COC meetings could not be

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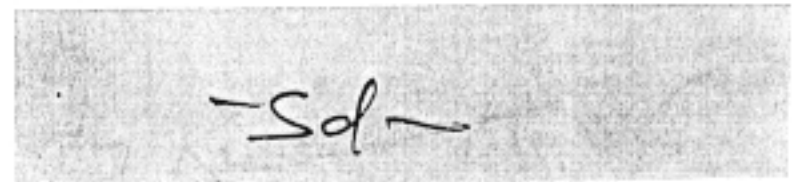
passed. The publications of names of allottees/home buyers may help to increase the participation of home buyers in COC meetings and vote.

28. It is already said that there is no request by any creditors not to publish his name in the list of creditors. The publication of unique code number may not serve the purpose as stated by the IRP.
29. Moreover, when Regulation 13(2)(c) says that the names of the creditors shall be published, by mere publishing the unique code number, the purpose would not be served.
30. In view of the above discussion, IRP is directed to publish the list of the creditors containing the names of the creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, on the website of the Corporate Debtor.
31. Application (CA No.225 of 2018) is disposed of accordingly.

Dated: 10.12.2018



**(SAROJ RAJWARE)
MEMBER (TECHNICAL)**



**(BIKKI RAVEENDRA BABU)
MEMBER (JUDICIAL)**

*Typed by:
Kavya Prakash Srivastava
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