

In the National Company Law Tribunal  
Mumbai Bench.

**MA Nos.1293, 1279, 1283 & 1276/2018** in  
CP No. (IB)-1765(MB)/2018

Under Regulation Nos. **4A, 6(2)(bb) & 8A(3)** of Insolvency  
Resolution Process for Corporate Persons Regulations, 2016.

In the matter of

1. Kishore Vussonji	:	Applicant	( <b>MA 1293/2018</b> )
2. Samir Mehta	:	Applicant	( <b>MA 1279/2018</b> )
3. Rajiv Shah	:	Applicant	( <b>MA 1283/2018</b> )
4. Rajiv Shah	:	Applicant	( <b>MA 1276/2018</b> )

V/s.

Devendra Prasad	:	Respondent
-----------------	---	------------

**IN**

Raj Infrastructure Development (India) Pvt. Ltd.	:	Operational Creditor
Versus		
Lavasa Corporation Limited	:	Corporate Debtor.

Order delivered on: 14.11.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s)	:	1. Mr. Arif Doctor, i/b. Vikrant D. Shetty.
For the Respondent(s)	:	1. Ms. Harshita S Choudhary (on behalf of CoC); 2. Mr. Rohan Malik, L&L Partners Law Offices (Mumbai); 3. Rohan B. Agrawal, i/b. MDP & Partners, Advocate for Respondent (IRP); 4. Salonee Kulkarni, i/b. Shardul Amarchand Mangaldas (for Resolution Professional).

*Per M.K. Shrawat, Member (Judicial).*

**COMMON INTERIM ORDER**

1. All these Miscellaneous Applications revolve around an identical issue hence heard together and herein below decided by this Common Order. For the sake of convenience, MA 1293 of 2018 is taken up as the lead Application to decide the main issue, for ready reference reproduced below:-

*"d. The Respondent be directed to include the name of Mr. Sunil Kumar Bansal, an insolvency professional registered with the Indian Institute of Insolvency professionals of ICAI having registration No. IBBI/IPA-001/IP-P01232/2018-19/11928 as one of the choice for "allottees under real estate projects" to act as their authorised representative;"*

2. The Applicant has stated that the Corporate Debtor i.e. Lavasa Corporation Limited had floated a Project at mountains of Dasve in which the Applicant had participated by signing an Agreement dated 21.05.2009 to get a Villa on payment of substantial consideration. Pursuant to the terms of the said Agreement, the Applicant had paid substantial amount to the Corporate Debtor. The Applicant had come to know that vide an Order of 30.08.2018 the said Corporate Debtor was declared "Insolvent" in CP (IB)-1765/(MB)/2018 u/s.9 of IBC by appointment of IRP one Mr. Devendra Prasad. The said Ld. IRP made a public announcement on 01.09.2018 inviting claims from Creditors. The Applicant had lodged the claim which was admitted as a Financial Creditor vide an email dated 05.09.2018.

3. The Applicant has received the information about appointment of an authorized representative to represent the "Class of Creditors" i.e. allottees under real estate project floated by Lavasa Corporation Limited. The Applicant vide email dated 14.09.2018 had raised objection in respect of the proposed authorized representative viz. Mr. Senapati Varaha Satyanarayana, Mr. Immaneni Eswara Rao and Mr. Sudip Bhattacharya. According to the Applicant, on account of lack of necessary details the decision on the appointment of an authorized representative could not be possible. The Applicant repeated its demand to provide requisite disclosure from the said IRP. An objection has been raised that the appointment of such authorized representative would be logistically incorrect because those professionals are resident of Telengana and Andhra Pradesh while the Office of the Corporate Debtor and the property in question is in the State of Maharashtra. Even in respect of the proposed name of Mr. Sudip Bhattacharya the Applicant had raised objection that in the absence of sufficient material/ information about the said Representative, it was not possible to communicate his decision. It has also been acknowledged by the Applicant that the name of Mr. Sudip Bhattacharya had been approved by NCLT as the authorised Representative of "Class of Creditors".

4. The Applicant has in the alternative suggested/ proposed a name of authorized representative i.e. Mr. Sunil Kumar Bansal, an Insolvency Professional registered with ICAI having proper Registration Number. It has also been alleged that the IRP at that time had not followed the correct procedure for appointment of the said authorised representative hence the name as suggested by him be considered to officiate the problems of the Investors.

5. Substituted IRP Mr. Shailesh Verma (Registration No. IBBI/IPA-002/IP-W00070/2017-18/10148) is present in person as well as represented by a Learned Counsel. At the outset it is pleaded that vide an Order of 05.10.2018 the name of Mr. Sudip Bhattacharya was confirmed by this Bench as an authorized representative of Home Buyers as one Class of Creditors. The relevant portion was emphatically cited, reproduced below:-

*"2. MA 1048/2018:- This application is moved by the Resolution Professional on 24.09.2018 and a Prayer reproduced as follows:- "To appoint Mr. Sudip Bhattacharya (IP Registration No. IBBI/IPA-003/IP-N00080/2017-18/10703) to act as the authorized representative of the financial creditors in the class of home buyers in accordance of sub-section 6(A)(b) of Section 21 of the Insolvency and Bankruptcy Code, 2016". Learned Representative has placed on record the minutes of first COC meeting held on 27.09.2018. On due consideration of amended Section 21(6) r/w 16(a) of Insolvency Resolution Professional Rules it is required to appoint IRP to represent the Directors. As a consequence, the name of Mr. Sudip Bhattacharya is hereby authorized to represent the home buyers. List of the home buyers is so far 837 in number. MA 1048/2018 Disposed of."*

6. In my humble opinion, to arrive at a logical conclusion it is necessary to examine the procedure laid down in Insolvency Resolution Process for Corporate Persons Regulations, 2016 wherein as per Regulation No.6 a procedure is laid down that an Insolvency Professional shall make a Public Announcement immediately on his appointment as IRP. Such Public Announcement is for various purposes and one of them is for the purpose to *'offer choice of three Insolvency Professionals identified under Regulation 4A to act as the authorised representative of Creditors in each class'*.

6.1. It is relevant to also refer Regulation 4A wherein it is provided to exercise "Choice of Authorized Representative". This Regulation says that on examination of Accounts the IRP shall ascertain Class of Creditors. Then for representation of Class of Creditors the IRP shall identify three Insolvency Professionals who are neither his relative

nor a related party and eligible to be Insolvency Professional as well as willing to act as authorized Representative of "Creditors in the Class".

6.2. It is also worth to place on record that Regulation 8A provides that a person claiming to be a Creditor in a Class is required to submit claim with proof to IRP on Form 'CA'. Most important point which is raised before this Bench is that a person being one of a Creditor is required to indicate his choice among the three choices suggested by the IRP under Regulation 6(2)(bb) of IRP for Corporate Persons Regulations 2016. This Sub-Regulation is reproduced for ready reference:-

*"Regulation 8A(1)---*

*(2) .....*

*(3) A Creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.*

6.3. On co-joined reading of Regulation 4A, 6(2)(bb) and 8A(3) an unambiguous procedure has been laid down that the Learned IRP shall propose three names of authorised representative to represent Class of Creditors and thereupon make a Public Announcement, out of which a member of Class of Creditor can indicate his choice to act as "authorized representative". Meaning thereby it is mandated that a Creditor has to select a name of an authorised representative out of the three names proposed by IRP. There is no option prescribed under the Statute to suggest any other name by a Creditor.

6.4. This Bench has passed an Order on 05.10.2018 (*supra*) on due consideration of all the requisite facts and the law applicable and thereupon decided to approve the name of Mr. Sudip Bhattacharya, whose name has otherwise been approved by 422 votes of Creditors of this Class. The said Order was passed u/s. 21(6A)(b) of Insolvency & Bankruptcy Code, 2016. For ready reference, relevant section is reproduced below:-

***"Committee of Creditors.***

*21 (1) ....*

*(2) ....*

*(3) ....*

*(4) ....*

*(5) ...*

*(6) .....*

(6A) Where a Financial Debt –

(a) ...

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorized representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors.”

(c) .....

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meeting of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.”

6.5. Undisputedly, the said Order of 05.10.2018 passed u/s, 21(6A)(b) is a reasoned Order after due consideration of facts, merits and the law involved, therefore, need not to be interfered merely on submission of a Miscellaneous Application, which is *ab initio* not sustainable in the eyes of law. Through this Miscellaneous Application the Applicant, in a way, is seeking recall of the said Order which is beyond the jurisdiction of this Judicial Forum. Rather, it is hereby cautioned to such Applicants not to move this type of frivolous Miscellaneous Applications which may deter the process of CIRP as well as simultaneously having adverse effect on the speedy redressal of the rights of all other Creditors.

7. In the light of the above discussion and the reasons assigned, these Miscellaneous Applications are Dismissed.

Sd/-  
(M.K. SHRAWAT)  
Member (Judicial)

Date : 14.11.2018.

ug