

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.304

IA/533(AHM)2024 in CP(IB)/40(AHM)2023

Order under Section Rule 11 of NCLT Rules,2016

IN THE MATTER OF:

Bhavan Trivedi IRP of Ramos Ceramic Private Limited**Applicant**
V/s

Sicer India Private Limited (Formerly Known as Sicer Inkera**Respondent**
Private Limited) & Others

Order delivered on: 25/07/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

SD/-

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT No.2**

**IA 533/NCLT/AHM/2024
IN
CP (IB) 40/NCLT/AHM/2023**

[An Application for appointment of RP and the provisions of funds required for the effective continuation of the CIRP with the allocation of the said funds to be determined by the CoC]

In the matter of:

Ramos Ceramics Private Limited (Corporate Debtor)

And

In the matter of:

CA & IP Bhavan Trivedi
Interim Resolution Professional (IRP)
Having office at: 55, 6th Floor,
Shri Krishna Centre,
Nr. Mithakali Six Roads,
Navrangpura, Ahmedabad-380009

...Applicant

Versus

1. Sicer India Private Limited
(Formerly known as Sicer Inkera Private Ltd.)
Registered office at:
C/o. Evershine Cera Pvt. Ltd.
Nr. Makson Ceramic 8-A National Highway
Dhuva, Rajkot, Wankaner,
Gujarat -363621

...Respondent No.

2. Gibraltar Glass and Ceramics Private Limited
Registered office at:
Survey No. 110, Village- Sartanpur
Tal: Wankaner, Rajkot, Morbi,
Gujarat-391440

...Respondent No.2

3. Favourite Minerals LLP
Survey No. 110, Village- Sartanpur
Tal: Wankaner, Rajkot, Morbi,
Gujarat-391440

... Respondent No. 3

Order pronounced on 25/07/2024

Coram:

**MRS. CHITRA HANKARE,
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant: Mr. Amrish Gandhi, PCS a.w.
Darshan Pathak, PCS
For the Respondent: Mr. Arpit Singhvi, Advocate for R-2
RP : Mr. Bhavan Trivedi, IP
For Operational Creditor : Mr. Vinit Nagar, PCS

J U D G E M E N T

1. Through IA 533 of 2024, Applicant is seeking appointment of IRP and prayed for following reliefs:
 - i. Direct the Committee of Creditors(CoC) of Ramos Ceramic Private Limited to promptly initiate the necessary as per Section 22(3)(b) of the Insolvency and Bankruptcy Code, 2016 for the appointment of Resolution Professional(RP).

- ii. Should this Tribunal deem the transition from the existing Interim Resolution Professional (IRP) to Resolution Professional (RP) appropriate, it is humbly requested to guide the Committee of Creditors to allocate funds for RP fees and CIRP expenses, including expenses for filing and processing this application, in advance, in accordance with the provisions of the IBC.
 - iii. Instruct the CoC to deposit the allocated funds either with the court or directly remit them to the appointed RP in compliance with the provisions of the IBC, to ensure the effective continuation of the proceedings.
 - iv. Considering the mandate of Regulation 17(3) of the IBBI Regulations, which stipulates the Interim Resolution Professional's performance of the Resolution Professional's functions from the 40th day of the insolvency commencement date in the event of a delay in the appointment of a resolution professional, this Tribunal is earnestly urged to direct the Committee of Creditors(CoC) of Ramos Ceramic Private Limited to allocate necessary funds for the payment of the fees and expenses incurred by the Interim Resolution Professional during the deemed RP period.
 - v. To direct the Committee of Creditors (CoC) of Ramos Ceramic Private Limited to exercise its discretion in determining whether to proceed with the CIRP. Should the CoC decide not to pursue the CIRP it may kindly be allowed to withdraw the application filed under CP(IB) 40(AHM)2023, in accordance with the provisions of the IBC, 2016.
2. The brief facts of the case are that the Corporate Debtor was admitted under CIRP vide order dated 14.02.2024. Mr. Bhavan Trivedi , IP is appointed as IRP. The application filed under Sec 9 of IBC 2016 was submitted by R1 and on its approval this Tribunal appointed the applicant as IRP in terms of Sec 16 of the IBC 2016 as the application was

submitted by an Operational Creditor of the CD. The role of the IRP was to start the CIRP process and convene the first meeting of the CoC in terms of Sec 17 and 18 of IBC 2016. The applicant had done that and formed a committee of creditors in terms of Sec 21 of the Act comprising exclusively of Operational Creditors. It is stated that in the first meeting of the CoC, comprising Operational Creditors of the Corporate Debtor convened on 18.03.2024, the members of the CoC were unable to reach a resolution regarding the appointment of new RP, therefore, no application pursuant to the provisions of Section 22 of the IBC 2016 was made on approval of COC for appointing a new RP.

3. It is to reiterate that upon public announcement of the CIRP claims were lodged with the said IRP and the CoC was constituted. Additionally an order was passed in IA 473 of 2024 filed by the IRP for placing on record the report certifying the CoC. The RP also arrived at the voting share of each of the 3 operational creditors. In the first meeting of CoC the committee, two resolutions placed by the IRP for approving the fee to be paid and his offer to continue as RP (on approval by CoC) was not approved and two out of three

members submitted their votes, expressing dissent on 20.03.2024 by email. The third member of CoC i.e. R-2 Gibraltar Glass and Ceramics Private Limited, neither provided assent nor dissent within the stipulated timeline. The voting share with 86.06% comprising 2 COC members disapproved both the resolutions, for the appointment of RP and the fee and expenses was disapproved. The CoC failed to nominate any new RP to be appointed as the RP in accordance with the Section 22(2) of the IBC 2016.

4. The Applicant relied upon Section 22(2) & 22(3) of the IBC 2016 and prayed this Tribunal to direct the CoC to initiate the necessary application and whether the transition from the existing IRP to RP deemed appropriate and prayed to consider guiding the CoC to allocate funds for RP fees and CIRP expenses in advance ensuring the smooth continuation of the CIRP proceedings. This may entail either depositing the funds with the Court or directly remitting them to the appointed RP as per the provisions of the IBC.
5. On issuance of notice from the Registry, the Ld. Counsel for the Respondent No. 2 appeared and filed its affidavit-in-reply

as well as written submissions. However, the Respondent Nos. 1 & 3 are proceeded Ex-parte.

6. The Respondent No. 2 stated in its reply that he is withdrawing its claim filed before the Applicant and withdrawing itself from the CoC that has been constituted. R-2 is seeking liberty to file such further detailed affidavit as and when required. It is to state that its claim of Rs. 65,96,194/- was admitted by the Applicant and he is acquired 13.94% voting share in CoC. It is also stated that owing to the expenses involved in the CIRP process, the R-2 does not want to pursue the CIRP against the Corporate Debtor as a member of CoC.
7. Having heard Ld. PCS for the Applicant as well as Ld. Counsel for the R-2 and perused the material available on record the following observations are made.
 - a) The IRP appointed in terms of the provisions of Section 16 of the IBC had constituted the committee of creditors in terms of Section 21 of the IBC. When there are no financial creditors, the IRP has rightly formed the committee with representation of Operational Creditors as per Regulation 16 of IBC Regulations 2016.

- b) The IRP has sought confirmation of the IRP expenses which was not ratified by 2 of the members, including the Operational Creditor who has moved the application for insolvency under Sec 9, while one of the members has not voted, and abstained. Subsequently he has withdrawn the claim and sought removal from COC.
- c) The appointment of a new RP was not suggested or the name of the same IRP who offered himself was not approved by the COC.
- d) In case the IRP cost is not approved by COC members, it is the responsibility and cost to the applicant COC member who even if has dissented has to bear the IRP expenses. This is also decided in the case of *Guru Containers Vs Jitendra Palande* by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.106 of 2023 passed on 22. 02.2023.
- e) The IRP's continuance as RP has not been approved in the first COC meeting and subsequently there are no other COC meeting which needs reconstitution and appointment of a new RP. This has also been decided in the order by

Hon'ble NCLAT as the CoC can still replace the IRP under Section 22 of IBC.

- f) Hence the IRP who is the applicant is eligible for his dues of IRP cost as his fee and reimbursement of CIRP cost incurred to be paid by the R1 namely Sicer India Pvt Limited who has preferred this application. However, he is not eligible to continue as RP as the COC in its 1st meeting has decided against the agenda for his nomination as RP. In view of the above we pass the following order.

ORDER

- i. IA No. 533 of 2024 is partially allowed.
- ii. R-1 is directed to pay the IRP cost and fee to the IRP without any further delay.
- iii. The IRP to convene a meeting of COC wherein the COC members (2) will approve the reconstitution of the COC and approve a new RP in place of the IRP who is the applicant in this matter. In case the R-3 votes for the reconstitution and replacement of RP he will share the CIRP cost incurred with R-1.
- iv. In case R-1 and R-3 decide not to appoint another RP or reappoint the IRP to continue, they will withdraw their

claims before the IRP and if such withdrawal is by more than 90% of claimants, the Tribunal will decide further in the matter.

v. IRP cannot do any other function other than convening the next meeting of COC for the matters mentioned in this order.

8. With the above said observations, IA No. 533 of 2024 is stands disposed of.

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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