

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 18.10.2019

PRIORITY CAUSE LIST – 1

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Dr Ashok Kumar Mishra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 84/BB/2019	For orders IA 502/19 IA 509/19 IA 510/19 IA 532/19 - CIRP	Sec 7 of I&B code 2016	M/s Pratap Chandra Pandhy & Ors	Abhay Kumar Das/Aruni Poddar, Advocates	M/s Dreamz Infra India Ltd	Ashok Kri IRP Shanmukh Bharadwa IRP

for Applicant in IA 532/19

Ramesh Chand I/B

ADVOCATE FOR PETITIONER/s: MR. ARUNI PODDAR Adv.
Aruni Poddar
9540555810

ADVOCATE FOR RESPONDENT/s:

for IRP

SHANMUKHA BHARADWAJ
Applicant in IA 502/19, 9986333532
IA 509/19
IA 510/19

S. VISWANATHAN
AR 99009632

D TO

ORDER

Heard Shri Ricab Chand along with Shri Aruni Poddar, learned Counsels for Applicant in I.A.No.532 of 2019 and Shri Shanmukha Bhardadwaz, learned Counsel for Applicant in I.A.No.502 of 2019, I.A.No.509 of 2019 & I.A.No.510 of 2019 and Shri S. Viswanathan, Authorized Representative. I.A.No.502 of 2019, I.A.No.532 of 2019, I.A.No.509 of 2019 & I.A.No.510 in C.P.(IB)No.84/BB/2019 are disposed of by separate order. Post the main CP on **19.11.2019**.


MEMBER(T)

Puja


MEMBER(J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.509/2019 in
C.P.(IB)No.84/BB/2019
U/ss. 17 & 18, R/w Section 238 of the IBC, 2016

In the matter of

Shri Ashok Kriplani

*Interim Resolution Professional of
M/s.Dreamz Infra India Limited
R/o. 17/13, Old Rajinder Nagar,
New Delhi – 110 060*

- Applicant/IRP

VERSUS

1. The Asst. Commissioner, South Sub-Division

Office of DC, KG Road, Near District Registrar Office
Ambedkar Veedhi, Sampanagi Rama Nagara,
Bengaluru – 560 009.

2. The Superintendent of Police

Economic Offence,
CID, Carlton House, Palace Road
Bengaluru – 560 001.

- Respondents

Date of Order: 18th October, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For Applicant/IRP : Shri Shanmukha Bharadwaz

ORDER

Per: Rajeswara Rao Vittanala, Member (J)



1. I.A.No.509/2019 in C.P.(IB)No.84/BB/2019 is filed by Shri Ashok Kriplani ('Applicant/Interim Resolution Professional') U/ss. 17 & 18, R/w Section 238 of the IBC, 2016, by inter alia seeking to direct the Asst. Commissioner and the Superintendent of Police to cooperate with the IRP especially in providing all knowledge and list of properties and Assets of the Corporate Debtor etc.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) Initially, the Adjudicating Authority has passed an order dated 20.08.2019 admitting the Company Petition by initiating CIRP, appointed Shri Ashok Kriplani as IRP, imposing moratorium etc.
 - (2) On 31.08.2019, the IRP emailed to the Corporate Debtor to cooperate with him by providing the balance sheets of last two years, books of accounts, name of his bankers etc. The email could not be sent to one email ID of the Corporate Debtor that was acquired from its Master Data, due to some temporary problem that the mail client reported it had with the provided email id. The same email however was reported to have been received by the Corporate Debtor on the email id that was provided in the Petition for CIRP failed against the Corporate Debtor.
 - (3) It is submitted that on 09.09.2019 the IRP visited the office of the R2 to only come to know orally that the R2 has handed over all the properties with it to the R1 vide notification of the state government dated 20.06.2019 published in The New India Express vide dated 27.07.2019 that the properties of the Corporate Debtor are attached and is under control and custody vide government



notification No. RD 17 GRC 2017 (P-2) dated 20.06.2019. Thereafter the IRP approached the R1 with a letter and annexure to give all the properties and documents in their custody to the IRP, the said application is pending therein. Therefore, the Respondents may be directed to cooperate with the IRP to resolve the issues between the lenders and the Corporate Debtor.

3. Heard Shri Shanmukha Bharadwaz, learned Counsel for the Applicant/Interim Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code.
4. As per law, it is duty of all statutory authorities including the Police to extend full co-operation to IRP/RP so as to facilitate CIRP to conclude.
5. Hence, I.A.No.509/2019 in C.P.(IB)No.84/BB/2019 is hereby disposed of by directing the Respondents to take appropriate decision on the request made by the IRP as expeditiously as possible, on production of a copy of this order.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.502 of 2019

U/s 21& sub-Section 6(A) (b)
Of the IBC, 2016

&

I.A.No.532 of 2019

U/s 60(5) of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016

in

C.P.(IB)No.84/BB/2019

1. I.A. No.502 of 2019:

Shri Ashok Kriplani

*Interim Resolution Professional
of M/s.Dreamz Infra India Limited
17/13, GF, Old Rajinder Nagar,
New Delhi – 110 060.*

- Applicant/IRP

2. I.A.No.532 of 2019:

Between:

Shri Pratap Chandra Padhy

House No.64, Srinivasa Nilaya,
Ground Floor, 3rd Cross,
Ashwathanagar, RMV 2nd Stage,
Sanjay Nagar,
Bengaluru – 560 094. & 2 Others

- Applicants/Financial Creditors

And

M/s.Dreamz Infra India Limited

*Through Shri Ashok Kirplani (IRP) of
M/s. Dreamz Infra India Limited
577/B, 2nd Floor, Outer Ring Road,
Teachers Colony, Koramangala,
Bengaluru – 560 034.*

- Respondent

Date of Order: 18th October, 2019


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Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For I.A.No.502 of 2019:

Counsel for Applicant/IRP : Shri Shanmukha Bharadwaz
Authorised Representative : Shri S. Viswanathan

For I.A.No.532 of 2019:

For the Applicant : Shri Ricab Chand with
Shri Aruni Poddar
For the Respondent/IRP : Shri Shanmukha Bharadwaz

COMMON ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.502 of 2019 in C.P.(IB)No.84/BB/2019is filed by Shri Ashok Kriplani, Interim Resolution Professional of M/s.Dreamz Infra India Limited (hereinafter referred to as 'Applicant/IRP') under Section 21 & Sub-section 6(A)(b) of the IBC, 2016, by inter alia seeking to appoint Insolvency Professional Mr. Viswanathan, as Authorised Representative of a class of Financial Creditors (home or shop buyers) of M/s.Dreamz Infra India Ltd.
2. I.A.No.532 of 2019 in C.P.(IB)No.84/BB/2019is filed by Shri Pratap Chandra Padhy & 2 Others (hereinafter referred to as 'Applicants/Financial Creditors') under Section 60(5) of the IBC, 2016, R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to direct the AR to perform his duty as mandate under the Code, 2016; to set aside the recommendation of IRP for proposed RPs and to direct

the AR to forward the name of Mr. Konduru Prasanth Raju to put for voting by CoC etc.

3. Brief facts of the case, which are relevant to the issue in question, as mentioned in the Applications, are as follows:

- (1) The main Company petition filed by M/s.Pratap Chandra Padhy & 2 Others, a Financial Creditor, under Section 7 of the IBC, 2016 R/w Rule 4 of the I&B (AAA) Rules, 2016 was admitted by this Adjudicating Authority, vide order dated August 20th, 2019 ('Admission Order') by initiating CIRP, appointing Shri Ashok Kriplani (IBBI Registration No.IBBI/IPA-003/IP-P00009/2016-2017/10071as appointed as the IRP, moratorium etc.
- (2) It is stated that as per available information, the IRP estimated that a class of financial creditors (shop/home buyers) are in large. Hence, in accordance with regulation 4A (2) for representation of creditors in a class ascertained under sub-regulation (1) in the committee, the IRP identified three insolvency professionals, who are (a) not his relatives or related parties (b) eligible to be insolvency professionals under regulations 3 and (3) willing to act as Authorized Representatives of creditors in the class. The details of three Insolvency Professional are as under:
 - a. Mr. Viswanathan Sankaran,
Regd. No.IBBI/IPA-001/IP-P00538/2017-2018/10963
 - b. Mr. K N Ravindra,
Regd. No.IBBI/IPA-002/IP-N00559/2017-2018/11702
 - c. Mr. BaladyShekar Shetty,
Regd. No.IBBI/IPA-002/IP-N00213/2017-2018/10665
- (3) It is stated that in accordance with terms of regulation 4A (3), the IRP has obtained the consent of each insolvency professional identified under sub-regulation (2) to act as

the Authorized Representative of creditors in the class in Form AB of the Schedule. The IRP has provide their name in the Public Announcement made on 04.09.2019 to invite claims form the creditors of Corporate Debtor in accordance to Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017, and in accordance to Section 13 & 15 of the IBC, 2016. In response to Public Announcement, IRP has received claims from class of creditors. The IRP has determined the claim, after verification, based on available information, records, evidence as shared by the Corporate Debtor, Creditors and available at other source in accordance to Regulations 7, 8, 9 & 9A, 10, 12, 13, 14,15, 16 of IBBI(CIRP) Regulations, and prepared the list of a class of home/shop buyers and their selection for AR.

- (4) For the first CoC the agenda mooted by the IRP on 27.09.2019 and the voting percentages are given below:

Agenda	Particulars
Agenda No.1	On quorum
Agenda No.2	Voting Share of FC
Agenda No.3	To take note of IRP work and progress report
Agenda No.4 (Includes two agenda vide 4A and 4B)	Agenda 4A: CIRP expenses Rs.5,44,713/- Agenda 4B: IRP fees Rs.10,00,000/- per months

Agenda No.5	Approval for interim finance (Rs.500 per claimant and the Corporation Bank to contribute Rs.5 Lakhs)
Agenda No.6	Present IRP does not offer for continuation as RP Mr. Shankar B. Iyer (IP) was introduced by present IRP with Rs. 3 lakhs per month.

- (5) It is stated by the Applicants of I.A. No. 502 of 19 that the name of Mr. Shankar B. Iyer, was proposed to vote as RP without any consultation of CoC. Due to distrust, the proposed appointment was refused by 94% votes. Consideration of fees of Rs.10,00,000/- for IRP was refused by 94% votes. Consideration of fees of Rs.10,00,000/- for IRP was refused by 96% vote. An agenda whereby he proposed contribution of Rs.500/- per buyer to be deposited in designated account was voted negatively with 87% votes. In spite of negative voting, it is alleged that the IRP hold that AR and IRP along with Corporation Bank decided to overturn the mandate of the CoC and started threatening the home buyers that if they do not deposit required amount of Rs.500/- per head, their name will be deleted from the list of CoC and voting will be seized. Such announcement was repeatedly made by the IRP to extract pressure on the CoC to deposit such money in spite of the fact that CoC rejected such proposal.
- (6) It is also stated that some members of the CoC in huge number given a counter offer for deposit of Rs.400/- in place of Rs.500/- and further informed in the agenda that once RP is appointed, they will look into the other expenses claimed by the IRP. Against the fee of Rs.10.00 Lakhs, a



sum of Rs.1,50,000/- was offered to be decided in the CoC. Further, the name of an IRP, who is local of Bangalore was proposed as RP and it was requested to call CoC meeting before 8th October, 2019. But the AR did not reply and IRP did not circulate any agenda for above. To above agenda, no heed was given by the IRP but he mooted his own agenda whereby he required Rs.500/- to be paid and asking home buyers to recommend some names for RP so that kiosk can be created and he will continue to act as RP by default provision of the Code.

- (7) It is also stated that to above agenda, 87% votes are in negative. But in spite of that, the IRP took to himself and AR and Corporation Bank to force the home buyer in name of CoC to cough up Rs.500/- per person. Once the CoC has voted against the resolution it is not within the power of the IRP to overrule the decision and voting. IRP is adamant for Rs.10,00,000/- fee and is not at all listening to the CoC. He has implanted Mr. Viswanathan Sankran as AR by making misleading claim of voting percentage and refrained from disclosing that the Adjudicating Authority has till now not accepted his appointment as such under the Code.
- (8) That the IRP has failed to take any action as required under the Code. Simply he made his record and statement as per the information and papers supplied by the home buyers in good faith but now the IRP is targeting some of these home buyers. The numerous complaints have been sent by home buyers to IBBI.

4. Heard Shri Shanmukha Bharadwaz, learned Counsel for IRP and Shri S. Viswanathan, Authorized Representative and Shri Ricab Chand learned Counsel for Applicant in I.A.No.532 of 2019. We have carefully perused the pleadings of both the parties and extant provisions of the Code.
5. Shri Ricab Chand, the learned Counsel has alleged that the IRP came with the 2ndCoC list dated 14.10.2019, whereby he has included only 605 members of CoC out of total more than 1800 claimant and also given the reason that claims of such Homebuyers/Claimants and the sole Financial Creditor will simply be rejected by the IRP, who do not contribute as stated above by the aforesaid date. The agenda published by the IRP has been rejected by the CoC members and stated that the IRP does not have power to curtail voting right of the claimant and rejecting the claim. In fact, those around 600 people have deposited the amount due to threatening issued by the IRP. They are ready contribute Rs.400/- instead of Rs.500/-.
6. Initially, only Shri Pratap Chandra Padhy and 2 others (Home buyers) have filed the main Company petition by alleging that the Corporate Debtor has committed default for Rs.40,06,625/- Accordingly, the case was admitted by initiating CIRP, appointed Mr. Ashok Kripalani, New Delhi, as IRP, who is incidentally suggested by Shri Pratap Chandra Padhy and others. Now, the same Applicants have filed the instant I.A.No.532 of 2019 by seeking various reliefs which includes to set aside the recommendation of IRP and proposed another RP etc. As per Law, once CIRP is initiated, the authority to conduct CIRP will vest in IRP/RP and COC. Therefore, I.A.No.532 of 2019 is not maintainable and Applicants Shri Pratap Chandra Padhy and two others, have no locus standi to interfere in the CIRP in question. On the other hand,



the IRP has chosen three qualified Resolution Professional to appoint as AR, as per law and put the choice to the Home buyers, vide Public Announcement dated 03.09.2019, as detailed supra and selected AR as per majority. Prima facie there is nothing illegal in the decision taken by the IRP in choosing three RP and then AR.

7. As per the details given in the Application in I.A.No.502 of 2019, the IRP has followed extant provisions of Code and the rules made there under in choosing Authorised Representative. It is clearly stated that Mr. Viswanathan, Resolution Professional got 53.2% whereas other two namely K.N. Ravindra and B.S. Shetty got 16.5% and 13.4% respectively. However, it is alleged that the IRP is resorting to change the voting percentage of COC, choosing his own persons etc as alleged in I.A.No.532 of 2018, we are not inclined to approve the appointment of Viswanathan, at present, in order to have transparency in the selection, and to avoid further litigation on the issue, in future, as Code provides prescribed timelines. Since almost two months are over from the admission of the case, it would be in the interest of justice and equity, that all concerned should cooperate so as to conclude CIRP in question, without further delay and as every day is important in the process as the object of code is for maximization of value assets of Company. Therefore, we are inclined to dispose of both the Applications with suitable directions as mentioned below. The threat of rejection of claims of home buyers , who have not contributed Rs.500/- is not at all correct and all the claimants, who have made their respective claims should be kept on the live list of homebuyers, subject to further decision to be taken by COC on later date, on the cost of CIRP. In any case, all Home buyers are to be treated as class without any discrimination on any count including contributing CIRP costs. Since the COC is dominated by Creditors in class (Home/Shop



Buyers) with nominal claim of Corporation Bank (FC), all decisions should be desirable to taken by COC as per law.

8. In the result, both I.A.Nos.502 & 532 of 2019 are hereby disposed of with the following directions:

- 1) We are hereby directed the IRP to keep the names of all Home buyers, who have filed their respective claims as per law, on the live Register pending decision on contributing to CIRP costs at later date.
- 2) The IRP is directed to give one more opportunity by granting ten days time from the date of publication, to the remaining Home Buyers, who have not exercised their choice of AR, among three Resolution Professionals, who are already selected by IRP, and thereafter decide the choice of AR as per law, and the IRP can file an appropriate Application before the Adjudicating Authority seeking to appoint such AR. We make it clear that choice of AR is restricted to three Resolution Professionals as already selected, and present option will be extended and available to only those, who have not exercised their choice of AR.
- 3) In the meanwhile, the IRP is directed to continue as IRP and discharge all his statutory functions, as per law, without any delay. The IRP is also directed to take immediate action to implement the above direction.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.510/2019 in
C.P.(IB)No.84/BB/2019
U/s. 19 (2) of the IBC, 2016
R/w Rule 30 of the IBBI (CIRP)
Regulations 2016

In the matter of

Shri Ashok Kriplani

Interim Resolution Professional of
M/s.Dreamz Infra India Limited
R/o. 17/13, Old Rajinder Nagar,
New Delhi – 110 060.

- Applicant/IRP

VERSUS

Mrs. Disha Choudhary

Suspended Director,
2C-74, Windermere CHS LTD,
Oshiwara, Meera Tower,
Andheri (West),
Azad Nagar,
Mumbai – 400 043 & 3 Ors.

- Respondents

Date of Order: 18th October, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For Applicant/IRP : Shri Shanmukha Bharadwaz

ORDER

Per: Rajeswara Rao Vittanala, Member (J)



1. I.A.No.510/2019 in C.P.(IB)No.84/BB/2019 is filed by Shri Ashok Kriplani ('Applicant/Interim Resolution Professional') U/s. 19(2) of the IBC, 2016, R/w Rule 30 of the IBBI (CIRP) Regulations, 2016, by inter alia seeking to direct the Respondents to cooperate with the IRP, especially in providing the up to date account books, audited balance sheet of last two years, list of stocks, inventories, list of fixed and movable assets, names and address of the bankers of the Corporate Debtor, list of litigations, tally or like accounts software etc. and phone numbers and email address of the Directors of the Corporate Debtors, so that IRP is able to make an effective and marketable IM; to direct the Respondents Nos.1, 2, 3, 4 to immediately hand over all the Properties of the Corporate Debtor as mentioned in the list of assets and disclose location of any other works or the sister concerns, subsidiaries, associate companies of the Corporate Debtor.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) Initially, the Adjudicating Authority has passed an order dated 20.08.2019 admitting the Company Petition by initiating CIRP, appointed Shri Ashok Kriplani as IRP, imposing moratorium etc.
 - (2) It is submitted that the Respondents Nos.1 to 4 are the suspended Directors of the Corporate Debtor. On 31.08.2019, the IRP emailed to the Corporate Debtor to cooperate with him by providing all the necessary information required by the IRP in conducting the Corporate Insolvency Resolution Process of the Corporate Debtor but the above said email got bounced back each time stating reason that the recipient server did not accept



requests to connect or said email address does not exist and after trying for complete 03 days, the Gmail on 03.09.2019 confirmed that the email is not delivered. Again, another email has been sent by the IRP to the Corporate Debtor on 01.09.2019, and the same was got delivered the same day and also sent email to the Counsel of the Company but no reply has been received so far. Thereafter, the IRP issued public announcement on 03.09.2019 at Bengaluru.

- (3) It is submitted that not replying to emails clearly shows that ill intentions of the suspended Directors of the Corporate Debtor of non co-operation with the IRP in present as well as in future. The IRP has further attempted to contact suspended Directors of the Corporate Debtor twice by way of post but to no avail. Most of the properties of the Corporate Debtor are in the custody of the CID for which separate application is being preferred by the IRP.
3. Heard Shri Shanmukha Bharadwaz, learned Counsel for the Applicant/Interim Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code.
4. It is settled position of law that on initiation of CIRP in respect of Corporate Debtor, it is the duty of all concerned including Suspended Directors and employees of Corporate Debtor to extend full co-operation in the process of CIRP to conclude it. It is to point out here that the Adjudicating Authority, while admitting the petition, it is already directed the Board of Directors and all the staff of Corporate Debtor to extend full Co-



operation to the IRP in carrying out his functions as prescribed under the Code.

5. Hence, I.A.No.510/2019 in C.P(IB)No.84/BB/2019 is hereby disposed of by directing the Respondents to co-operate fully with the IRP and to provide all information, books of accounts, audited balance sheet of last two years, list of stocks, inventories, list of fixed and movable assets, names and address of the bankers of the Corporate Debtor, list of litigations, tally or like accounts software etc. and phone numbers and email address of the directors of the Corporate Debtors to the IRP without fail.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi