

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

I.A.(IB) 54/KB/2022

In

C.P (IB) No.1614/KB/2019

In the matter of

An application under section 22(3) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

Prism Johnson Limited, having its registered office at-305, Laxmi Niwas Apartments, Ammeerpet, Hyderabad-16, Telengana, -500016, having its Regional Office at Unit 4N, 4th Floor, New Town Square, Near City Centre-II, Chinar Park, Atghara, Rajarhat, Kolkata-700136, West Bengal

.... Operational Creditor

Versus

RNM Infram Private Limited, having its registered office at 30, Mukherjee Para Lane, P.O. Serampore, Hoogly-712201

.... Corporate Debtor

And

In the matter of

Committee of Creditors of RNM Infra Private Limited on replacement of IRP Mr. Kanchan Dutta, having Regd. No. IBBI/IPA-001/IP-P00202/2017-18/10391 with RP Mr. Saradindu Jena, having Regd. No. IBBI/IPA-002/IPN00520/2017-18/11622.

And

Committee of Creditors through one of the Financial Creditor The Federal Bank Limited having a voting share of 74.97% in the said Committee of Creditors.

... Applicant

Date of hearing : 28/02/2022

Order Pronounced on : 08/03/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Ms. Aparajita Rao, Adv.] For Applicant
2. Mr. Rahul Auddy, Adv.] For IRP

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. By way of this IA (IB)54/KB/2022 in CP(IB) No. 1614/KB/2019 filed by the CoC,the applicant herein. It is prayed that the name of Mr. Saradindu Jena,an Insolvency Professional, having Registration No. IBBI/IPA/002/IP-N00520/2017-18/11622, be approved as Resolution Professional in place of Interim Resolution Professional Mr. Kanchan Dutta, having its Registration No. IBBI/IPA-001/IP-P00202/2017-18/10391.
3. It is submitted that the CP was admitted on 21.01.2020 and Mr. Kanchan Dutta was appointed as Insolvency Professional, who took charge on 8th February, 2020 and made public announcement on 11th February, 2020. Thereafter, the Shareholders/ Directors of the Corporate Debtor filed an IA No. 341/KB/2020 challenging the Order dated 21/01/2020 initiating CIRP, and vide order dated 5th March,2020 , this Adjudicating Authority imposed a stay

of CIRP and directed IRP not to proceed till the said IA was disposed of. On 23/12/2021, the aforesaid IA was dismissed and stay order was vacated, thereby resuming the CIRP from that day i.e. 12th December, 2021. It is stated that the IRP formed a CoCs on the basis of claims received by him on 31st December, 2021. The first meeting of the CoC was held on 07/01/2022 and the IRP expressed his willingness to act as RP in the matter at a remuneration of Rs.1,25,000/- plus GST and other expenses as per actual. It is submitted that the Federal Bank Ltd. having 74.9% voting strength in the CoC, proposed the name of Mr. Saradindu Jena, an Insolvency Professional having Regd. No. No.IBBI/IPA-002/IP-N00520/2017-18/11622 as RP at a remuneration of Rs.85,000/-and other expenses as per actual. The IRP put the proposal as Resolution in the E-voting process. The Resolution was passed with 97.37 % of total voting strength of CoC.(Annexure-C). It is submitted that Mr. Saradindu Jena, has also submitted his consent in the matter in Form-AA as per IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. (Annexure-D). It is submitted by the applicant that there is no Disciplinary Proceedings pending against the proposed IRP Mr. Saradindu Jena.

4. It is noticed that only because the IRP has demanded a fees which is not suitable to the members of the CoC, they have sought replacement of the said IRP by approving the name of another IRP who is charging lessor fees.

5. In this regard Section 27 of Insolvency and Bankruptcy Code, 2016 is relevant and is reproduced as under:-

“ Replacement of resolution professional by committee of creditors

(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors 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.

Section 27(2) envisages that-

- (2) *The Committee of creditors may, at a meeting, by a vote of sixty-six percent of voting shares, resolve to replace the resolution professional appointed under section 27 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.*
- (3)- *Further provides that the committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.*
- (4) *It is further submitted that the Adjudicating Authority shall forward the name of the proposed insolvency 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) *Further provides that 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”.*

6. We may notice here that if the name of the RP that has been forwarded to the Adjudicating Authority is to be forwarded to the Board for its confirmation, it would be better if we appoint a person out of the approved list of the IPs, which has been duly approved, for all purposes and conveyed to NCLT, for being appointed in such a case instead of sending the name proposed by the CoC, to IBBI, to save time.

7. We, therefore, appoint **Mr. Kanakabha Ray** having Registration No. **IBBI/IPA/003/IP-N00204/2018-2019/12456,** **email** **Id** kanak1686@gmail.com to act as Resolution Professional in place of **Mr. Kanchan Dutta**, the outgoing RP who is directed to hand over all documents in his possession to the newly appointed RP, within seven days from today. The incoming RP shall file further progress report in the matter accordingly.

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8. A copy of this order shall be sent to the IBBI Board for information.
9. With the above directions, **I.A. (IB) 54/KB/2022** shall stand disposed of.
10. List the matter on **29/04/2022** for filing of **Progress Report**.
11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 8th of March, 2022

Pj