

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (I.B.C) No. 434/KB/2022

I.A. (I.B.C) No. 423/KB/2022

In

C.P. (IB) No. 1062/KB/2019

Applications under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

Dipak Bhadra

...FINANCIAL CREDITOR

Versus

RCBS Realty Private Limited

...CORPORATE DEBTOR

IN THE MATTER OF:

Ratul Gupta

...APPLICANT.

Versus

Rajat Mukherjee, Resolution Professional & Ors.

...RESPONDENTS.

And

I.A. (I.B.C) No. 434/KB/2022

IN THE MATTER OF:

Ratul Gupta, Shaila Towers, Block B, 3rd Floor, Flat No. 301, 759,
Hossainpur, Madurdaha, Kolkata-700107.

... APPLICANT.

Versus

1. Rajat Mukherjee, Resolution Professional, having his office at 302,
Daga Complex, II, 103/5, B.K. Street, Uttarpara, Hooghly, West Bengal –
712258.

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2. Committee of Creditors, of the Corporate Debtor, having its office at 111, Shyama Prasad Mukherjee Road, Kolkata – 700029.

3. Ravi Baghri, Authorised Representative of plot holders having its address at Octacrest Complex, Wing – A, Flat No. 1101, Lokhandwala Township, Kandivali (East) Mumbai – 400101.

... RESPONDENTS.

And

I.A. (I.B.C) No.423/KB/2022

IN THE MATTER OF:

Kinkar Ghosh, son of Debiprasad Ghosh residing at 12/2/6/1 Umesh (Chandra) Banerjee Lane, Howrah, Khurut Road, Howrah – West Bengal 711101, representative of 200+ number of plot holders of the Corporate Debtor.

... PETITIONER

Versus

1. **Mr. Rajat Mukherjee, Resolution Professional of RCBS Realty Private Limited (In CIRP)**, residing at 302 Daga Complex II, 103/5 B. K. Street, Uttarpara, Hooghly, West Bengal-712258

And

2. **Mr. Ravi Bagri, the Authorized Representative of the plot holders of RCBS Realty Private Limited** having its address at Octacrest Complex, Wing-A, Flat No. 1101, Lokhandwala Township, Kandivali (East)- 400101, Maharashtra.

... RESPONDENTS

Date of pronouncement of order: 30.04.2024

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

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Appearances (via Video Conferencing/Physical):

Mr. Jishnu Ghoudhury, Adv.] For the Petitioner in
Mr. Aritra Basu, Adv.	] IA(I.B.C)/434(KB)2022
Mr. Niladri Khwaza, Adv.]
Mr. Sunil Kumar Singhania, Adv.	] For the Operational Creditor
Ms. Kalpana Singhania, Adv.]
Mr. R. Bagchi, Adv.	] For the Resolutional Professional
Mr. Dripto Sen, Adv.]
Mr. Rajat Mukherjee, RP]
Mr. Rahul Auddy, Adv.	] For the Applicant in
Mr. Aditya Gooptu, Adv.	] IA(I.B.C)/434(KB)2022
Ms. Manju Bhuteria, Adv.	] For the Applicant in
Ms. Tanvi Luhariwala, Adv.	] I.A.(I.B.C)/406(KB)2022
Mr. Anirudhya Dutta, Adv.]
Mr. Kuldip Mallik, Adv.	] For the Applicant in
Mr. Shiven Ray, Adv.	] I.A.(I.B.C)/365(KB)2022
Mr. Atul Sureka, Adv.]
Mr. Pramit Bag, Adv.	] For R-3, Mr. Ravi Bagri
Mr. Sumit Biswas, Adv.]
Ms. Rajashree Bhowmick, Adv.]
Ms. Tanushree Sogani, Adv.	] For Original Petitioner(Dipak Bhadra)
Mr. Sunil Kumar Singhania, Adv.	] For one of the Operational Creditor
Ms. Kalpana Singhania, Adv.]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.
2. Ld. Counsels were heard and records were perused.

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I.A. (IBC) No. 434/KB/2022

- 3.** This application has been preferred to seek the following reliefs:-
- a. Resolution adopted by the members of the Committee of Creditors in the meeting convened on April 20, 2022, be set aside;
 - b. Injunction restraining the respondents from giving any effect or further effect or acting in terms of the resolution adopted by the Respondent No. 2 in the meeting convened on April 20, 2022 in any manner whatsoever;
 - c. An Order be passed forthwith for removal of the Respondent no.3
 - d. There should be an order of injunction restraining the Respondent No.3 from acting on behalf of the plot holders in any manner whatsoever.
 - e. Stay of the Corporate Insolvency Resolution Process of the Corporate Debtor, pending disposal of the present application;
 - f. Direction be given for reconstitution of the Respondent No.2;
 - g. Ad-interim orders in terms of prayers above;

4. Facts in a nutshell:

4.1. Shri. Rajat Mukherjee was appointed as the Resolution Professional ('RP' in short) of RCBS Realty Private Limited (for short, "Corporate Debtor". The CIRP in respect of the Corporate Debtor commenced on and from December 13, 2019.

4.2. The Corporate Debtor has three incomplete land development projects at Baruipur, Jibantala and Sonarpur. For the preservation and protection of the said landed properties, which are mostly non-demarcated land parcels. The RP had to deploy security guards and engage security services agency and the Corporate Debtor is being run as a going concern.

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4.3. Further, the Resolution Professional has filed the following applications:

Case No.	Case Matter	Applicant	Case Status	Registration Date
IA 325/21	PUFE Transaction	IRP/RP	pending	15-03-2021
#IA 764/21	Liquidation Application	IRP/RP	pending-Disposed off	25-08-2021
IA 26/22	CIRP Cost	IRP/RP	pending	10-01-2022
IA plan4/24	30(6) application on propos	IRP/RP	pending	15-03-2024
IA 72/20	Non Cooperation of CD	IRP/RP	disposed off	
IA 788/20	1 st Extension	IRP/RP	disposed off	
IA 51/21	2 nd Extension	IRP/RP	disposed off	
IA 145/21	AR Appointment	IRP/RP	disposed off	
IA 449/21	3 rd Extension	IRP/RP	disposed off	
IA 513/21	Early Hearing of IA449	IRP/RP	disposed off	
IA 213/22	Early Hearing of IA26	IRP/RP	disposed off	
IA 895/22	Urgency Application	IRP/RP	disposed off	
IA 1556/22	16 th progress report	IRP/RP	disposed off	

4.4. It is urged that at present, the following applications are pending before this Tribunal, wherein, RP has been arrayed as a party respondent:

Case No.	Case Matter	Applicant	Case Status	Registration Date
CP 1062/19	Initial Application	Dipak Bhadra FC	pending	05-07-2019

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IA 0471/21	Challenge CoC Constitution	Sanjeev Chakraborty SBoD	pending-RFO	21-04-2021
IA 0365/22	Subrogation Matter	Brainer India FC	pending	20-04-2022
IA 0406/22	Suspended BoD's Application	Sanjeev Chakraborty SBoD	pending	05-05-2022
IA 0423/22	Replacement of AR	Kinkar Ghosh FC in Class	pending-RFO	09-05-2022
IA 0434/22	Reverse CIRP	Ratul Gupta FC in Class	pending-RFO	17-05-2022
IA 0572/22	Challenging Plan of R Gupta	Brainer India FC	pending	16-06-2022
IA 0581/22	Challenging Plan of R Gupta	Dipak Bhadra FC	pending	17-06-2022
IA 1150/23	Challenge CoC Constitution	PNBHFL FC	pending	04-07-2023
IA 488/24	60(5) challenging proposal	Brainer India FC	pending	04-03-2024
IA 66/20	Challenge CoC constitution	Brainer India FC	disposed off	
IA 44/21	Challenge CoC Constitution	Rakesh Ranjan FC in Class	disposed off	
IA 811/21	Challenging Plan Rejection	Ratul Gupta FC in Class	disposed off	

4.5. The RP contends that to defend himself and to protect the interest of the Debtor company the RP has been incurring huge expenditure.

4.6. The contribution made so far by the CoC members have been depicted as under:

Collection details from Day 1 to Till Date

CD' bank a/c	273751
Brainer India	1315000

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Dipak Bhadra	55600
Anita Ranjan	42000
SBI	2637424
SBoD	675000
FC in Class	177840
Petitioner of IA 434 & 423	4080000
Mr. Ganguli & Mr Bagga	16592
PNBHFL	220200
	94,93,407

4.7. An application being I.A.(I.B.C) No. 26/KB/2022 for NET CIRP dues to the tune of Rs.55,87,442.00 as on 10.04.2024 has been Preferred.

4.8. An Order dated 10.04.2024 of this Tribunal records that an amount of Rs.14,23,703.56/- is due from Brainer has been paid. Rest of CoC are yet to contribute towards CIRP in full.

4.9. Meanwhile, a proposal for reverse CIRP is being deliberated upon.

4.10. This I.A. (IB) No. 434 of 2022 has been preferred by an allottee in the project. His contentions are as under:

5. Submissions of Applicant in IA 434 of 2022:-

5.1. This is a reverse insolvency matter. Three principal projects of the Corporate Debtor at and/or near Kolkata were 100%

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allotted. Those allottees have now come forward with Ratul Gupta, the Applicant, who is also an allottee. A Resolution Plan has been propounded by which all allottees get their dues. The Resolution Plan would have been approved by the CoC but for the fact that:-

- i.** The home buyers' authorized representative ("AR") acting with vested interest and contrary to the wishes of the home buyers, went against them and their proposed plan;
- ii.** In collusion with certain Financial Creditors, the AR did not allow the plan of the home buyers to be voted on and has tried to send the Corporate Debtor into liquidation.

5.2. Subsequently, by an Order dated 06.10.2023, the AR has been removed. Upon voting done under the supervision of the Deputy Registrar of the Tribunal. Subsequently, after another set of voting, the decision of the majority of the home buyers to proceed with the plan has been recorded.

5.3. All that is required to be done is to now place the home buyers' plan formally before the CoC. The majority of the CoC with voting shares 70% are the home buyers themselves. Therefore, their plan will be approved.

5.4. The applicant in I.A.(IB) No. 434/KB/2022 has challenged the decision of the Committee of Creditors dated April 20, 2022 as unsustainable. It is contended that the resolution adopted by the members of the Committee of Creditors on April 20, 2022 cannot be sustained as the resolution plan prepared and submitted by the

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Applicant was neither considered by the members of the CoC, nor put to vote.

5.5. The Applicant thus prays that the decision dated 20th April, 2022 be set aside and the matter be remanded to the CoC for fresh consideration after excluding the period from 20th April, 2022. **In the light of Committee of Creditors of Essar Steel Ltd. Vs. Satish Kumar Gupta & Ors. reported at (2020) 8 SCC 531; paragraph 19, 20, 21 and 24 and Committee of Creditors of Trading Engineers International Ltd. vs Trading Engineers International Ltd., through Resolution Professional, reported at 2021 SCC Online NCLAT 46; paragraphs 1 to 5.**

5.6. It is urged that the Hon'ble Supreme Court of India and the Hon'ble National Company Law Appellate Tribunal have held that reverse CIRP is possible, as liquidation is the last resort. Reference is made to the following:

a. Anand Murti Vs. Soni Infratech Private Limited and Another, reported at (2023) 3 SCC 743; paragraphs 19, 20, 22:

"Where The Hon'ble Supreme Court of India after considering the undertaking given by the promoter of the Corporate Debtor, that the same will be in the interest of the Home Buyers, allowed the promoter to complete the housing project."

b. Amit Katyal Vs. Meera Ahuja and Ors, reported at (2022) 8 SCC 320; paragraphs 18,19,20,21 and 23

"Hon'ble Supreme Court of India did not allow commencement CIRP proceedings of the Corporate Debtor for the interest of the Home Buyers and out of 128 home buyers of 176 units, 83 home

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buyers were against the insolvency proceedings and the original applicants/creditors settled the disputes with the Corporate Debtor.”

- c. Aditi Bezbaruah and Ors Vs. Kamalesh Kumar Singhania, RP, in respect of Maxim Infrastructure & Real Estate Pvt. Ltd and Ors, in Company Appeal (AT)(Insolvency) Nos. 1486 and 1473 of 2019.**

“Where the Appellate Tribunal held that keeping the development agreements alive in order to ensure successful insolvency resolution of the Corporate Debtor, reversion of the lands owned by the Appellants to them does not appear to be a viable alternative.”

5.7. Hence In view of the directions supra the following prayers are made:

- a.** The decision of the Committee of Creditors adopted in the meeting convened on April 20, 2022 be set aside;
- b.** Exclusion be granted for completing the CIRP process of the Corporate Debtor.
- c.** The Committee of Creditors be directed to consider and put the plan of the Applicant for voting as expeditiously as possible. The Committee of Creditors be directed to take a decision as expeditious as possible after allowing voting on the plan prepared and submitted by the Applicant.

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6. We had already permitted the voting to be conducted under the Chairmanship of Mr. Gautam Mukherjee the Deputy Registrar, NCLT, Kolkata Bench. The result of voting is as under:

	No of Vote Casted	Voted in favour of change of A.R.	Voted Not in favour of Change of A.R.	(%Share) Voted in favour of change of A.R.	(%Share) Voted in favour of A.R.
Physical Voting	44	43	1	98.24	1.76
Online Voting	68-5 (rejected)=63	50	13	60.83	38.13
Total	107	93	14	62.45	22.27

I.A. (I.B.C) No. 423/KB/2022

1. This I.A. has been preferred by Mr. Kinkar Ghosh seeking interim order, so that no order is passed in liquidation application No. I.A.(I.B.C)No.764(KB)2021, pending adjudication of the present application No. I.A.(I.B.C) No. 423/KB/2022 preferred on behalf of 200 plot owners seeking direction for removal of Respondent No.2 through authorized representative.
2. Having noted that a substantial number of allottees have voted in favour of change of Authorized Representations, and having noted the implication of the decisions extracted supra, we allow the prayers in I.A.(IB) No.434/KB/2022 to stay the Liquidation process and replace the Respondent No.2 in the petition.

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3. Further in regard to IA 434/KB/2022 we direct the following:-

- (i) The decision of the Committee of Creditors adopted in the meeting convened on April 20, 2022 is set aside.
- (ii) CoC is permitted to be reconstituted within 7 days from receipt of this order.
- (iii) Exclusion of the period spent in litigating is granted for completing the CIRP process of the Corporate Debtor.
- (iv) The reconstituted Committee of Creditors is directed to consider and put the plan of the Applicant for voting as expeditiously as possible and to take a decision as expeditiously as possible preferably in four weeks after allowing voting on the plan prepared and submitted by the Applicant.

7. Accordingly, I.A.(I.B.C) No. 423/KB/2022 stands **disposed of**.

8. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

9. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the 30th April, 2024.

SG, Steno.