

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

208. IA/2265/2024 IN C.P. (IB)/2946(MB)2019

IN THE MATTER OF

Bank of India

VS

Wadhwa Buildcon LLP

Section 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 02.07.2024

CORAM:

MS. REETA KOHLI
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant:

Adv. Prajakta Menezes (PH)

For the Intervenors (for home buyers):

Adv. Adeel Parkar (PH)

For the RP (Vishal Jain):

Adv. Partho Sarkar (VC)

ORDER

I.A. 2265/2024

- 1) The prayer in the present application is as under:
 - a) *To replace RP Vishal Jain (Respondent) with the RP proposed by Applicant viz. Mr. Rajkumar Jaiswal (IBBI/IPA-001/IP-P-02598/2021-2022/13975) or with any other insolvency professional as this Tribunal may deem fit with immediate effect in exercise of the inherent powers of this Hon'ble Tribunal.*
 - b) *To exclude the period starting from 20 March 2024 till the date of passing of the Order for replacement of the RP from the CIRP timelines.*

c) *Pass such order or further relief (s) as this Hon'ble Bench may deem fit and proper in facts and circumstances of the case.*

2) On 25.06.2024, the following order was passed:

The prayer in the present Case is for replacement of the RP. Adv. Mr. Anirudh Purushothman appearing on behalf of RP submits that the RP has already fixed the meeting which is scheduled for today i.e., 25.06.2024 at 05:00 P.M. Adv. Mr Anil Parker appearing for the Home Buyers submits that they too have to file an IA for the replacement of the RP. The learned counsel for the Applicant submits that the present IA was filed when the Applicant was having minority vote in the COC. In view of the fact that the similar prayers is being made by the home buyers and in view of the fact that the counsel for the RP has undertaken that the RP himself is ready and willing to take up this Agenda Item with respect to change of RP for consideration in its today's meeting. Thus, in view of the submissions having been made by the RP, we deem it appropriate to direct the RP to consider and decide this Agenda Item in meeting scheduled for today i.e., on 25.06.2024 at 05:00 P.M. Post this IA on 02.07.2024 for consideration.

3) Today on behalf of the RP Advocate Mr. Partho Sarkar is appearing. The Ld. Counsel for the home buyers submit that though their application seeking change of RP was filed much prior, but unfortunately the same has not yet been listed. Both the Ld. Counsels i.e. for the applicant and also Ld. Counsel for the home buyers jointly submit that they together constitute more than 99% of voting share in COC.

4) The Ld. Counsel for the applicant submits that, despite order dated 25.06.2024 wherein the undertaking was given by the counsel for the RP neither the voting lines were opened for changing the RP nor the RP has circulated the minutes of meeting. The Ld. Counsel submitted that this conduct on the part of the RP further corroborates their contentions about the conduct of the RP. Further, the communication dated 01.07.2024 forwarded by the bank to the RP is placed on record which states as under:

“As per the directions of the Court on 25.06.2024, RP was to convene a COC wherein agenda for his replacement was to be placed. Though the COC was conducted and agenda for replacement was discussed, it was never put to vote. Infact till date no minutes have been circulated for meeting dated 25.06.2024. With no instructions of the COC for "adjournment of the meeting, the RP suo moto emailed on 28.06.2024 for convening "adjourned" meeting on the same day. Adjournment of any sort was never sought in COC held on 25.06.2024. Only few agendas regarding discussion on RFRP, transaction audit were deferred till next COC meeting. It was made crystal clear on 25.06.2024 that the RP shall put to vote the agenda "replacement of RP" in the same meeting.

Further, on 28.06.2024, though BOI initially sought postponement of meeting to be held on 28.06.2024, it was still conducted and BOI participated. Even after that meeting no minutes have been circulated and no agenda has been put to vote.

The above facts are clear evidence of the misconduct of RP, Mr Vishal Jain. You are instructed to bring this to the knowledge of the Hon'ble Court during the hearing on 02.07.2024.

We also request you to emphasize the need for a neutral RP in the light of the present circumstances. For this BOI suggests that the Hon'ble NCLT appoint RP from the list of Insolvency Professionals empaneled by IBBI.”

- 5) In addition to the abovesaid, we deem it appropriate to add that as per Section 22 of IBC the appointment of the RP is the prerogative of the COC. Presently the applicant bank and the home buyers constitute more than 99% of the COC. Thus, in law, they are free and have every right to appoint RP who in their opinion is professionally competent & in whom they can repose faith & confidence. In this background, where it is apparent that the majority of members of the COC and the RP have lost trust in each other and the process of CIRP is getting delayed. Both the counsels have jointly submitted that in this process they have already lost period of approximately 100 days. The present application, it is stated, was filed on 18.04.2024 with the request of change of RP. On the last date, the case was adjourned only on the undertaking of the counsel appearing for the RP with the clear understanding that the agenda item for change of RP shall be taken on board by the RP himself and the matter would be resolved in the COC meeting itself without their being any need of an express order from the Hon'ble NCLT.

- 6) Further, the Ld. Counsel for the applicant has also made reference to a compilation of cases alleging that various NCLT benches have made unpleasant observations about the conduct of the respondent/RP. Without commenting upon the same, in the facts and circumstances of the present case, we deem it appropriate to accept the prayer of the applicant to replace the RP when both the COC members i.e. home buyers and that of the applicant bank jointly have more than 99% voting share in COC.
- 7) In view of the submissions made, we deem it appropriate to appoint Mr. Manish Lalji Dawda, having registration no. IBBI/IPA-001/IP-P-02506/2021-2022/13797, having email id: ip.dawdamanish@gmail.com as RP to proceed with the matter. The respondent/ RP is directed to co-operate with the newly appointed RP and hand over all the requisite documents to the newly appointed RP Mr. Manish Lalji Dawda, having registration no. IBBI/IPA- 001/IP-P-02506/2021-2022/13797, having registered email id: ip.dawdamanish@gmail.com to proceed with the matter.
- 8) With these observations, **I.A. is allowed.**
- 9) Registry is directed to communicate this order immediately to the Resolution Professional.

Sd/-
MADHU SINHA
Member (Technical)
Shubham

Sd/-
REETA KOHLI
Member (Judicial)