

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

111. I.A. 1466/2024

In

C.P. (IB)-1184(MB)/2023

CORAM: MS. LAKSHMI GURUNG, MEMBER (J)
SH. CHARANJEET SINGH GULATI, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **24.04.2024**

NAME OF THE PARTIES: Synergy Wood and Glass Private Limited

VS

Shri Aniruddha Wood Private Limited

Appearance

For Applicant : Adv. Rohit Gupta a/w. Adv. Manaswi Agrawal

For Respondent/IRP : Adv. Pooja Gera a/w. Adv. Dhurani Bagdai i/b.

VRAT Legal

SECTION 7 OF THE IBC, 2016

ORDER

Hearing Through: Virtually and Physical (Hybrid) Mode

I.A. 1466/2024

1. This application has been filed by the applicant, M/s. JM Financial Asset Reconstruction Company Limited who is one the financial creditors of the corporate debtor seeking replacement of IRP with Ms. Namrata Amol Randeri as the RP.

2. Ld. counsel for the applicant submits that the company petition was admitted by an order dated 21.02.2024 and Mr. Pramod Dattaram Rasam was appointed as an IRP.
3. The claim of the Applicant was admitted by the IRP, the Applicant became a member of the COC having a voting share of 66.83% in the COC. The only other member of the COC was Synergy Wood and Glass Private Limited (Original Petitioner in the above Company Petition) with the voting share of 33.17%.
4. The applicant provided the details of the Insolvency Professional to be appointed as an RP. However to the surprise of the applicant, the Respondent failed to list the agenda proposed by the applicant for replacement of the IRP with proposed RP in the 1st COC meeting on 23.03.2024.
5. It is submitted that as per the provisions of the IBC, the COC is required to either confirm the appointment of the IRP as the RP or replace the IRP with a new RP in the 1st COC Meeting, to be passed by a majority of at least 66% of voting. The IRP has failed in his statutory duties to place the proposal for replacement of the IRP before the COC for voting. In these circumstances, the Applicant reasonably apprehends that the IRP may misuse his powers under the IBC to defeat the rights of the Applicant.
6. It is submitted that the IRP's failure to include the agenda for appointment of the new RP was not only in breach of the provisions of IBC, but also self-serving act of the IRP.
7. During the hearing of the matter, it was submitted that the voting percentage of the applicant has been reduced to below 66% and therefore

appointment of RP, proposed by the applicant could not muster the requisite percentage of voting. Similarly, the resolution for appointment for IRP as RP has also failed. Therefore, as of today there is no consensus to appoint the RP.

8. Ld. counsel for the applicant relied upon order dated 28.07.2020 of NCLT, Ahmedabad in IA No. 691/2019 in CP No. 397/2018 titled as **Allahabad Bank V/s. Anil Kumar IRP for KSL & Industries Ltd .**

9. The relevant extract is reproduced below:

"11. Under such circumstances, when there is a conflict and no consensus is reached by the majority of voting share to appoint the IRP/RP so proposed by the Applicant, it is expedient to appoint an independent IRP/RP to break any kind of stalemate between the Financial Creditors. Moreover, the very object of IB Code is to complete the CIRP in the time bound manner and if the dispute with regard to the IRP will continue, in that event, the very object of the IB Code will get frustrated. The IB Code prescribes timelines for various activities of the CIRP. It is mandatory to complete a CIRP within 180 days, extendable by a one-time extension of up to 90 days [M/s. Surendra Trading Company v. M/s. Juggilal Kamlapat Jute Mills Company Limited & Ors.]

12. Though as per Section 7 of the IB code, the Financial Creditor has the prerogative to propose the name of the IRP/RP and thereafter, they may change it by filing an application under Section 22 of the IB Code. However, to resolve this issue and to end the stalemate between the secured and unsecured Financial Creditors, this Bench in exercise of power under Rule 11 of the NCLT Rules 2016,

do hereby appoint Mr. Kiran Shah as the new IRP/RP and direct him to convene the CoC meeting and complete the CIRP as early as possible. Further, the period which is consumed in deciding this Application as well as the lockdown period i.e. from 25.03.2020 to 31.05.2020 is exempted."

10. The above order passed by AA was upheld by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 786/2020 vide order dated 20.07.2021 in following term;
(iv) So the Learned Adjudicating Authority have rightly invoked inherent jurisdiction in the fact of this case and passed the Impugned Order.
11. Ld. counsel for the IRP submits IRP has no objection if independent RP may be appointed.
12. Upon considering the submission of Ld counsel for parties, above quoted orders passed by the NCLT Ahmedabad Bench and Hon'ble NCLAT, we are of the considered opinion that in the facts and circumstances of the present case it would be fair and proper to invoke the inherent power vested in the Adjudicating Authority under Rule 11 of the NCLT Rules 2016 and appoint an independent Resolution Professional from the panel of the IBBI.
13. This Bench in exercise of power under Rule 11 of the NCLT Rules 2016, do hereby appoint Mr. Piyush Kisanlal Jani, Registration Number-IBBI/IPA-001/IP-P01439/2018-2019/12164 (capiyushj@gmail.com) as the new RP and direct him to take charge from the RP and complete the CIRP process as early as possible.

14. Ld. counsel for the applicant submits that the professional fee of Rs. 2 lakhs plus out of pocket expenses incurred by the IRP will be paid by the applicant. The IRP is directed to hand over the charge of the corporate debtor to the new RP.
15. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.
16. The Registry is further directed to forward copy of this order to the IBBI for their record purpose. IA 1466/2024 is **disposed of** in the above terms.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)
---Rajeev---

Sd/-
LAKSHMI GURUNG
Member (Judicial)