

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 3173/2019, MA 3008/2019 & MA 3013/2019
in CP No. 02/2018**

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016

In the Miscellaneous Application No.
3173/2019

State Bank of India

...Applicant

&

In the Miscellaneous Application No.
3008/2019

Nagar Zilla Majdoor Sena & Ors.

...Applicants

&

In the Miscellaneous Application No.
3013/2019

VIL Vendors Association Aurangabad

...Applicant

In the matter of

State Bank of India

...Financial Creditor

v.

Videocon Industries Ltd.

.....Respondent

Date of Pronouncement: 25.09.2019

Coram: Hon'ble M.K. Shrawat, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicants: Sr. Counsel Mr. Ravi Kadam a/w Mr. Madhav Kanoria a/w Ms. Saloni Kapadia a/w Mr. Anush Mathkar a/w Ms. Naveena Varghese a/w Mr. Aarant Sarangi i/b Cyril Amarchand Mangaldas, for State Bank of India on behalf of CoC.

Mr. Karan M. Bhide, for Applicant in MA 3013 of 2019.

Sr. Counsel Mr. S.V. Kamdar a/w Advocate Ashish Paswani a/w Advocate Krutika i/b Rajani Associates, for RP in MA 3008 of 2019 & MA 3013 of 2019.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The present Application is filed by State Bank of India on behalf of Committee of Creditors of Videocon for the replacement of Mr. Mahendra Khandelwal with Mr. Abhijit Guhathakurta having IBBI Registration No. IBBI/IPA-003/IP/N000103/2017-18/11158. Mr. Mahendra Khandelwal had been appointed as IRP/RP for the ‘Consolidated Corporate Debtors’ pursuant to the Order dated 08.08.2019 passed by this Bench in MA-1306/2019.
2. Earlier, an MA-1306/2019 was filed by State Bank of India on behalf of 15 Companies belonging to Videocon Group for consolidation of CIRP of the said companies. Out of the 15 Companies, the CIRP of only 13 Companies (hereinafter referred to as “Consolidated Corporate Debtors”) was consolidated and remaining two companies were ordered to run their separate CIRP. The list of 13 Companies which were ordered to be consolidated for CIRP is given as under :-

1. Videocon Industries Limited.
2. Videocon Telecommunications Limited.
3. Evans Fraser and Company (India) Limited.
4. Millennium Appliances India Limited.
5. Applicomp (India) Limited.
6. Electroworld Digital Solutions Limited.
7. Techno Kart India Limited.
8. Century Appliances Limited.
9. Techno Electronics Limited.
10. Value Industries Limited.
11. PE Electronics Limited.
12. CE India Limited.
13. Sky Appliances Limited.

3. In the Order dated 08.08.2019, this Bench had directed Mr. Mahendra Khandelwal having registration No. IBBI/IPA-001/IP/P00033/2016-17/10086, who was Resolution Professional for 3 of the Videocon Companies to act as an IRP/RP for all the Consolidated Corporate Debtors.
4. Mr. Mahendra Khandelwal, the RP for the Consolidated Corporate Debtors constituted the COC and held the First Meeting of the COC on 16.09.2019. In the First Meeting of the COC held on 16.09.2019 the COC by a majority of 93.52% of the voted to appoint Mr. Abhijit Guhathakurta as the RP of the Consolidated Corporate Debtors.

SUBMISSIONS MADE BY LD. COUNSELS APPEARING ON BEHALF OF MR. MAHENDRA KHADELWAL (RP), VIL VENDORS ASSOCIATION, AURANGABAD IN MA 3013 OF 2019 & NAGAR ZILLA MAJDOOR SENA & ORS. IN MA 3008 OF 2019 –OPPOSING THIS APPLICATION

5. During the course of hearing the Counsel for the present RP Mr. Khandelwal who is proposed to be replaced by the new RP Mr. Abhijit Guhathakurta as well as the Learned Counsel Mr. Pradeep Sancheti appearing for the Operational Creditor VIL Vendors Association, Aurangabad, argued against the change of RP. The opposition Learned Senior Counsels Mr. Pradeep Sancheti and Mr. S.V. Kamdar argued largely on 4 counts:-

(a) That Mr. Khandelwal has been appointed by the Bench and not under Sections 22 or 27 of the I&B Code and therefore, it is not within the powers of COC to recommend the change. The change, if at all, can be made at only by the Bench but not on the recommendation of the CoC.

(b) The Learned Counsels further argued that there has already been a delay in conducting the CIRP Proceedings against the Consolidated Corporate Debtors. They also drew this Bench's attention to an earlier Order dated 08.08.2019 wherein the Bench had directed that the CIRP proceedings against the Corporate Debtor to be completed within 180 days from the date of this Order i.e. 08.08.2019. Therefore, the Learned Counsel argued that more than 40 days have already passed since then. Therefore, they argued that any change of RP, at this stage, would make time bound resolution difficult and may lead to situation where the Consolidated Corporate Debtors may go into Liquidation which would adversely impact the claims of all stakeholders and also impact the livelihood of the Workers.

(c) The Learned Senior Counsels further contended that no reason has been given by the Applicant i.e. State Bank of India (acting on behalf of the COC) for a change in RP and therefore, the Bench may not consider the request for change in RP.

(d) The Learned Senior Counsels also contended that if the request to appoint Mr. Abhijit Guhathakurta as RP is considered, then a situation of 'Conflict of Interest' may arise. The Ld. Counsels argued that Mr. Abhijit Guhathakurta the proposed RP was Ex-Chief General Manager of SBI and was handling the Asset Reconstruction Department of the Bank. They also mentioned that the proposed RP was an employee of Deloitte. Therefore, they argued that because of the earlier association of the proposed RP with the SBI, a situation of 'Conflict of Interest' would arise. The Learned Counsels further stated that the copies of MA Nos. 3173/2019 was not given to them regarding change of RP pursuant to the decision of COC.

SUBMISSIONS MADE BY SBI ON BEHALF OF COC

6. The Learned Senior Counsel Mr. Ravi Kadam appearing on behalf of State Bank of India drew the attention of this Bench to the fact that Insolvency is a Creditors Driven Process and therefore, it would be fallacious to come to the conclusion that the COC does not have power to change the RP. The Ld. Counsel mentioned that as per section 22(3)(b) of the I&B Code, the CoC can replace the Interim resolution professional by filing an application before the Adjudicating Authority and the Adjudicating authority will forward such application to IBBI for confirmation. Similarly, again in Section 27 of I&B Code the COC at any time during the CIRP proceedings can change the RP. He further argued that this section is part of the Code because Code essentially visualizes that the CIRP is a Creditors Driven Process and therefore to say that COC does not have powers to change the RP, would be against the letter and spirit of the I&B Code.
7. On the issue that only 180 days are available from 08.08.2019 pursuant to this Bench's Order, for concluding the CIRP proceedings, therefore any change of RP would be detrimental in meeting the time lines, is not correct. He further mentioned that the RP's issue of replacement has been voted by 100% of COC. If the proposed RP is not appointed, it would adversely affect the CIRP proceedings. Therefore, if the process is to be completed within the time lines granted, it is essential that the RP should be the one who has the confidence of COC to take the process further.
8. The Ld. Counsel further alluded this Bench to Section 22(1) of the I&B Code which allows the COC to recommend the change of the RP 'at any time' of the CIRP proceedings. Regarding this contention that no reasons have been given for removal of the present RP Mr. Mahendra Khandelwal, the Ld. Counsel of SBI mentioned that casting a negative aspersion on an RP would adversely impact his career as RP and may lead to inquiry and further action by IBBI which would not be in the interest of the RP. The Learned Counsel appearing on behalf the Applicant drew the attention in this regard to the Order dated 16.07.2018 passed by the Hon'ble NCLAT in *State Bank of India V/s Ram Dev International Limited {Company Appeal (AT) (Insolvency) No. 302 of 2018}*. It was held that:

"14. Though such submission seems to be attractive, we are of the view, it is not desirable for a Committee of Creditors to record its opinion in view of the following reasons:

(i) If the Committee of Creditors record any adverse opinion for replacement of Resolution Professional, it will not only harm him for the present but will also affect him in future during appointment as Resolution Professional in another proceeding. In such case, the Committee of Creditor will have to refer the matter to IBBI for initiation of departmental proceeding, which is also not desirable in all the cases.

(ii) *If the Committee of Creditors forms opinion on the basis of performance of the Resolution Professional and not because of allegation, it will also go against the Resolution Professional in interest of the Resolution Process.*”

This clearly mentions that it is not desirable for the COC to record any adverse opinion for replacement of RP.

9. On the issue of Conflict of Interest being attracted by the appointment of Mr. Abhijit Guhathakurta as RP, it was mentioned by the Learned Counsel that he is Ex-Chief General Manager who retired on 31st December, 2016 and presently he is not an Employee of any Organisation. The Ld. Counsel mentioned that as per IBBI (insolvency Professional) Regulations, 2016, a “No Conflict of Interest” Undertaking has been given by Mr. Abhijit Guhathakurta to COC. The Proposed RP has also given his consent to work as RP of Consolidated Corporate Debtors which is on record in the Application. He has also given his consent in Form-AA to act as RP to the COC, a copy of which has been annexed with the Application of State Bank of India. The Learned Counsel of State Bank of India has mentioned thorough its averments that the appointment of Mr. Abhijit Guhathakurta is in line with the Code of conduct prescribed in IBBI (Insolvency Professionals) Regulations, 2016, for RP.

FINDINGS

10. On going through the submissions made by the Senior Counsels of all the sides this Bench is of the view that the power of CoC, to replace the IRP with RP in the first CoC meeting as prescribed under section 22 of the I&B Code or the power to replace the RP at any time during the CIRP proceedings as prescribed under section 27 of the I&B Code, cannot be interfered with. In light of the decision of Hon’ble NCLAT in the above said order (*supra*), the CoC even need not give the reasons for the replacement of IRP/RP.
11. In the insolvency resolution mechanism, the RP acts as a bridge between the CoC and the prospective investors and other stakeholders of the Corporate Debtor. Hence, the appointed RP should be the one in active confidence of the CoC.
12. All the contentions and objections to this application, made by the Operational Creditors and the erstwhile IRP Mr. Mahendra Khandelwal, have been answered by the Applicant.
13. Hence, decision of the COC to replace the erstwhile IRP Mr. Mahendra Khandelwal with the proposed RP Mr. Abhijit Guhathakurta, as prayed in this application MA No. 3173 of 2019 is hereby approved.

14. It is further directed that any amount due to Mr. Mahendra Khandelwal be reimbursed.

It is also directed that the outgoing RP shall hand over all the collected documents and pass on all the information available to the substituted RP.

15. MA 3173 of 2019 is Allowed. In view of this, MA 3008 of 2019 & MA 3013 of 2019 are Dismissed. Ordered Accordingly.

SD/-

Chandra Bhan Singh

Member (Technical)

SD/-

M. K. Shrawat

Member (Judicial)

Date : 25.09.2019