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**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 28.02.2020

**PRIORITY CAUSE LIST – 1**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra


CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 228/BB/2018	For pronouncement on IA 106/2020	Sec 9 of I&B code 2016	M/s Indu Corporation Pvt Ltd	Thakordas & Madagarkar Advocate, Crest Law partner Adv for IA	M/s Bhuwalka Steel Industries Ltd	Mr. Shivadutt Bannanje BP

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

ORDER

IA 106/2020 is dismissed by separate order.

  
member (T)

  
member (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A.No.106/2020 in  
C.P. (IB)No.228/BB/2018  
U/s. 60 (5) of the IBC, 2016

Wahaca Trading Private Limited  
(Formally known as G.G.Trading Pvt. Ltd.)  
6<sup>th</sup> Floor, New Harileela House,  
Mind Road, Fort,  
Mumbai – 400 001 - Applicant

**In the matter of:**

M/s. Indu Corporation Private Limited  
'Nishuvi' 4<sup>th</sup> Floor, No.75,  
Dr. Annie Beasant Road, Worli,  
Mumbai – 400 018 - Petitioner/  
Operational Creditor

**Versus**

M/s. Bhuwalka Steels Industries Limited  
10<sup>th</sup> Mile, Old Madras Road,  
Bandapura Village,  
Bengaluru - Respondent/  
Corporate Debtor

**Date of Order: 28<sup>th</sup> February, 2020**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Shri Aditya Venugopalan  
For the Resolution Professional : Shri A. Murali with  
Ms. Jyothi Anumolu

  
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**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A.No.106/2020 in C.P.(IB)No.228/BB/2018 is filed by Wahaca Trading Private Limited ('Applicant') U/s. 60 (5) of the IBC, 2016, by inter-alia seeking to discharge/replace Mr. Shivadutt Bannanje as the Resolution Professional of the Corporate Debtor and appoint any other Resolution Professional to look after the affairs of the Corporate Debtor in CIRP; to inform the IBBI regarding the misconduct of the Resolution Professional of Mr. Shivadutt Bannanje and to grant interim stay on the CIRP of the Corporate Debtor.
2. Brief facts of the case, as mentioned in the Application, are as follows:
  - (1) Initially C.P.(IB)No.228/BB/2018 filed by M/s. Indu Corporation Private Limited was admitted, vide order dated 08.04.2019, by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, appointing Shri Shivadutt Bannanje, as IRP, imposing moratorium etc. Accordingly, the Interim Resolution Professional published advertisements in Form G – Expression of Interest (EOI) as per Regulation 36A(2) on June 27, 2019 in Financial Express (English Paper) and Vishwavani (Kannada Paper) to invite EOI from Prospective Resolution Applicants and the last date for submission of the EOI was July 15, 2019 and the Corporate Debtor received 8 (Eight) EOI. The Committee of Creditors in their Meeting dated August 14, 2019, decided to invite Resolution Plan from those eight Applicants who's Expression of Interest was received. Subsequently, the Interim Resolution



Professional had appointed as Resolution Professional, by this Adjudicating Authority vide Order dated 08<sup>th</sup> April, 2019.

- (2) It is stated that initial period of 180 days came to an end on October 4, 2019 and thus further extension of time for a further period of 90 days was granted by Tribunal, by an order dated 20.09.2019, with effect from October 4, 2019.
- (3) On the last date of the submission of the Resolution Plan, two Resolution Plans were received. The Resolution Professional had scheduled a meeting of the CoC on November 7, 2019, to open the Resolution Plans for the Corporate Debtor, received from Prospective Resolution Applicants. However, on November 6, 2019, an Order from Hon'ble High Court of Karnataka was received granting stay on the CIRP proceedings of the Corporate Debtor i.e. Bhuwalka Steel Industries Limited including restraining the Resolution Professional from opening, considering evaluation or approving any Resolution Plans.
- (4) Wahaca Trading Private Limited (herein after referred to as Applicant) is one of the Operational Creditor of substantial value due from the Corporate Debtor to the tune of INR 127 Crores approximately. Ushdev International Limited (herein after referred to as 'UIL) is a Company registered under the provisions of the Companies Act, 1956 and is engaged in the business of trading in steel and metals (both ferrous and non-ferrous). P.G. Mercantile Pvt. Ltd is an affiliate Company of UIL.
- (5) The Corporate Debtor has signed monthly balance conformation statement *inter alia* admitting the amounts due and payable to UIL and P.G. Mercantile since 2011-2012, vide



a letter dated 10<sup>th</sup> June 2013, the Corporate Debtor confirmed that an amount of Rs.128,00,58,893.46/- is outstanding towards UIL and P.G. Mercantile till that date. Due to non-payment of outstanding amount, UIL along with P. G. Mercantile and HPMPL filed Suit No.19 of 2014 along with Notice of Motion No.21 of 2014, before the Hon'ble High Court of Bombay for specific performance of the agreement for sale and for a money decree amounting to Rs. 128,00,58,893.46/-. The Hon'ble High Court of Bombay by an order dated 16<sup>th</sup> July 2014 in Notice of Motion No.21 of 2014 and held in Para 21 as follows:

*"Having regard to voluminous evidence referred to above, the Plaintiffs have certainly made out an overwhelming prima facie case that the Defendants owed a sum of over Rs.106 Crore to the Plaintiffs for goods sold and delivered.*

- (6) It is stated that a Deed of Assignment dated 31<sup>st</sup> January 2014 was executed between UIL and the Applicant i.e. G.G. Trading Pvt. Ltd. (subsequently name changed to Wahaca Trading Private Limited), wherein, all the rights arising in respect of 90% debt of UIL was assigned to the Applicant i.e. Rs.52,99,48,198/-. Therefore, the Petitioner/Operational Creditor filed the Company Petition against the Corporate Debtor.
- (7) On 26<sup>th</sup> April 2019, the Applicant submitted its proof of claim (Form B) along with the supporting documents before the Resolution Professional. Along with the Form B, and placed reliance on the order dated 16<sup>th</sup> July 2014 passed by the Hon'ble High Court of Bombay, vide an email dated 02<sup>nd</sup> May 2019, the Resolution Professional requested for certain clarifications and further documents. Subsequently, vide



email dated 04<sup>th</sup> May 2019 the Applicant forwarded a detailed response email for the queries sought by the Resolution Professional in respect of their claims against the Corporate Debtor. Thereafter, the Applicant by their email dated 05<sup>th</sup> May 2019 sought clarifications from the Resolution Professional regarding their email dated 04<sup>th</sup> May 2019 and in relation to the acceptance of their claim against the Corporate Debtor. Further, the Applicant also sought clarification regarding acceptance of the claim and the exact amount to that effect. The Applicant also sought an updated list of claims of other creditors of the Corporate Debtor received till date.

- (8) In the second meeting of Committee of Creditors was held on 18<sup>th</sup> June 2019 wherein it was resolved that Resolution Professional was authorized to appoint two registered valuers in consultation with Committee of Creditors for valuation of the Corporate Debtor, to conduct forensic audit for the Corporate Debtor for a period of 7 years starting from 2012-13 and also decided that the minimum net worth criteria for the prospective Resolution Applicants will be at Rs.25 Crores.
- (9) The Applicant addressed an email dated 19<sup>th</sup> June, 2019, pointed out discrepancy in the agenda that was forwarded to the Applicant and also requested Resolution Professional to conduct a detailed audit and the same should be done as per the IBBI guideline which includes siphoning and diversion of funds. Being completely aware of the manner in which Corporate Debtor was running, the Applicants laid down various criteria for the forensic auditor to investigate while preparing the forensic audit report. Thereafter, the Resolution Professional addressed an email dated 1<sup>st</sup> July 2019, wherein



he failed to substantially respond to the said email of 19<sup>th</sup> June 2019.

(10) In the third meeting of Committee of Creditors held on 14<sup>th</sup> August 2019 the appointment of two registered valuers was ratified along with appointment of forensic auditor. The Resolution Professional has received the eight (8) Expressions of Interest by the prospective Resolution Applicants. In the said meeting, it was resolved that the prospective Resolution Applicants were required to submit their Resolution Plans, Information Memorandum and the Evaluation Matrix. The following Resolution Applicants have filed their respective Expression of Interests:

- i. Starteck Finance Limited;
- ii. Finquest Financial Services Private Limited;
- iii. PP Metallix Limited;
- iv. Electrosteel Steels Limited;
- v. Laxcon Steels Limited;
- vi. Sushil Kumar Bhuwalka;
- vii. ANA ARC Limited; and
- viii. Prudent ARC Private Limited.

(11) In the Fourth Committee of Creditors meeting held on 16<sup>th</sup> September 2019, which is approximately three months from the date of appointment of the said two registered valuers and forensic auditor that the Resolution Professional placed for discussion the progress report of the work assigned to the said two registered valuers and the forensic auditor. During the said meeting, the email addressed by the Applicant about 3 months prior i.e. 19<sup>th</sup> June 2019 was tabled and the Resolution Professional informed to the CoC that the same



was forwarded to the forensic auditor and was told to investigate the matter and report the same in the said forensic audit report.

- (12) It was further brought to the attention of the Resolution Professional that as per financials of the Corporate Debtor, the loan is categorized as "good" which means the amount is recoverable and the Resolution Professional informed them that he will take necessary action for recovery of the loan against Shri Durga Trade Links Pvt. Ltd., once the Forensic Audit is complete. Further, it was also discussed that the Applicant suspects that the Promoter/Directors of the Corporate Debtor have removed the machineries from one of the plant of the Corporate Debtor. The Resolution Professional also informed the Committee of Creditors that a letter was received from the Applicant informing certain fraudulent transactions undertaken by the Corporate Debtor and submission of the Resolution Plan by the Resolution Applicants was extended till 06<sup>th</sup> November 2019.
- (13) Aggrieved by the decision of the Committee of the Creditors of rejecting the Expression of Interest of G.K. Ispat Pvt. Ltd. a Writ Petition No. 50370 of 2019 was filed by G.K. Ispat Pvt. Ltd. and M/s. Bipin Textile Processing Industries Ltd., before the Hon'ble High Court, Karnataka for reliefs. The Hon'ble High Court, Karnataka, vide an order dated 06<sup>th</sup> November 2019, was pleased to grant interim stay restraining from opening, considering or evaluating or approving the Resolution Plan in respect of the Corporate Debtor. Accordingly, the Resolution Plans could not be opened. The Hon'ble High Court, Karnataka has erred in exercising





jurisdiction over the subject matter and further had erred in granting interim stay to the Petitioners therein. The Insolvency and Bankruptcy Code, 2016 provides for an appropriate forum to the Resolution Applicant to approach in case he is aggrieved by the decision of the Committee of Creditors. The Resolution Professional was duty bound to initiate prosecution against the said M/s. Shri Durga Trade links Pvt. Ltd. but due to his lackadaisical approach, he has failed to take any steps for recovery. The Hon'ble High Court was pleased to dispose of the said Writ Petition No. 50370 of 2019 by an order dated 3<sup>rd</sup> January, 20, by directing the Resolution Professional to consider as many Expression of Interest available. It came to the shock of the Applicants that the Resolution Professional gave his consent to accepting the bids of G. K. Ispat Pvt. Ltd., which has been recorded in the said Order dated 03<sup>rd</sup> January 2020. The Resolution Professional does not have power to overrule the decision of the Committee of Creditors.

- (14) In the Eighth meeting of Committee of Creditors held on 17<sup>th</sup> January 2020 the Resolution Professional submitted that a total of three Resolution Plans i.e. M/s. PP. Metallix, M/s. Starteck Finance Limited and M/s. Bipin Textiles Processing Industries Private Limited have been received in respect of the Corporate Debtor. Further, the Resolution Professional was informed that the auditor were to submit their draft report latest by 11<sup>th</sup> January 2020. However, till date no report has been received. Therefore, Committee of Creditors directed the Resolution Professional to call the forensic auditor for the meeting of the Committee of Creditors to be held on 21<sup>st</sup> January 2020 and direct him to submit his



forensic audit report with whatever information is available at his disposal.

(15) It is alleged that the Resolution Professional has not performed his duties satisfactorily, wherein, the Resolution Professional has not only opened the bids submitted by the Resolution Applicants but also initiated negotiations with the Resolution Applicants without providing the Committee of Creditors the valuation report or the forensic audit report.

3. The Application is opposed by Mr. Shivadutt Bannanje, Resolution Professional of Bhuwalka Steels Industries Limited ( the Corporate Debtor) by filing the statement of objections dated 12.02.2020 by inter-alia contending as follows:

(1) On April 26<sup>th</sup>, 2019, the Applicant submitted its proof of claim (Form B) vide e-mail dated May 2, 2019, the Resolution Professional had requested additional documents to verify proof of claim as required under Regulation 7 of the IBBI (CIRP for Corporate Persons) Regulations, 2016. Further, vide e-mail dated 7<sup>th</sup> May 2019, the Resolution Professional duly sent another reminder to submit the relevant documents so as to be able to expedite the process of verification of claims. It was only on 10<sup>th</sup> May, 2019, that the Applicant provided necessary clarifications and all necessary documents. After considering the documents, the Resolution Professional had sought further clarifications on the amount of Rs.9.68 crores given by the Applicant to the Corporate Debtor vide e-mail dated 21<sup>st</sup> May, 2019 and the same has not been provided until now as acknowledged by the Applicant in its e-mail sent the Resolution Professional dated 29<sup>th</sup> May, 2019. Despite not receiving any clarifications on the amount of Rs.9.68 crores,



the Resolution Professional in the interest of the Applicant and to expedite the process, confirmed the total claim of the Applicant as Rs.106,21,65,697/- vide e-mail dated 3<sup>rd</sup> June, 2019. The Interim Resolution Professional conducted the first Committee of Creditors (“CoC”) meeting on May 6<sup>th</sup>, 2019 wherein the CoC, was constituted with two Financial Creditors, Canara Bank and IDBI Bank.

- (2) In the 2<sup>nd</sup> meeting the Resolution Professional had also informed the CoC about the requirement of appointing two registered valuers to determine the fair value and liquidation value of the Corporate Debtor in accordance with Regulation 27 of the Insolvency Regulations read with Regulation 34 of the Insolvency Regulations. In the interest of time, the Resolution Professional had floated Expression of Interest and further submitted the commercial bids quoted by the registered valuers before the CoC. However, the CoC deferred the appointment of registered valuer and directed the Resolution Professional to further negotiate the professional fees of the registered valuers and appoint a registered valuer in consultation with the CoC. The Resolution Professional also requested the CoC to take a decision on the conduct of forensic audit of the Corporate Debtor and appointment of forensic auditors to this effect. The Resolution Professional had also informed the CoC, that in order to expedite the process of appointment the Resolution Professional had floated the expression of interest among the IBA registered forensic auditors and their bids were placed before the CoC. While the CoC passed a resolution to conduct the Forensic Audit of the Corporate Debtor for a period of 7 years



commencing from FY 2012-13, however, the CoC deferred the appointment of the forensic auditors and directed the Resolution Professional to further negotiate the professional fees of the forensic auditors and appoint the forensic auditor in consultation with the CoC and Form G - Expression of Interest was presented by the Resolution Professional and the same was approved by the CoC. On June 27, 2019, the Resolution Professional had duly uploaded the Form G on the IBBI website and two newspapers inviting expression of interest ("EoI") from prospective resolution applicants as per Regulation 36A of the Insolvency Regulations. The Resolution Professional has received 8 EoIs from Resolution Applicants.

- (3) In the third meeting of the CoC was held on August 14<sup>th</sup>, 2019 wherein Mr. N S Vaidyanathan and Mr. Kanti A Kramsey & Co. Advisors LLP were appointed as the registered valuers and M/s GD Apte & Co. was appointed as the Forensic Auditor. In the said meeting, the CoC also directed the Resolution Professional to receive resolution plans from eight resolution applicants. In the fourth meeting of the CoC, the Resolution Professional had apprised that the valuation of the assets of the Corporate Debtor was completed and the final report was awaited. However, the forensic audit was delayed on account of the Corporate Debtor not giving certain documents.
- (4) In the fifth meeting of the CoC, it was ratified that the time-limit for submission of Resolution Plan by the Resolution Applicants shall be extended to 22<sup>nd</sup> October, 2019 and 4<sup>th</sup> October 2019 as approved via mail by the CoC. The Resolution Professional informed the CoC that two resolution plans were received and if the Committee decided, the same could be



opened and discussed. Further, the Resolution Professional also informed that two eligible prospective Resolution Applicants informed in writing for extension of time for submission of the resolution plan. The CoC decided to extend the time period for submission of Resolution Plans up to November 6, 2019 in the interest of having a more competitive Resolution Plan. Further, it was brought to the notice of the CoC that two fresh EoIs were received by the Resolution Plan from Salagram Power & Steel Pvt. Ltd., on 30<sup>th</sup> October, 2019 and from GK Ispat Pvt. Ltd., on 28<sup>th</sup> October, 2019. It was further decided by the CoC that the entire process of considering the EOI of the two new Applicants would go beyond 1<sup>st</sup> January, 2020 by when the 270 days period would expire.

- (5) In the 6<sup>th</sup> meeting of the CoC the time limit for submission of Resolution Plans was further extended to 6<sup>th</sup> November, 2019. The Applicant had brought to the notice of the CoC of certain fraudulent transactions relating to the related parties of the Corporate Debtor that had taken place prior to the commencement of the CIRP. The same was duly forwarded by the Resolution Professional to the forensic auditors since the scope of forensic auditors included fraudulent transactions under Section 66 of the Code. The decision taken by the CoC not to entertain belated EoIs is in accordance with Regulation 36A(5) and 36A (6) of the Code, which provides that the prospective Resolution Applicant should submit EoI within the prescribed time-limit and EoI received after the time specified in the invitation shall be rejected. And against the said decision of the CoC, GK Ispat Pvt. Ltd and Bipin Textile



Processing Industries Ltd, filed a Writ Petition No.50370 of 2019 before the Hon'ble Karnataka High Court. The Hon'ble High Court vide order dated 6<sup>th</sup> November, 2019 granted interim stay on the CIRP proceedings. The Resolution Professional had also informed the CoC of the above proceedings before the High Court in the sixth meeting of the CoC conducted on 7<sup>th</sup> November, 2019, wherein the CoC after deliberation authorized the Resolution Professional to submit the following before the Hon'ble High Court, Karnataka:

*"1. The Committee was of the view that entertaining Expression of Interest at this stage would not be feasible due to time constraints since the Corporae Insolvency Resolution Process period of 270 days is coming to an end on Jan 1, 2020.*

*2. The Committee is further of the view that if the fresh Expression of Interest (EoI) has to be considered then a fair chance has to be given to all the new EoI applicants (if any). further, the whole process of inviting fresh EoI will take a minimum of 60 days.*

*3. The Petitioners in the Writ Petition, M/s. G.K. Ispat Private Limited had not submitted their Expression of Interest during the time period for which EoI was open. However, the EoI has been submitted only on October 28, 2019 i.e. during the closure of the Resolution Plan submission date. The second petitioner i.e. M/s. Bipin Textiles Processing Industries Private Limited had not filed any EoI till date.*

*4. Further, the Committee of Creditors also authorized the Resolution Professional to engage a lawyer on behalf of the*



*Resolution Professional and the Committee of Creditors to represent them before the Hon'ble High Court.”*

- (6) In the seventh meeting of the CoC held on 7<sup>th</sup> December, 2019 it was resolved that an Application be moved before this Tribunal for exclusion of time of litigation period on account of the interim stay granted by the Hon'ble High Court on the conduct of CIRP. With respect to outstanding dues to be recovered from one of the related party of the Corporate Debtor, i.e., M/S Durga Tradelinks Private Limited, it is submitted that the Resolution Professional had already issued two notices dated October 9, 2019 and November 12, 2019 to the promoters i.e., Mr. Ajay Bhuwalka and Mr. Ankit Bhuwalka of M/s. Durga Tradelinks Private Limited for the recovery of the outstanding amount. However, no response was received from their end. Meanwhile, the Hon'ble High Court vide Order dated 3<sup>rd</sup> January, 2020 had directed the Resolution Professional to accept the EoI submitted by GK Ispat Pvt. Ltd and Bipin Textile Processing Industries Ltd.
- (7) In the eighth meeting of the CoC held on 17<sup>th</sup> January, 2020, the Resolution Professional submitted that a total of three Resolution plans from M/s PP Metallix, M/s Starteck Finance Limited and M/s Bipin Textiles Processing Industries Private Limited have been received in respect of the Corporate Debtor. On 18<sup>th</sup> January, 2020, it was discussed that the Resolution Professional shall call the Resolution Applicants in the next meeting to discuss the Resolution Plans. It was further submitted that the scope of forensic audit had been increased on account of additional fraudulent transactions that the



Applicant and PG Mercantile requested to be investigated vide e-mail dated 17th September, 2019.

- (8) In the ninth meeting of the CoC held on 21<sup>st</sup> January, 2020, the Resolution plans submitted by the prospective Resolution Applicants were discussed and it was decided that the said plans had to be revised and it was decided that the revised resolution plans had to be submitted on or before 29<sup>th</sup> January, 2020 at 6 p.m. The Resolution Professional had also informed the CoC that the first draft of the Forensic Audit Report was received by the Resolution Professional.
- (9) In the tenth meeting of the CoC held on 30<sup>th</sup> January, 2020, the Forensic Auditors i.e. M/s. G D Apte & Co. was invited to the Committee of Creditors meeting for presenting the draft forensic audit report. The forensic auditors represented by Mr. Prakash Kulkarni and Mr. Nikhil Chandra presented the draft forensic audit report and explained the difficulties in preparation of the Forensic Audit Report and also mentioned the following points for delay in submission of audit report:
- a) Non-availability of people and records since the audit had to be carried out from FY 2012 onwards.
  - b) The Company had no employees to provide the relevant information/ documents.
  - c) Few purchase and sales vouchers were made available.
  - d) There was a mismatch of data between the audited balance sheet and the accounting entries passed in books of account or Tally back-up.
  - e) The inventory records were not available hence reconciliation between inventory record and tally data could not be done.



- (10) In the 10<sup>th</sup> CoC meeting, the Resolution Professional further placed the e-mail received from one of the Resolution Applicants, i.e., PP Metallix which stated that they have filed a Writ Appeal No. 84 of 2020 against the Order passed by the Hon'ble High Court of Karnataka dated January 3<sup>rd</sup>, 2020 before the Hon'ble High Court of Karnataka. The said Writ Appeal would come up for hearing on February 2, 2020 and requested the CoC to not consider any of the revised resolutions. However, the CoC after deliberation decided that in the absence of interim stay order, the revised resolution plans should be considered keeping in mind that the extended period of 330 days would be completed by 27<sup>th</sup> February, 2020. After deliberation of the COC stated that they were satisfied with the work of the Resolution Professional and that the transparency was maintained during the CIRP.
- (11) The relevant extracts of the minutes of the CoC meeting is produced herein for ease of reference:

*"The Resolution Professional thereafter informed the Committee of Creditors that one of the Operational Creditors ie. Wahaca Trading Private Limited has filed an application before the Hon'ble National Company Law Tribunal, Bengaluru Bench, seeking for a replacement of the Resolution Professional in the matter of Bhuwalka Steel Industries Limited since they are of the view that the Resolution Professional has not carried out his responsibilities as per the stipulated provisions of the Insolvency and Bankruptcy Code, 2016. The Resolution Professional placed a copy of the Miscellaneous application*



*filed by the operational creditor before the Hon'ble National Company Law Tribunal for their perusal.*

*The Committee of Creditors after deliberation stated that they were satisfied with the work of the Resolution Professional and that the transparency was maintained during the Corporate Insolvency Resolution process. The Committee further stated that if the operational creditor had any issues with the Resolution Professional regarding the performance of his duties, they could have approached the Committee of Creditors and discussed the matter and thereby helped them to complete the process within the prescribed time as per the Code.*

*The Committee unanimously decided and directed the Resolution Professional to defend the application filed by the operational creditors and if required engage a good counsel to represent him and the Committee of Creditors before the Hon'ble National Company Law Tribunal. The Committee further directed the Resolution Professional to narrate the facts of the said matter to the counsel for his submission before the Hon'ble Tribunal.*

*Further, one of the members of the Committee stated that being representative of the Banks they had attended various Committee of Creditors meetings on earlier occasions and are of the view that the Resolution Professional has been diligent in the performance of his duties and have also followed the provisions laid down under the Insolvency and Bankruptcy Code and the relevant Regulations as prescribed by law during the Corporate Insolvency Resolution Process. The Member further stated that similar statements had been*



*made in previous meetings where the Resolution professional was appreciated with regard to discharge of his responsibilities.”*

- (12) It is submitted that Section 27 of the Code provides the procedure for removal and replacement of Resolution Professional and the said provision only provides for the CoC, by a vote of sixty-six percent of voting shares, to replace the Resolution Professional. Relevant extracts of Section 27 of the Code is produced herein for ease of reference:

*“27. (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.*

*1[(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.]*

*(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.*

*(4) The Adjudicating Authority shall forward the name of the proposed resolution 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) 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.”*

- (13) It is submitted that the Applicant was an Operational Creditor whose debt value was more than 10% of the total debt. Accordingly, as per Section 24 (3)(c) of the Code, the Applicant was entitled to participate in the CoC meetings. Further as per Section 24(4) of the Code, the representative of Operational Creditors may attend the meeting of creditors but shall have no right to vote at such meetings. Further, the proviso to Section 24 states that the absence of such operational creditors shall not invalidate the proceedings of such meeting. Therefore, as per the statutory scheme the presence of the Operational Creditor is not mandatory. Notwithstanding the same, the Resolution Professional had promptly served notices of the various CoC meetings along with the agenda and relevant documents in advance to the Applicant through various e-mails. Further, the presence of the authorized representative of the Applicant in each of the said CoC meetings is evidence of the fact that notices were served promptly and duly served by the Resolution Professional along with all relevant documents. Further, the Resolution Professional had shared the minutes of each CoC meetings with the Applicant immediately after the completion of meetings.
- (14) It is alleged that there was inordinate delay of 7 months in the completion of forensic audit, under Code, the Resolution Professional is duty bound to identify transactions relating to

Preferential transactions under Section 43 of the Code, undervalued transactions as per Section 45 of the Code, transactions defrauding creditors as per Section 49 of the Code, extortionate credit transactions as per Section 50 of the Code and fraudulent trading or wrongful trading as per Section 66 of the Code. With reference to the above transactions, the Respondent states that the Resolution Professional is not an expert by himself to identify these transactions and hence it was necessary for him to appoint a professional for the same. It is further stated that as per the Banking Regulation Act, Banks are required to conduct the forensic audit of a Non-Performing Asset exceeding the value of Rs. 50 crores, however given that the matter was in CIRP, the CoC requested the Resolution Professional to appoint the forensic auditor. Accordingly, M/s. G D Apte & Co. was appointed as the forensic auditors. And the Resolution Professional had been following up with the forensic auditors from time to time to expedite the forensic audit and had also kept the CoC updated of the progress.

- (15) As per the directions of the CoC, the forensic audit had a wide scope being conducted for a period of 7 years starting from F.Y. 2012-13. The Corporate Debtor had no employees and no annual filings were filed with the MCA or tax returns were filed with the relevant tax authorities. Hence, the only recourse left for the forensic auditors to complete the audit was to rely on the information provided by the Corporate Debtor itself. In order to ensure that the transactions are audited, the forensic auditor had to liaise and collect information from various sources such as the suspended



Directors of the Corporate Debtor, the statutory auditors of the Company and etc. Accordingly, the Resolution Professional had also coordinated with various authorities and the suspended Directors of the Corporate Debtor. As per the Code and all other applicable laws, there is no such restriction on collection of information from the suspended Directors or the statutory auditors of the Corporate Debtor, however the completion of the forensic audit report is the responsibility of the forensic auditors and not that of the Resolution Professional.

- (16) The forensic audit was duly completed on and the draft final report was received by the forensic auditors Resolution Professional on January 21, 2020. On meeting dated January 30, 2020, the Forensic Auditors were called to brief the Committee regarding their findings. Accordingly, the meeting was attended by the Representatives of the Forensic Auditors i.e., Mr. Prakash Kulkarni and Mr. Nikhil Chandras who presented their findings. The CoC informed the Forensic Auditors to issue notice to the promoters of the Corporate Debtor asking for their clarification within seven days of service of such notice and thereafter to finalize the forensic audit report and submit the same to the CoC.
- (17) In relation to the delay in submitting the valuation report, it is submitted that the process of valuation was completed in the month of September, 2019 and the registered valuers had provided the valuation report on October 10, 2019 Thus, there was no delay in the completion of the valuation process and submission of the same to the CoC.
- (18) The Applicant had failed in his duty to recover the dues from



M/s Shri Durga Trade Links Pvt. Ltd, it is submitted that the Resolution Professional had issued notices to recover the dues payable vide mail dated October 9, 2019 and reminded them regarding the same on November 2, 2019. It is submitted that since the Resolution Professional had called for submission of resolution plans from the prospective resolution applicants based on the assets of the Corporate Debtor and since the CIRP proceedings are in process, the Resolution professional cannot take up any legal action against M/s. Shri Durga Trade Links given that any action of recovery will have to a impact on the 'assets' of the Corporate Debtor and consequently, the resolution plans would have to be altered, delaying the process.

- (19) The allegation that the Resolution Professional overruled the decision of the CoC and consented to acceptance of bids of GK Ispat and M/s Bipin Textiles Processing Industries Pvt. Ltd. is false and baseless. It is submitted that an email dated January 2, 2020, had been written to Mr. B C Guru, Counsel for Resolution professional and the CoC marking a copy to CoC members, informing him that it may not be possible to accept an EoI exclusively from any one individual since the procedure prescribed under the Code has to be followed. However, if the Hon'ble High Court directs the CoC, then the CoC has no choice but to accept it. The Resolution Professional made it very clear to the Counsel that decision will be left to the discretion of the High Court.
- (20) The Resolution Professional failed to prevent the promoters of the Corporate Debtor from theft of machinery, it is submitted that a chartered engineer was appointed by the Resolution



Professional to verify the machinery ("**Chartered Engineer**"). The Chartered Engineer was asked to verify the list of machinery as on the valuation date vis-a vis on the date of his visit to the plant site along with the forensic auditor. On November 16, 2019, the Chartered Engineer who had conducted the valuation earlier visited the site in presence of the Transaction Auditor/Forensic Auditor ie. Mr. Nikhil Chandras and verified the machinery list along with his earlier report and confirmed that the list of machineries are intact and there has been no theft of machinery, contrary to the allegations of the Applicants.

- (21) It is further submitted that the CoC in its 10<sup>th</sup> meeting had recorded that the Resolution Professional had carried out his duties with due diligence and in a transparent manner. The CoC further recorded that they were satisfied with the work of the Resolution Professional and had further appreciated the efforts put in by the Resolution Professional. Thus, it is submitted that while the CoC had expressed its accord and satisfaction with the work of the Resolution Professional, the Applicant alleging otherwise, goes to show that the allegations are malafide and not in the best interest of the CIRP.
- (22) The malafides of the Applicant is also evidenced by its e-mail dated October 14, 2019, wherein the Applicant insisted the Corporate Debtor go into liquidation if the Resolution plans were not submitted within strict deadlines, when in fact the prospective Resolution Applicants were offering their revised resolution plans as per the directions of the Committee of Creditors. Further, the malafide intentions were also reflected in mail dated January 20, 2020 where the Applicant wrote to





the Resolution Professional marking a copy to all the members of the Coc that the Applicant is challenging the order dated January 3, 2020 passed by the Hon'ble High Court of Bengaluru in Writ Petition no.50370 of 2019, notwithstanding that higher the number of resolution plan received, more it is beneficial for the Corporate Debtor. On this ground, the instant Application should be dismissed.

4. Heard Shri Aditya Venugopalan, learned Counsel for the Applicant, and Shri A. Murali, learned Counsel for the Resolution Professional. We have carefully perused the pleadings of both the Parties and extant provisions of the Code and Rules made thereunder and the Law on the issue.
5. In the light of pleadings of both the Parties, the following main issues arise for consideration:
  - 1) Whether the Applicant, who is Operational Creditor, has locus standi to maintain the instant Application:
  - 2) Whether any adverse order can be passed against Mr. Shivdutt Bannanje, the Resolution Professional , without impleading him in person, to the instant Petition.
  - 3) Whether the allegations made against conducting of CIRP in question merits consideration.
6. As detailed supra, the Applicant is admittedly an Operational Creditor holding the claim of more than 10 %. On admission of Petition/Application filed U/s 7,9 or 10 of Code, the Adjudicating Authority will appoint IRP, impose moratorium etc. As per Section 22 of Code, the first meeting of Committee of Creditor should be held within seven days of such constitution of COC to consider



whether to confirm the same IRP as RP or to replace by a majority vote of not less than 66 % voting share of Financial Creditors. And thereafter, replacement of Resolution Professional can be effected under provisions of Section 27 of the Code In the instant case, Resolution Professional is duly appointed and conducting CIRP as per law and subject to satisfaction of COC, as detailed supra. Therefore, the Applicant has no locus standi to file the instant Application to seeking to change Resolution Professional.

7. The Applicant has not impleaded the Resolution Professional to seek any order against him. Principles of natural ordains that no order can be passed against anybody without impleading and granting sufficient opportunity to him to defend. The Resolution Professional has filed reply on behalf of Corporate Debtor, and it does amount to giving opportunity to him. Therefore, the instant Applicant is liable to be dismissed on this ground alone for non-joinder of necessary Party.
8. So far as various allegations made by the Applicant against conducting of CIRP, as detailed supra, we are convinced that Resolution Professional is discharging his duties strictly in accordance with law and COC in its Meeting held on 30<sup>th</sup> January, 2020 has reposed confidence in the conduct of Resolution Professional. Moreover, the Adjudicating Authority, will consider all issues including CIRP is conducted as per law or not, at the time of considering for acceptance of Resolution Plan. Therefore, it is premature to make any allegation against conducting of CIRP in question, and those allegations made are prima facie found to be baseless.



9. For the aforesaid reasons and circumstances, we are of the considered opinion that the instant Application is not maintainable, and it is misconceived as also devoid of merits.
10. In the result, I.A.No.106/2020 in C.P.(IB)No.228/BB/2018 is hereby dismissed. No order as to costs.

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

Shruthi