

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COURT-II

(IB)-894(ND)2019

CORAM:

**PRESENT: MR. L.N. GUPTA
HON'BLE MEMBER(T)**

**MS. INA MALHOTRA
HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
28.02.2020**

**NAME OF THE COMPANY: Ram Niwas & Sons V/s. M/s. Palm Developers
Pvt. Ltd.**

UNDER SECTION 9 OF IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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Present for the Petitioner	:	Mr. Raghavendra Bajaj, for Mr. Mr. Abhinav Mukherjee, Advocate
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ORDER

IA 1610/2020 has been filed under Section 60(5) of the Code. The grievance of the applicant is that the claim of the two Corporate Guarantors has been considered by the RP which has caused prejudice to the claim of the Financial Creditor in terms of the percentage of their voting rights in the COC. Ld. Counsel has relied upon the decision of the Hon'ble Apex Court in Civil Appeal No. 8512-8527/2019 in the matter of Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited V/s. Axis Bank Ltd., wherein it has been observed that a secured creditor need not necessarily fall within the category of a financial claimant.

The Corporate Guarantees have not been invoked as yet. As such the claim has not culminated in a debt. Till such time, a financial debt crystallizes, its claim is unsustainable, much less vest the Corporate Guarantors to be members of the COC.

In view of the aforesaid situation where the COC has been constituted with Corporate Guarantors who do not have a cause of action, no further steps

(Sapna)

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shall be taken in the meeting of the COC till the voting percentage is ascertained.

The IRP is restrained from holding a meeting of the COC or putting any agenda to vote physically or online, till the constitution of the COC is ascertained. Notice be issued to the IRP returnable on 5th March 2020. Dasti.

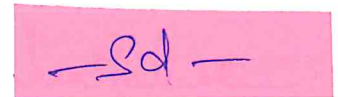
It is also brought to the notice of this Bench that the IRP has not taken any steps as mandated under the Code nor taken any steps to take over the assets of the Corporate Debtor till date.

Further, there is no report filed before this Bench as to how many units have been allotted and whether all allottees have been notified. This is required to ensure the appointment of the authorized representative of all flat owners in the COC. List of allottees be furnished by the IRP along with proof of intimation. Further, the names of the 3 IRPs proposed shall be given with the name of the IRP getting the highest number of votes to be appointed as the AR be filed by way of an affidavit along with the voting pattern.

IAs 1448/2020 and 1449/2020 be listed on the next date of hearing i.e. 5th March 2020.



(L.N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)