

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 111
(IB)-1493(PB)/2018

IN THE MATTER OF:

Enkay (India) Rubber Co. Pvt. Ltd.
v.
Sumeru Processors Pvt. Ltd.

..... Petitioners/Applicant
..... Respondent

Under Section 7 of Insolvency and Bankruptcy Code, 2016, (CIRP)

Order delivered on 30.05.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the IRP

Mr. Saurabh Kalia, Mr. Palash Agarwal, Advs. & Ms. Kanvi Nagpal, CS with Mr. Vijender Sharma, IRP

For the Respondent

Mr. Narender M Sharma, Ms. Anindita Saha & Mr. Pravesh Khayali, Advs.

For the DCB

Mr. Hashmat Nabi & Mr. Rizwan Ahmed, Advs.

ORDER

CA-1032(PB)/2019

This is an application filed by DCB Bank Limited (one of the members of the CoC) under Section 22(3) read with Section 27 of the Insolvency & Bankruptcy Code, 2016 with a prayer to appoint Mr. Rajiv Malik as Insolvency Professional. It is appropriate to mention that CP. No. (IB)-1493(PB)/2018 was admitted on 15.04.2019 and Mr. Vijender Sharma, IRP was appointed as Interim Resolution Professional who started functioning as such and the first meeting of Committee of Creditors was held on 09.05.2019 under the

Chairmanship of Interim Resolution Professional. In the first meeting of CoC the Interim Resolution Professional could not be replaced as no substituted RP to act as such was provided. As a result, Mr. Vijender Sharma, IRP continued to function as such in pursuance of the provisions of Section 22(3)(b) read with Regulation 17(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

2. The second meeting of the CoC was held on 20.05.2019 under the chairmanship of Mr. Vijender Sharma, Interim Resolution Professional and agenda at Item No. B-1 was regarding the appointment of a Resolution Professional. The applicant DCB Bank Limited recommended the name of Mr. Rajiv Malik and after much deliberation, the IRP requested the CoC members to vote to appoint anyone of the persons named therein as one of the Insolvency Professional to work as Resolution Professional of the corporate debtor undergoing CIRP. In the e-voting held on 22.05.2019 the following pattern emerged:-

	Approved	Not Approved	Abstained
Voted during the meeting	0.00%	63.94%	29.23%
Voted through e-voting	1.76%	0.00%	5.07%
TOTAL	1.76%	63.94%	34.3%

3. It is evident that for replacement of an IRP by bringing his substitute the Committee of Creditor in its meeting, by a majority vote of not less than 66% of the voting share of the financial creditor may resolve to replace the Interim Resolution Professional by another Resolution Professional. Under Section 22(3)(a) the decision of the CoC is to be communicated to the corporate debtor and the Adjudicating Authority-NCLT.

4. In case of replacement, Section 22(3)(b) comes into play and an application is required to be filed before Adjudicating Authority-NCLT for appointment of the substituted Resolution Professional. However, in the present case in the first meeting no replacement of the IRP could take place and Mr. Vijender Sharma, IRP continued to function as Interim Resolution Professional. The second meeting was held on 20.05.2019 and voting took place on 22.05.2019 but the resolution could not be carried by the requisite percentage of voting share in favour of Mr. Rajiv Malik.

5. The argument raised by Mr. Hashmat Nabi, Ld. Counsel for the applicant is that if 63.94% has not approved the continuation of the IRP and voted for replacement then it should be regarded as 66% and Mr. Rajiv Malik should be permitted to function as RP.

6. Having heard the Ld. Counsel we are of the considered view that the applicant DCB Bank Limited cannot press the aforesaid argument because the relaxation of the provision requiring 66% voting share of replacing of an IRP with RP is in terms of Section 22(2) and (3) (a) & (b) of the Insolvency & Bankruptcy Code, 2016. There is

no possibility to apply doctrine of necessity which has been invoked to save a piquant situation in the facts and circumstances of the present case. Therefore, we are unable to persuade ourselves to accept the submission made on behalf of the applicant-DCB Bank Limited. Thus, the application lacks merit and warrants dismissal.

7. As a sequel to the above discussion this application fails and the same is dismissed.

CA-927(PB)/2019

On behalf of respondent No. 1 reply has been filed. An Affidavit of service has been filed in respect of non applicant-respondent No. 2 Mr. Farhad Suri & non applicant-respondent No. 3 Mr. Niraj Jha.

2. Despite service the aforesaid non applicant-respondents have not put in appearance. Let bailable warrants be issued in the name of Mr. Farhad Suri, Member of the Suspended BoD & Mr. Niraj Jha, Member of the Suspended BoD. The details are as under:-

1. Mr. Farhad Suri, Member of the suspended BoD

House No. C-33, East Nizamuddin Hazrat Nizamuddin,
South Delhi-110013 DL IN

2. Mr. Niraj Jha, Member of the suspended BoD

JP-17, First Floor,
Near Rashmi Hospital Pitampura,
Saraswati Vihar, Delhi-110034 DL IN

3. Bailable warrants be issued to the aforesaid persons for a sum of Rs. 25,000/- along with two sureties of equal amount to ensure their presence in Court and the same be done to the satisfaction of the executing officer.

4. The DCP, Delhi is requested to depute a competent officer having jurisdiction to execute the bailable warrants and the report be submitted at the earliest.

5. A copy of this order be sent to DCP concerned by the Registrar at the earliest.

6. List on 14.06.2019.

Sd/-

(M.M.KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

30.05.2019
Ritu Sharma