

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

I.A. No.356/2019 in
C.P. (IB)No.244/BB/2018
U/S. 27(3) of the IBC, 2016

In the matter of:

Bank of Baroda

Rep. by Mr. C. Mohan, Assistant General Manager
on behalf of the Committee of Creditors
C/o. Bangalore Zone Office
38, Sapthagiri Palace,
12th Cross, Ganganagar South,
Near CBI Office,
Bangalore – 560 024 - Applicant

Date of Order: 26th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri C. Mohan, AGM, Party-in-person

ORDER

Per: Dr. Ashok Kumar Mishra, Member (Technical)

1. I.A. No.356 of 2019 in C.P. (IB)No.244/BB/2018 is filed by Bank of Baroda, Rep. by Mr. C. Mohan, Assistant General Manager, on behalf of the Committee of Creditors (Applicant) U/S. 27(3) of the IBC, 2016, by inter alia, seeking to appoint Smt. Ramanathan Bhuvaneshwari as the Resolution Professional by replacing the



existing Resolution Professional in respect of CIRP of the Corporate Debtor, in the interest of justice and equity.

2. Brief facts of the case, as mentioned in the instant Application, are as follows:

(1) Initially Dena Bank has filed C.P. (IB)No.244/BB/2018, U/s. 7 of IBC, 2016, R/w Rule 4 of I&B (AAA) Rules, 2016, by inter alia, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Kavveri Telecom Infrastructure Limited & Ors. (Respondent/Corporate Debtor) on the ground that it has committed, a default amount of Rs. 69,18,44,425.03 (Rupees Sixty Nine Crores Eighteen Lakhs Forty Four Thousand Four Hundred and Twenty Five and Three Paise only) which includes Principal amount and interest. Accordingly, the case was admitted by an order dated 21.03.2019 by initiating CIRP in respect of the Corporate Debtor appointed Shri B. Hariharan as IRP, imposing moratorium etc.

(2) The IRP constituted the Committee of Creditors, consisting of Dena Bank as the sole Financial Creditor of the Corporate Debtor holding 100% Voting Power. The IRP held the first meeting of Creditors on 20th April 2019, in which the Committee of Creditors resolved to appoint the Interim Resolution Professional Mr. B. Hariharan as Resolution Professional, in compliance with Section 22(2) of the Code. Accordingly, under Section 22(3) of the Code, on receipt of written consent from the Interim Resolution Professional to act as Resolution Professional, the Committee of Creditors communicated its decision to appoint IRP as RP to the Interim

Resolution Professional, the Adjudicating Authority and the Corporate Debtor.

- (3) The Resolution Professional conducted the 4th meeting of Committee of Creditors on 06.07.2019. In this meeting, as per point no.5 of the Minutes of the meeting, the CoC was of the view that it is better to appoint a Bangalore based Resolution Professional for effective and speedy performance of the Resolution Process of the Corporate Debtor. The Committee of Creditors decided to exercise their power under Section 27(1) of the Code, which is stated as below:

Section 27 – Replacement of Resolution Professional by Committee of Creditors:-

(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.

Accordingly, in the above meeting held on 06.07.2019, it was decided that the CoC shall identify a suitable Resolution Professional based in Bengaluru.

- (4) It is submitted that during the pendency of this case, by virtue of the Gazette of India, Extraordinary Notification No. GSR 2 (E) vide notification dated 02.01.2019, the Government of India has notified the Scheme called as the Amalgamated of Vijaya Bank and Dena Bank with Bank of Baroda Scheme 2019, which has come into force on 01.04.2019. It is submitted that pursuant to the said scheme, the



Petitioner/Applicant Bank herein was amalgamated with "Bank of Baroda". Accordingly, the Reserve Bank of India had on 30.03.2019 issued a press release declaring that all the customers of the Petitioner/Applicant Bank will be treated as customers of Bank of Baroda.

- (5) The 4th CoC meeting was held on 06.07.2019, in which the CoC recommended the Insolvency Professional Smt. Ramanathan Bhuvaneshwari having IBBI registration No. IBBI/IPA-002/IP-N00306/2017-18/10864, as the most suitable person to handle this CIRP of the Corporate Debtor.

"RESOLVED THAT in terms of Section 27 of the Code, the Committee of Creditors be and is hereby approve the appointment of Ms. Ramanathan Bhuvaneshwari, holding IBBI Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864 and who has submitted Form AA being consent to act as Resolution Professional, residing in Bengaluru as the Resolution Professional of the Corporate Debtor M/s. Kavveri Telecom Infrastructure Ltd in place of Mr. B Hariharan who is the present Resolution Professional residing in Chennai".

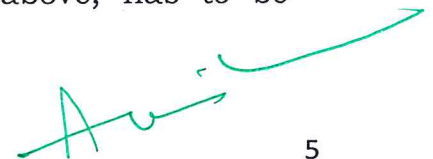
"FURTHER RESOLVED that the remuneration of Ms. Ramanathan Bhuvaneshwari, proposed Resolution Professional shall be fixed and approved/ratified by the Committee of Creditors at its next meeting".

"FURHER RESOLVED that in terms of Section 27(3) of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors shall hereby file an application before the Adjudicating Authority (i.e. Hon'ble NCLT, Bengaluru Bench) for the appointment of Ms. Ramanathan Bhuvaneshwari i.e,



proposed Resolution Professional along with her written consent in Form AA and that the Committee of Creditors hereby authorise Mr. C Mohan, Assisant Geneal Manager of Dena Bank (Now known as Bank of Baroda) to sign and file the necessary applications, for and on behalf of the Committee of Creditors and further to do all acts, deeds, matters and things as may be necessary in order to secure the approval of the Adjudicating Authority.

- (6) The Resolution Professional has also submitted Form AA in accordance with the applicable provisions of the Code and the Regulations providing her consent to act as the Resolution Professional in respect of the Corporate Debtor mentioned above. the Committee of Creditors, consisting of Dena Bank (Now known as Bank of Baroda), having 100% Voting Power, had decided to have a Resolution Professional based in Bengaluru, as stated in the policy of the Bank, for effective performance of CIRP of the Corporate Debtor.
3. Heard Shri Mohan.C, AGM, for Applicant Bank. We have carefully perused the pleadings of the party and also extant provisions of IBC, 2016 and the Rules made thereunder.
4. The case is listed on various dates to consider the instant Application. However, due to various defects in the Application, we could not pass orders. We have asked the Bank officer to suitably correct Application and file necessary documents. As stated supra, the main Company Petition was filed by Dena Bank, and thus instant Applicant i.e. Bank of Baroda is not substituted in the place of Petitioner. As per law, Bank of Baroda by virtue of the amalgamation as referred above, has to be



substantiated in the place of Dena Bank by filing necessary Application and thereafter can seek the relief as prayed in the instant application. However, the Applicant (Bank of Baroda) is not sought for any such relief by way of appropriate Application. Therefore, in order to avoid further delay in replacing the existing IRP, we are taking lenient view by exercising our inherent powers, in the interest of justice, and to avoid further delay, deciding the instant Application.


5. The Adjudicating Authority used to appoint IRP's after verifying their eligibility consent etc., in order to avoid replacement of IRP's later in order to avoid delay in CIRP. In the instant case also, the Adjudicating Authority has accepted the nomination of Shri B Hariharan as IRP, after satisfying itself, he was eligible to be appointed. Moreover, IRP/RP, after giving written consent to act as IRP/RP, cannot absolve of their responsibilities on un-tenable grounds. However, for the reasons best known to the Applicant, the IRP is being replaced without citing any consent reasons. The statute prescribed 180 days + 90 days to complete CIRP process.
6. Therefore, instead of keeping the matter pending till all defects as pointed out as supra, we are permitting the Applicant to nominate the said Smt. Ramanathan Bhuvaneshwari to act as RP with a stipulation that the RP should not resort delay tactics by filing unnecessary Applications.
7. In view of the above facts and circumstances of the law, I.A. No.356/2019 in C.P (IB) No.244/BB/2018 is disposed of with the following directions:



- (1) Smt. Ramanathan Bhuvaneshwari, holding IBBI Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864 is hereby appointed to act as Resolution Professional in respect of the M/s. Kavveri Telecom Infrastructure Limited & Ors. (Respondent/Corporate Debtor)
- (2) She is directed to take immediate steps to complete the CIRP process in question, within the stipulated period.

8. Post the C.P. (IB)No.244/BB/2018 on **09.09.2019**.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi