

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-137(ND)/2018

CORAM:

PRESENT: MS. DEEPA KRISHAN

MS. INA MALHOTRA

HON'BLE MEMBER(T)

HON'BLE MEMBER(J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.06.2018

NAME OF THE COMPANY: Power 2SME Pvt. Ltd. Uttam Stirps Ltd.

SECTION OF THE COMPANIES ACT: 8 & 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	Present for the Petitioner:		Mr. Pankaj Bhagat & Mr. Amitav, Advocates	
	Present for the Respondent:		Mr. Navneet Kumar Jain, IRP	

ORDER

The file has been taken up at the instance of the Operational Creditor who was the initiator of the Corporate Insolvency Resolution Process of the Corporate Debtor.

2. While admitting the petition on 09.04.2018, the IRP appointed by this Bench was Mr. Navneet Kumar Jain, who in compliance of the statutory mandate carried out the procedure for inviting claims and constituting the COC. His report along with the minutes of the first COC was filed before this Bench. The COC which comprises of four major

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banks passed a resolution recommending the name of Mr. Sanjay Gupta as the Resolution Professional. Vide order dated 28th of May, 2018, the decision of the COC was affirmed by this Bench and Mr. Sanjay Gupta was appointed as the RP in this case. His consent and certificate of eligibility in the required form were placed on record. Accordingly Mr. Navneet Kumar Jain, the erstwhile IRP was relieved by this Bench. Mr. Jain has since handed over/undertakes to handover all the documents collected by him to the new Resolution Professional.

3. The Operational Creditor is aggrieved by the decision of the COC to name their RP and not to confirm Mr. Jain as the RP in this case. He has therefore raised objections to the said appointment of Mr. Sanjay Gupta as the RP to work out the resolution plan.

4. In the first instance, this Bench is unable to appreciate the locus of the Operational Creditor to raise such an objection. It is squarely within the domain of the COC to decide who would continue as the RP. Mr. Pankaj Bhagat, Id. Advocate appearing for the operational creditor has submitted that the aforesaid recommendation is vitiated as the RP is on the panel of Oriental Bank of Commerce which has more than 68% claim as a financial creditor and the factum of his impartiality qua them cannot be ruled out. The action of the RP should be above board. He has placed reliance on two decisions of the principal Bench NCLT in the matter of Musadi Lal Kishan Lal vs. Ramdev International Limited in IB No. 178(PB/2017) and Alchemist Asset Reconstruction Company vs. NIIL



Infrastructure Private Limited IB No. 560(PB/2017) wherein it has been observed that the provisions of Section 27(2) of the Code permit the replacement of the Resolution Professional with another Resolution Professional, but being on the panel, the same would give rise to allegations of impartiality.

5. We heard the learned counsel for the objector as well as for the COC. The name of Mr. Sanjay Gupta has been unanimously proposed by the members of the COC which comprises of the Oriental Bank of commerce, invited consent and State Bank of India, Punjab & Sind Bank and Bank of Maharashtra. We are taking judicial note of the fact that banks normally like to propose the appointment of the Resolution Professional of their own choice and a person different from one who had initially acted as the IRP. The IBBI empanels Resolution Professionals and has put the same on its website. Oriental Bank has short listed names of empanelled and eligible Resolution Professionals for recommending their names in various CIR proceedings against defaulters. In the present case, it is not as if Mr. Sanjay Gupta had earlier rendered services in any capacity as a professional to Oriental Bank of Commerce that would create a bias against him in representing the bank, nor is he a retainer with them in any professional capacity. His name appears as one of the 125 professionals that the bank has short listed for proposing their appointment as the RP in resolution processes as and when the need arises. This has been done so that no time is lost in

scrutinising their eligibility or seeking their consent. We must not lose sight of the fact that time is the essence of the proceedings under the Code and if the Bank has previously scrutinized the credentials of the Resolution Professional, it would be no ground to impute partiality. The name of Mr. Sanjay Gupta proposed by the Oriental Bank of Commerce was unanimously approved by the other members Banks of the COC. Under such circumstances it cannot be said that Mr. Sanjay Gupta, the Resolution Professional, would show any favour or partiality to Oriental Bank of Commerce. There is nothing wrong in any bank maintaining their list of RPs whom they feel are competent or experienced to handle resolution plans.

6. The short listing of the names of eligible RPs and maintaining their list does not per se give rise to the fact that the RP would lean in favour of the financial creditor. His work is open to scrutiny, and subject to the final decision of the COC.

7. The facts of the case law cited by the Id. Counsel for the Objector/Operational Creditor appear to be different from the facts of the case in hand. We do not find the present case to be one where the proposed RP has been a Retainer with any of the members of the COC, so as to disqualify him on grounds of a possible controversy.

8. Given the aforesaid observations, as well as the fact that the Operational Creditor has no locus standi to question the decision of the

COC by making allegations, and in the process pray that the previous IRP alone should be confirmed as the RP, is an objection which is wholly unsustainable. There is no reason for us to modify or amend our decision of dated 28th May, 2018 confirming Mr. Sanjay Gupta as the RP in this case.

Objection dismissed.

9. The RP is directed to file his periodic interim reports.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)