

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

I.A.No.329 of 2020
U/s. 22(3)(b) of IBC, 2016

&

I.A.No.342 of 2020
U/s. 60(5)(c) of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In

C.P.(IB)No.229/BB/2019

For I.A. No.329 of 2020:

Between:

Mr. V.S.Varun

*Interim Resolution Professional
(Acting under directions of the CoC of
Unishire Regency Park LLP)
Flat No.1B, 108, Banyan,
The Tree by Provident,
2nd Main Road, Herohalli,
Off Magadi Road,
Bengaluru – 560 091.*

Applicant

For I.A. No.342 of 2020:

Between:

IIFL Finance Limited

*R/o. at IIFL House,
Sun Infotech Park,
Road No.16V,
Plot No.B-23, Thane Industrial Area,
Wagle Estate
Thane - 400 604*

Applicant

And

Mr. V.S.Varun

*Interim Resolution Professional of
Unishire Regency Park LLP
and 2 others*

Respondents



Date of Order: 15th February, 2021

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

Parties/Counsels Present, through Video Conference:

For I.A. No.329 of 2020:

For the Applicant/IRP : Shri Arjun Rao

For I.A. No.342 of 2020:

For the Applicant : Ms. Amrita Jain

For the Respondent No.1 : Shri Arjun Rao

For the Respondent No.2 : Ms. Meena Venugopal

COMMON ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.329 of 2020 in C.P.(IB)No.229/BB/2019 is filed by Mr. V.S.Varun, Interim Resolution Professional of Unishire Regency Park LLP('Applicant'), U/s. 22(3)(b) of the IBC, 2016, by *inter alia* seeking to direct the name of the Proposed Resolution Professional, Mr. BaladyShekar Shetty, having IBBI Reg. No. IBBI/IPA-002/IP-N00213/2017-18/10665, be forwarded to the IBBI for its confirmation in terms of Section 22 (4) of the IBC, 2016 and to appoint him as the Resolution Professional of the Corporate Debtor; to discharge the Applicant from the role of Interim Resolution Professional of the Corporate Debtor.
2. I.A.No.342 of 2020 in C.P.(IB)No.229/BB/2019 is filed by IIFL Finance Limited ('Applicant'), U/s.60(5) (c) of IBC, 2016, R/w Rule 11 of NCLT Rules, 2016, by *inter alia* seeking to declare all actions taken by R-1 as an IRP of the Corporate Debtor during the CIRP including but not limited to constitution of the CoC, assigning the



voting shares and appointment of Mr. BaladyShekar Shetty as RP, as null and void etc.

3. Brief facts of the case, as mentioned in I.A.No.329 of 2020, which are relevant to the issue in question, are as follows:

- (1) Initially, C.P.(IB)No.229/BB/2019 filed by India Infoline Finance Limited (Petitioner/Financial Creditor), was admitted by the Adjudicating Authority vide Order dated 29.05.2020, by initiating CIRP in respect of Corporate Debtor; appointing the Applicant as IRP; imposing moratorium etc. Accordingly, the IRP made public announcement dated 05.06.2020, in the prescribed form about the commencement of the CIRP, by calling upon the claims from the creditors of the Corporate Debtor on or before 18.06.2020.
- (2) Accordingly, Nippon Life India AIF Management Limited has claimed a financial debt due of Rs.4,33,00,88,111/- and the same has been provisionally admitted and India Infoline Finance Limited claimed a financial debt due of Rs.18,90,09,629/- and the same has been provisionally admitted. These claims were provisionally admitted but due to non-availability of books of account of the Corporate Debtor, the said claims could not be verified from the books of account. However, the Applicant took all necessary steps available in law to constitute the First CoC based on the claims received and collated as per Section 21 of the Code and the relevant regulations. The IRP constituted the CoC as per the provisions of Section 21 of the Code, which consists of the following two financial creditors:
 - a. Nippon Life India AIF Management Limited holding 95.82% of the voting rights in the CoC.
 - b. India Infoline Finance Limited holding 4.18% of the voting rights in the CoC.

- (3) The CoC in its first meeting dated 06.07.2020, *inter alia* did not confirm the erstwhile IRP as the RP. The CoC members stated that they will soon finalise a Resolution Professional in the interregnum and various other issues were discussed. Thereafter, a second meeting of the CoC was conducted on 22.7.2020, where in various objections were raised by one of the Financial Creditors, IIFL Finance Limited, as to the constitution of the CoC and appointment of Resolution Professional. As there was no agreement between the Members of the CoC, the matter was put to a vote and a resolution was passed with 94% of the voting share, to appoint the Proposed Resolution Professional as the Resolution Professional of the Corporate Debtor, subject to confirmation by the Adjudicating Authority.
- (4) In terms of Section 22(3)(b) of the Code, the proposed Resolution Professional has provided his written consent to act as Resolution Professional of the Corporate Debtor in Form AA under Regulation 3(1A) of the IBBI (IRP for Corporate Persons) Regulations, 2016. Therefore, the requirements of Sections 22(2) and 22(3)(b) of the Code have been met. However, other Financial Creditor, IIFL Finance Limited, has issued a letter dated 06.08.2020, making various allegations against the Applicant. Hence, the present Application.
4. Brief facts of the case, as mentioned in I.A.No.342 of 2020, which are relevant to the issue in question, are as follows:
- (1) The IRP vide his email dated 04.07.2020, communicated the agenda for convening the first CoC meeting to be held on 06.07.2020, without verification and collation of claims. The IRP has stated that he had received a claim from Nippon Life India AIF Management Limited, against which verification was pending. As per Regulation 13 of the IBBI, Regulations, 2017, the IRP is required to verify the claims received within 7 days



from the last date of receipt of claims, i.e. by 25.06.2020. However, the RP proceeded to conduct the first CoC meeting without verification and collation of claims received, with the Applicant and Nippon Life India AIF Management Limited as the attendees. The Applicant has made several allegations against the claim made by Nippon Ltd., apparently arising, as stated by the Applicant, from the fact that in the Impleading Application filed by Nippon Ltd., (which was rejected by this Tribunal), during the pendency of the original section 7 Petition, the claim made by Nippon Ltd. was far less as against the claim now made before the RP and provisionally accepted at Rs.4,33,00,88,111/-.

5. The Respondent No.2/Nippon Life India AIF Management Limited, has denied the allegations made by the Applicant of IA No. 342 of 2020 by inter-alia contending that IRP has received claims from the Applicant as well as the Nippon Life India AIF Management Limited. However, claims were yet to be verified since the Corporate Debtor has not updated the accounts for quite some time and that efforts were on to verify the details at the earliest. However, the IRP had verified the claims on the basis of the claim forms and the documents submitted therewith and also from master data of Corporate Debtor and on basis thereof CoC was constituted.
6. Heard Shri Arjun Rao, learned Counsel for IRP, Ms. Amrita Jain, learned Counsel for IIFL Finance Limited, and Ms. Meena Venugopal, learned Counsel for Respondent No.2 through Video Conference. We have carefully perused the pleadings of the parties and extant provisions of the Code.
7. The facts as narrated above show that IRP is stated to have constituted COC based on available material in order to avoid further delay in CIRP. Since there are only two COC Members and claim of IIFL Finance Limited, was fully accepted by the IRP, it



cannot have much grievance. However, if the claim of Nippon is reduced, after final verification, it may get some advantage in the process. Though, we are not satisfied with casual approach of the Applicant/ IRP in verifying the claims in question, we are approving the new RP, who will examine afresh basing on evidence and law. Moreover, IIFL Finance Limited cannot become major COC Member, even if the claim of Nippon is reduced to some extent, after verification. Therefore, in order to avoid further delay in CIRP, it would be just and proper to approve the proposal to Mr. BaladyShekar Shetty as the Resolution Professional, who is qualified Resolution Professional having requisite experience. Also, the new Resolution Professional can be directed to verify the claim of Nippon afresh by taking into consideration the record available and all also allegations made by IIFL Finance Limited in the instant Application.

8. In the result, both **I.A Nos.329 & 342 of 2020** in CP (IB)No.229/BB/2019 are hereby disposed of with the following directions:
- a) We hereby appoint **Mr. BaladyShekar Shetty**, Insolvency Professional having Registration No.IBBI/IPA-002/IP-N00213/2017-18/10665 as Resolution Professional to conduct CIRP as per dated 29thMay, 2020 passed in C.P.(IB) No.229/BB/2019.
 - b) The new Resolution Professional is directed to take charge of CIRP of the Corporate Debtor with immediate effect, and to take immediate steps to complete it as expeditiously as possible.
 - c) The existing IRP is directed to handover all the records of CIRP of the Corporate Debtor to the said Resolution Professional immediately and also assist the new Resolution professional.

L. J. Shetty

- d) The new Resolution Professional is directed to examine the claim of Nippon, afresh basing on records available and also the contentions/allegations made by the Applicant in I.A.No.342 of 2020, and verify the claim made by Nippon Life India AIF Management Limited, dispassionately not influenced by the casual decision(s) taken by the outgoing IRP, based on the materials available on the record and take final decision on the quantum of claim made by it and communicate his decision to IIFL Finance Limited, within a period of three weeks from date of receipt copy of this order.
- e) IIFL Finance Limited is granted liberty to approach the Adjudicating Authority, in case new RP, too takes arbitrary decision on the issue like the IRP.
- f) The Registry is directed to communicate a copy of this order to IBBI. all Parties to the instant case, immediately.
- g) No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja