

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (J)

IA (IB) No. 724/KB/2018 in CP(IB) No.762/KB/2017

In the matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11,14 and 51 of the National Company Law Tribunal Rules, 2016;

-And-

In the matter of:

Noor Alam & Ors.

.... Financial Creditors

-Versus-

Prism Infracon Limited;

---Corporate Debtor

-And-

In the matter of:

Pankaj Agarwal, son of Pradip Agarwal, having his office at Room No.1 (Basement), 6, Old Post Office Street, Kolkata- 700 001;

.... Applicant

-Versus-

Partha Kamal Sen Insolvency Resolution Professional of Prism Infracon Limited, having his office at Flat-8C1, Brook Tower, Hiland Park, 1925 Chak Garia, Kolkata- 700 094 and also at ECO Space.

...Interim Resolution Professional/Respondent

Counsel appeared:

- | | |
|--------------------------------------|------------|
| 1. Mr. Shyamantak Banerjee, Advocate |] For SEBI |
| 1. Mr. Rahul Auddy, Advocate |] For RP |

- | | | |
|---------------------------------------------|---|-------------------------|
| 1. Mr. Partha Kamal Sen |] | Resolution Professional |
| 1. Mr. Anupam Das Adhikary, Advocate |] | For Respondent No.2 |
| 2. Mr. Krishnendu Paul Choudhury, Advocate] | | |
| 1. Ms. Rajashi Dutta |] | |
| 2. Mr. Ramji Munshi |] | For Financial Creditors |
| 3. Mr. Pankaj Agarwal |] | |
| 4. Ms. Paramita Maity |] | |

Date of Pronouncement of Order: 05.09.2018

ORDER

In CP No.762/KB/2017, this application under section 60(5) of the Insolvency & Bankruptcy Code, (in short, I&B Code) 2016 is filed by one Mr. Pankaj Agarwal against IRP, Mr. P.K.Sen for directing the IRP to accept the claim of the applicant's claim as one of the members of the CoC as a representative of 86 debenture holders of the Corporate Debtor.

2. He stated that he has submitted his claim to IRP on the basis of power of attorney executed by 86 debenture holders in his favour. They appointed him as their representative to take part as one of the members of the CoC.

3. I heard the Ld. Counsel for RP and the Ld. RP in person. I also heard Ld. Sr.Counsel of the Corporate Debtor who submitted that the matter is likely to be settled. Be that as it may. In this case, the Corporate Debtor is now admitted to CIRP and IRP has been appointed to look after the affairs of the Corporate Debtor. At present, this authority is seized with the question where all powers of attorney holders of the Financial Creditor can be allowed to take part as one of the members in CoC.

4. Mr. Noor Alam, one of the debenture holders has filed this CIRP under section under section 7 of the I&B Code, 1956 against the Corporate Debtor. It is admitted by this Authority vide order dated 03.07.2018. One Mr. P.K. Sen is appointed as IRP. He made public announcement of CIRP of the Corporate Debtor. In response thereto, the applicant filed claims of 86 debenture holders on the basis of power of attorney executed by them in his favour. It appears that IRP did not entertain his request. Hence, he has filed this application.

5. Amended provisions of section 21(6A) of the I&B Code states that :-

Where a financial debt—

- (a) *is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;*
- (b) *is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or subsection (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;*
- (c) *is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,*

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

6. The terms of the debenture holders i.e. financial creditors are to appoint their agent to represent them in CoC. In this case, original trustees of a trust created by the Corporate Debtor to manage the affairs of debenture holders are debarred/restrained by the SEBI from acting as an Intermediary of the trust that was created by the Corporate Debtor. Now each debenture holder has to submit his claim to the IRP. However, above provision allows the class of creditors to appoint their representative to attend the CoC meetings. IRP has to allow the applicant to act as representative of the creditors. However, it is further made clear that while raising claim of each of the debenture holder, IRP/RP has to keep in his mind the provisions of section 57 of the Companies Act, 2013.

7. With the above observations, this application in IA(IB) No.724/KB/2018 stands disposed off.

Registry is hereby directed to communicate the order to the Applicant, Corporate Debtor and to the IRP/RP.

Let the certified copy of the order be issued upon compliance with requisite formalities.

Sd/-

(Madan B. Gosavi)
Member (J)

Signed on this, the 5th day of September, 2018.