NATIONAL COMPANY LAW TRIBUNAL
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Fort, Mumbai - 400 001.
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सत्यमेव जयते

राष्ट्रीय कम्पनी विधि अधिकरण
छटी मंजिल, फाउन्टेन दूरसंचार भवन नं. १,
सेंट्रल दूरसंचार भवन के पास,
एम. जी. मार्ग,फोर्ट, मुंबई - ४००००१.
दूरभाषनं. २२६१७२००/२२६१९६३६ (फॅक्स

No. NCLT/ MB/I&BC/ Schweitzer /2018/44 Date: 30.01.2018

To
Shri R. Sreekara Rao
Deputy General Manager,
Insolvency and Bankruptcy Board of India,
7th Floor Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi-110001

Subject: Request to replace the IRP and appointment of RP in the matter

Ref- M.A. No.692/2017 in C.P. No. 1059/ I &BC/NCLT/MB/MAH/2017
in the matter of M/s Schweitzer Systemtek (India) Pvt.Ltd.

Sir,

With reference to the subject cited I have to state that this Registry has been directed by Court No.2 of NCLT, Mumbai Bench by order dated 10-01-2018 to refer the case given below to Insolvency and Bankruptcy Board of India, for replacement of name of Interim Resolution Professional (IRP) with Resolution Professional (RP) and to appoint him in the following matter:-

M.A. No.692/2017 in C.P. No. 1059/ I &BC/NCLT/MB/MAH/2017

The copy of the order dated 10-01-2018 passed by Court No.2 of NCLT, Mumbai Bench in the said Insolvency Petition is enclosed for your kind perusal.

In view of above submission I am directed to request you to kindly appoint Mr. Rajesh Kumar Mittal as an Resolution Professional (RP) in place of Interim Resolution Professional (IRP) Mr. Martin S.K. Golla and to appoint him in above referred matter.

Yours Faithfully

(V. S. HAJARE)
(DEPUTY DIRECTOR)

Encl-As above

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No. 1059/(MAH)/2017
M.A. No. 692/2017

CORAM: Present: SHRI M.K. SHRAWAT
MEMBER (J)

SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.01.2018

NAME OF THE PARTIES: Schweiter Systemtek India Pvt. Ltd.

SECTION OF THE COMPANIES ACT: I & BP Code 2016.

S. No.	NAME	DESIGNATION	SIGNATURE
1	Madhavi Nalluri for Applicant-Promoter	Advocate	
	Manasvi Agrawal	Adv for Phoenix ARC	
	Jay Sanklecha	IRP (Mr. Martin S.K. Golla)	Jay.

(Contd...2).

ORDER

CP 1059/I&BC/NCLT/MB/MAH/2017

1. MA 407 is submitted on 08.09.2017 by M/s. Imperior Multi Ventures Private Limited (in short IMVPL) in the capacity of a Financial Creditor invoking the provisions of section 60(5)(c) of The Code that in spite of anything contained in any other law the NCLT have jurisdiction to entertain or dispose of any question of law or facts arising out of the Insolvency Resolution or Liquidation proceedings in respect of a Corporate Debtor.

1.1 Through this Application the Applicant has pressed following two directions to be issued by NCLT if deemed fit:-

"

i) Declare that the Respondent No.2 cannot be a part of the committee of creditor on the basis of the claim submitted by it to the IRP.

ii) Declare that in case of a deadlock at the first meeting of the committee of creditors, the IRP appointed at the time of admission of the application under the IBC may continue to act as the resolution professional until such time as a resolution is passed under section 22 for his/her replacement; "

1.2. On hearing both the sides it is noticed that on the question whether Phoenix ARC Private Limited can participate in the meeting of the Committee of Creditors due to change of percentage of voting share has to be decided by the Insolvency Professional to be substituted. The substituted Insolvency Professional shall consider the percentage of the share of one of the Financial Creditor Phoenix ARC Private Limited after taking into account the claim of the respective Creditors vis-

(Contd....3.)

à-vis the total Debt under consideration. In this manner the relief as per para(i) is hereby addressed.

1.3 Further, we have noted that there was a deadlock because there was no absolute majority of 75%, as alleged, in favour of any of the Financial Creditors and due to that reason, the name of the substituted Insolvency Professional could not be finalised. We have been informed that through a separate pleadings addressed by a Legal Representative of the Interim Resolution Professional it is conveyed that Mr. Martin Golla has expressed his desire to be recused from the Proceedings of this case. As a consequence, it is conveyed by the Learned Representatives of both the alleged Financial Creditors that they are in agreement to substitute the Insolvency Professional. As a consequence, the continuation of the present IRP is not required. The suggestion of invocation of jurisdiction prescribed under section 22(2) is not judicially required.

1.4 The Application is disposed of accordingly on the above terms.

2. MA 378 is submitted on 06.09.2017 by the Financial Creditor Phoenix ARC Private Limited with the Prayer to invoke the jurisdiction prescribed under section 22(2) of The Code for the purpose that the Committee of Creditors may by a majority vote of not less than 75% of the voting share of the Financial Creditors can either resolve to appoint the Interim Resolution Professional as Resolution Professional

(Contd....4.)

or to replace the Interim Resolution Professional by another Resolution Professional. Through this Application it is prayed by the Financial Creditor that the following professional may be appointed as Insolvency Professional:-

"Rajesh Kumar Mittal, Kalyan (West), Registration No. IBBI/IPA-002/IP-N00083/2017-18/10224, email id: csrajeshmittal@gmail.com".

2.1 The Representatives of the alleged Financial Creditors have agreed for the aforementioned substitution. Under the circumstances when the Financial Creditors have expressed their willingness for the aforementioned substitution, the same is hereby treated as a Resolution passed by the Committee of Creditors approving the substitution and appointment of Mr. Rajesh Kumar Mittal as Insolvency Professional.

2.2 The Registry of NCLT is hereby directed to intimate the impugned substitution to Insolvency & Bankruptcy Board of India, New Delhi immediately.

2.3 The Application is disposed of accordingly.

3. One more Miscellaneous Application MA 692 is submitted on 27.12.2017 by one Mr. Suresh Shivshankar Menon. At the outset, on hearing the submissions of the Learned Representatives Ms. Madhavi Nalluri, it is communicated that once the Insolvency Proceedings had already been commenced vide an Order passed under section 10 moved by M/s. Schweitzer Systemtek India Private Limited dated 03.07.2017 the Board stood dissolved hence the Promotor Director has no *locus standi*. In any case this Application is merely for extension of period

(Contd....5.)

by 90 days more. The Representatives of the Committee of Creditors have also made the same prayer. As a consequence, invoking the jurisdiction prescribed under section 12 the period of 90 days is hereby extended.

3.1 This Application is although not maintainable, however, the period is extended as directed above.

4. The Insolvency Professional Mr. Rajesh Kumar Mittal shall submit the Progress Report on or before the next date of hearing. The Petition be listed for hearing on **27.02.2018**. Directed accordingly.

Sd/-

BHASKARA PANTULA MOHAN
Member(Judicial)

Sd/-

M.K. SHRAWAT
Member (Judicial)

Date : 10.01.2018
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