

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
IA 45/2017 in CP 1055/I&BP/NCLT/MAH/2017
Under Section 16(5) of IBC, 2016**

In the matter of

Roofit Industries Ltd Petitioner

Order delivered on 25.7.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant/Interim Resolution Professional: Mr. J. K. Jain

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

It is a Miscellaneous Application moved by the Interim Resolution Professional under Section 16(5) of the Insolvency and Bankruptcy Code, 2016 with reliefs as follows:

- a. To waive the requirement of providing the participants of the COC meeting an option to attend the COC meeting through video conferencing or other audio and visual means as per said Regulation 23 of the CIRP Regulations;
- b. To declare that the voting in the COC meeting via electronic means will not be invalid due to no participation by the members whose emails are not available.
- c. To waive the service of the notice of the COC meeting via email on financial creditors whose emails are not available;
- d. To waive the service of the notice of the COC meeting on the depositors;

- e. To debar the depositors of the Corporate Applicant from attending the COC meeting; and
- f. Any other relief or reliefs in the nature and circumstances of the case be granted in favour of the Intervener as this Hon'ble Court deems fit.

Facts of the case:

1. The Interim Resolution Professional submits that this Debtor has nearly 91 Financial Creditors as defined in Section 4(7) of the Code, apart from 29,171 fixed depositors. Out of these 91 Financial Creditors, only 21, responding to the public notice given as envisaged under section 13 and 15 of the IB Code, have filed their claims in Form 'C' prescribed under Regulation 8 of the Insolvency and Bankruptcy Board of India (IRPCP) Regulations, 2016

2. The Interim Resolution Professional/Applicant submits that it is not possible for the Interim Resolution Professional to provide Video Conferencing or other Audio Video facility as per the said Regulation 23 of the CIRP Regulations to the participants to attend the Committee of Creditors meeting. He also says that it is not possible,

(a) to provide electronic voting to the members of the Committee of the Creditors as per Regulation 26 of the CIRP Regulations unless email address of such members is available. It is not available in the records of the Company,

(b) to serve notice of the Committee of Creditors meeting on the depositors of the Corporate Debtor,

(c) to serve notice of the Committee of Creditors meeting on Financial Creditors via emails as their emails are not available. However, a copy of notice calling the meeting of the Committee of Creditors can be served on all Financial Creditors (except depositors) at their latest address available with the Corporate Debtor and

(d) to entertain the depositors in the Committee of Creditors meeting.

3. Apart from these averments in this application, the Interim Resolution Professional submits that this Company has not been functioning for the last 15 years, indeed this company remained as sick company and the proceedings were pending before AIFR, therefore he says that it has become very difficult for him to get even the material documents that are required in relation to creditors. This Interim Resolution Professional has filed this application remaining under the impression that he is required to give notice to every Financial Creditor, Operational Creditor and Depositors regardless whether any claim has been made by them or not.

4. By going through this application as well as on making an exercise in respect to relevant sections in IB Code and CIRP Regulations, the Interim Resolution Professional has to collate all the claims received against the Corporate Debtor basing on the public notice given under Section 13 and 15 of the IB Code. Since it has not been mentioned either in the Section of law or in the Regulations that Insolvency Resolution Professional is under obligation to give second individual notice to each of the Financial Creditors, Operational Creditors and Depositors, the only presumption that could be drawn at this juncture is that Interim Insolvency Resolution professional is under no obligation to give another notice apart from the public notice given under section 13 and 15 of the IB Code, therefore, he is at liberty to constitute Committee of Creditors after collation of the claims received by him from the Creditors.

5. On seeing the Public Notice given u/s 13 and 16, soon after constitution of Committee of Creditors, meeting is to be held as per Regulation 19 of the IBB(CIRP) Regulations, 2016, and that Committee meeting shall be called by giving not less than seven days notice, in writing, to every participant at the address which has been provided to the Resolution Professional either by hand delivery or by post, apart from serving on every participant by electronic means in accordance with Regulation 20.

6. Since it has been mentioned notice has to be given to every participant, if we see the definition of "participant" in CIRP Regulation, it is understandable

that "Participant" means a person entitled to attend the meeting of Committee under Section 24.

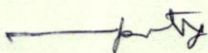
7. For this definition of participant is in reference to Section 24, when section 24 is read, it can be ascertained that Section 24 is only saying that notice shall go to the members of Committee of Creditors, members of suspended Board of Directors or the partners of the corporate persons, operational Creditors or the representative of them, if the amount of the aggregate due is not less than 10% of the debt, the Directors, partners and one representative of the Operational Creditor as referred to Sub-Section 3 may attend the meeting of the Committee of Creditors but shall not have any right to vote in the meetings.

8. By reading this Regulation 19, definition of participant along with Section 24, it appears that the Resolution Professional shall give notice to only Committee of Creditors already constituted, members of the suspended Board of Directors and Operational Creditors, if any, made in their claim.

9. After having gone through all those provisions together, for the Insolvency Resolution Professional has email addresses of all of them who had made claim before him, he shall send email to all those persons, creditors and other persons as mentioned in Section 24 of the IB Code, 2016.

10. As to providing video conferencing, since the Insolvency Resolution Professional says that the Company has no money even to hold any video conference or audio video facility, though that right has been given to parties under Regulation 23 of CIRP Regulations, for there being no funds with the company, if at all any of the members of Committee of Creditors want to have video conferencing, the Insolvency Resolution professional is at liberty to arrange video conference at the cost of the Creditors seeking Video conferencing.

11. Accordingly, this application is hereby disposed of.



V. NALLASENAPATHY
Member (Technical)



B.S.V. PRAKASH KUMAR
Member (Judicial)