

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

Company Application No.82/2017 in C.P. No.16/2017

In the matter of :

Edelweiss Asset Reconstruction Company Limited acting in its capacity as trustee of EARC Trust SC 44 and 116 having its office at Edelweiss House, Off. CST Road, Kalina, Mumbai- 400 098

... Applicant/ Financial Creditor

And

In the matter of :

1. Sree Metaliks Limited (under Insolvency Resolution Process) represented through Mr. S.M.Gupta, Interim Resolution Professional having its registered office at 8/1, New Tangra Road, China Town, Kolkata- 700 046
2. Mr. S.M.Gupta (Reg.No.IBBI/IPA-002/IP-0037/2016-17/1200) Interim Resolution Professional Sree Metaliks Limited (under Insolvency Resolution Process) P-15, Bentinck Street, Kolkata- 700 001
3. JM Financial Asset Reconstruction Company Limited having its office at 3rd floor, B Wing, Squashish IT Park, Plot No.68E, Off. Dattapada Road, Borivali (East), Mumbai- 400 066
4. Andhra Bank having its office at Bhubaneswar Main branch, 7 & 8 Janpath Bapuji Nagar, Choudhary Market, Bhubaneswar- 751 009
5. ICICI Bank Limited having its office at ICICI Bank House, 3A, Gurusaday Road, Kolkata – 700 019
6. Srei Equipment Finance Limited having office at Vishwakarma, 86C, Topsia Road, Kolkata – 700 046
7. Srei Infrastructure Finance Limited having office at Vishwakarma, 86C, Topsia Road, Kolkata – 700 046
8. Allahabad Bank having office at 3/1, B, I.R.C. Village, Nayapalli, Bhubaneswar- 751 015

9. Oriental Bank of Commerce having office at D-11, Sector-1, Salt Lake, Kolkata – 700 084

10. Pegasus Asset Reconstruction Private Limited having office at 55-56, 5th floor, Free Press House, Nariman Point, Mumbai – 400 021

11. IFCI Limited, Chatterjee International Centre, 3rd floor, 33-A, Jawaharlal Nehru Road, Kolkata – 700 071

..... **Respondents**

Counsels on Record:

1. Mr. S.M. Gupta, F.C.S. (Regd. Insolvency Professional)] Interim Insolvency Resolution] Professional
2. Mr. Sabyasachi Chowdhury Mr.Rahul Auddy Ms.Neha Naik] Edelweiss Asset] Reconstruction Co.Ltd.]
3. Mr.V. Raja Rao Ms.Aparajite Rao] Pegasus Asset] Reconstruction Private Ltd.] Indus Ind Bank Ltd.
4. Mr. Sanjay Mandpe Md. Manruddin, Advocate] Oriental Bank of Commerce
5. Ms. Nitu Poddar] Srei Equipment Finance Ltd.
6. Mr. O.N.Sharma, Sr. Manager] Allahabad Bank
7. Mr. Rahul Das, Sr. Analyst] JM Financial Asset Reconstruction Company Ltd.

Date of Pronouncing the order :

ORDER

Per Sri Vijai Pratap Singh, Member(J)

I.R.P. has submitted Progress Report dated 02.03.2017 in relation to the Insolvency and Bankruptcy Code Case, which was registered as C.P. no.16/2017 wherein it has been mentioned that no consensus could be arrived at the appointment of Resolution Professional and it was left for the Tribunal to appoint a Resolution Professional.

C.A. no.82/2017 has been moved by the Applicant/ Financial Creditor Edelweiss Asset Reconstruction Company Limited, wherein it has been prayed that Shri Kuldeep Verma enrolled with the Indian Institute of Insolvency Professional of ICAI as Insolvency Professional may be appointed as Resolution Professional. In this application, page 39 depicts the ballot for appointment of Insolvency Professional.

The applicant has filed proceeding of the first meeting of the Committee on Creditors of Sree Metaliks Limited which is exhibit no.7 of this application. Item no.3 of this meeting was to consider, discuss and approve the appointment of a Resolution Professional to conduct the Corporate Insolvency Resolution Professional. It appears that the creditors were not able to arrive at a consensus on the appointment of Resolution Professional. The ballot for appointment of Resolution Professional as mentioned at page 39. It appears that out of 8 creditors, Allahabad Bank and Oriental Bank of Commerce absented from the voting and other six creditors voted in the meeting. Three creditors proposed the name of Mr. Kuldeep Verma as Resolution Professional and rest of the three creditors proposed the name of Mr. Vinod Kumar Kothari as Resolution Professional. Therefore, it appears that percentage of votes in favour of Mr. Kuldeep Verma was 67.27% and percentage of votes in favour of Mr. Vinod Kumar Kothari was 32.73%. Since the requisite percentage of votes of 75% of voting share of financial creditors could not be obtained for any of the proposed Resolution Professional. The Resolution could not be passed for appointment of Resolution Professional.

At the time of argument, it was stated by the Advocate of the Corporate Creditor SREI Equipments Finance Limited that he is not opposing the appointment of Mr. Kuldeep Verma as Resolution Professional. During the course of argument, SREI Equipments Finance Ltd. And SREI Infrastructure Finance Ltd. which had proposed the name of Mr. Vinod Kr. Kothari have not opposed the appointment of Mr. Kuldeep Verma as Resolution Professional.

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At the time of hearing, except ICICI Bank Ltd., Advocates representing all other creditors were present in the Court and they all agreed that Mr. Kuldeep Verma may be appointed as Resolution Professional. Though the Corporate Creditor, SREI Equipment Finance Ltd. and SREI Infrastructure Finance Ltd. had earlier proposed the name of Mr. Vinod Kr. Kothari for appointment as Resolution Professional but now they have stated that they are ready to accept the name of Mr. Kuldeep Verma as a Resolution Professional.

As far as the Creditor, ICICI Bank Ltd. is concerned, it appears from the Minutes of the Joint Lenders meeting dated 03.03.2017 that ICICI Bank and Oriental Bank of Commerce have informed that they would be approaching their Competent Authority for the clearance and in principle they are in agreement with the other lenders. From this, it appears that ICICI Bank has in principle supported the views of other lenders. Therefore, in the present situation, there remains no opposition to the appointment of Mr. Kuldeep Verma as Resolution Professional. As per the provisions of sub-clause (2) and (3) of section 22 of Insolvency and Bankruptcy Code, 2016, it appears that Committee of Creditors by majority vote, being not less than 75% of voting share of the financial creditor, may resolve to appoint the I.R.P. as a Resolution Professional or to replace the I.R.P. by another Resolution Professional.

In this case, Committee of Creditors has not approved the appointment of I.R.P. as R.P. and out of eight creditors, two of the creditors absented from voting. Three creditors proposed the name of Mr. Kuldeep Verma and rest of the three creditors proposed the name of Mr. Vinod Kr. Kothari for appointment as Resolution Professional. The total percentage of votes which were in favour of Mr. Kuldeep Verma was 67.27%. 32.73% votes were in favour of Mr. Vinod Kr. Kothari.

In this case, SREI Equipment Finance Ltd. and SREI Infrastructure Finance Ltd. have expressed their support for the appointment of Mr. Kuldeep Verma as Resolution Professional. Though no representative from ICICI Bank Ltd., which has only less than 2% of voting share is present in the Court, it

appears from the Minutes of the Lenders meeting dated 3rd March, 2017 that ICICI Bank in principle was in agreement with other lenders for appointment of Resolution Professional. So, in the present scenario, all the creditors are in favour of Mr. Kuldeep Verma for appointment as resolution Professional. Therefore, the Company Application 82/2017 deserves to be allowed.

ORDER

Company Application no.82/2017 is hereby allowed and Mr. Kuldeep Verma is appointed as Resolution Professional subject to approval from the Insolvency Board which is required as per sub-rule 4 of section 22 of Insolvency & Bankruptcy Code, 2016. Shri Kuldeep Verma is to submit his consent for working as Resolution Professional through an affidavit. The Registrar is directed to send a copy of the order to Insolvency Board with a copy of the Company Application no.82/2017 for confirmation regarding the appointment of Resolution Professional.

List the matter on 22 March, 2017 for further orders.

Sd/-

(S. Vijayaraghavan)
Member(T)

Sd/-

(Vijai Pratap Singh)
Member (J)

Signed on this 9th day of March, 2017