

Date: 21/04/2022

The General Manager Department of Corporate Services BSE Limited Phiroze Jeeja bhoy Towers Dalal Street, Fort Mumbai - 400 001	The Manager Listing Department National Stock Exchanges of India Limited Exchange Plaza , 5 th Floor, Plot No.C/1, G Block, Bandra- kurla Complex, Bandra(East) Mumbai - 400 051
Scrip Code : 523796	Scrip Code : VICEROY

Dear Sir/Madam,

Sub: Intimation of Replacement of Resolution Professional (RP) in the matter of M/S. Viceroy Hotels Limited.

Pursuant to Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations), we hereby inform that: Dr. G.V Narasimha Rao, Insolvency Professional (Registration No. IBBI/IPA-003/IP-N00093/2017-18/10893) has been appointed as the new Resolution Professional (RP) in place of Mr. Karuchola Koteswara Rao, Insolvency Professional (Registration No. IBBI/IPA-003/IP-N00039/2017-18/10301) for conducting Corporate Insolvency Resolution Process of Viceroy Hotels Limited in terms of the Order dated April 13, 2022 of the Hon'ble National Company Law Tribunal, Hyderabad.

We request you to kindly take the same on record.

Thanking You,

Yours Faithfully,

For **Viceroy Hotels Limited**



N. Sharon Sneha
Company Secretary & Compliance Officer

VICEROY HOTELS LIMITED

S.No. 105

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
13-04-2022 AT 1:30 P.M. THROUGH VIDEO CONFERENCE.

**IA No 931/2020,
IA(IBC) 27, 367/2022 in
CP(IB) No.219/7/HDB/2017
U/s 7 of IBC, 2016**

IN THE MATTER OF:

Asset Reconstruction Company (India) Limited

...Financial Creditor

Vs

Viceroy Hotels Limited

...Corporate Debtor

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders in IA No.27/2022, passed vide separate orders.

IA no.367/2022

Learned Counsel for Applicant Shri Narendra Naik, is present. In view of orders passed in IA no.27/2022, it is open to the petitioner to take notice on the RP and file proof of service.

List the matter on 06.05.2022.


MEMBER (T)

Karim


MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – I, AT HYDERABAD**

I.A. No. 27 OF 2022

IN

C.P. (IB) No. 219/7/HDB/2017

IN THE MATTER OF VICEROY HOTELS LIMITED

BETWEEN

Asset Reconstruction Company (India) Limited (Arcil),
(Member of COC in the CIRP of Viceroy Hotels Limited),

...Applicant

AND

Mr. Karuchola Koteswara Rao,
(Resolution Professional of Viceroy Hotels Limited)

...Respondent

Dated 13.04.2022

Coram

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For CoC: Shri Vivek Reddy, Senior Advocate assisted by Shri
Shabeer Ahmed

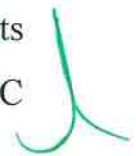
For R.P.: Shri. L Ravichander, Senior Advocate assisted by Shri
A.Chandrasekhar, Advocate



ORDER

- I (1) The applicant herein, at the behest of the members of CoC, has sought a direction from this Tribunal, for implementing the resolution dated 28.03.2022 passed by CoC, *inter alia*, replacing Mr. K.K. Rao, the present R.P. by another RP, in continuation to the reliefs prayed in IA 27 of 2022 in C.P (IB) No.219 of 2017, under section 60(5) of the IB Code.
- (2) The same applicant had earlier filed IA No. 27/2022, *inter-alia*, for directions to the Resolution Professional to convene a meeting of the CoC, and the same was partly allowed by the Tribunal, vide order dated 22.03.2022, directing the RP;
- i. To forthwith convene a meeting of the Members of the CoC;
 - ii. The CoC shall finalize its agenda for the proposed meeting having regard to the fact of pendency of Appeal No. 325 of 2021, before the Hon'ble NCLAT, Chennai. The resolution passed, if any, in the meeting of Members of CoC shall be placed before the Tribunal well before 31.03.2022.
- (3) Pursuant to above directions of the Tribunal, the Resolution Professional convened the 19th COC meeting on 28.03.2022 wherein, certain resolutions have been passed by the COC and in compliance of the directions of this Tribunal, supra, reports enclosing the resolutions and annexures are filed by both CoC and the Resolution Professional.





(4) In the report filed by the CoC it is stated that as per directions of this Tribunal, supra, ARCIL/one of the Members of CoC (Applicant in IA 27/2022) issued an email dated 23.03.2022 to the Resolution Professional containing agenda items which was marked to other members of CoC as well. In the said email, Agenda No.1 was to "*discuss and approve appointment of new Resolution Professional for the Corporate Debtor*". However, the Resolution Professional defied the instructions of the CoC by not including the said agenda point in the notice circulated by him on 25.03.2022. On taking objection by the members of the CoC, nevertheless the following resolutions were passed by a majority of 90% of the members of the CoC as evidenced through the e-voting: -

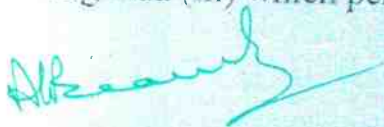
- (i) Resolved that the permission of Hon'ble NCLT be sought to issue Form-G and invite fresh expressions of interest from the interested bidders for submitting Resolution Plans for the Corporate Debtor in the best of interests of our stake holders and maximization of asset value of Corporate Debtor.
- (ii) Resolved that Mr. K.K. Rao be forthwith replaced by Dr. G.V. Narasimha Rao bearing IP No.IBBI/IPA-003/IP-N00093/2017-2018/10893 as new Resolution Professional for conducting the Corporate Insolvency Resolution Process of Corporate Debtor. The consent letter (Form 2) of Dr. G.V. Narasimha Rao dated 25.03.2022 and his declaration that he is not facing any disciplinary proceedings have been filed at Page No. 18 of the Applicant's Memo/CoC Report dated 31.03.2022.



- (5) The Applicant further, submits that the contention of the Resolution Professional, that the inclusion of agenda pertaining to change of RP would be in conflict with the orders of this Tribunal and order dated 17.12.2021 passed by Hon'ble NCLAT, is baseless. It is stated by the Applicant that order of NCLAT does not indicate that (a) the RP cannot be changed in the present CIRP proceedings and (b) that it is only the present RP who has to ensure that the company remains as a going concern. According to the Applicant the order of Hon'ble NCLAT can be complied with, even in the event of change of RP. It is further submitted that in terms of Section 27 of the Code, the CoC is fully empowered to replace the Resolution Professional.
- (6) The Applicant has relied on the following rulings: -
- (i) *Bank of India Vs. Nithin Nutritions Pvt. Ltd. (Company Appeal No.497 of 2020)*, the Hon'ble NCLAT after perusing Sections 22 and 27 of the IBC, observed at para 6 that the law nowhere says that the COC is required to give reasons for the reason that the relationship between IRP/IP and the COC is that of confidence. The Hon'ble NCLAT further held that if there is loss of confidence and such combination is continued, the Corporate Debtor would be put to loss because of the bad relationship between IRP/RP with COC. It is further submitted that in *State Bank of India Vs. Ram Dev International Ltd. (Company Appeal No.302 of 2018)*, the Hon'ble NCLAT observed at para 14 that when a RP is sought to be changed, it is not desirable for the COC to record its opinion since the recording of any adverse opinion will affect the RP for future appointments as a Resolution Professional.



- (ii) *Pallavi Joshi Bakhru and others Vs. Universal Buildwell Pvt. Ltd. and others (IB 456 (ND)/2018 and IA No.4575/2020)*, the Hon'ble NCLT, New Delhi Bench upon consideration of the law and other precedents on the subject, also observed at para 18 therein that it is only the COC which is empowered to replace the IRP/RP under Section 27(2) if it is approved by 66% voting shares and except for pendency of a disciplinary proceedings or ineligibility in terms of the provisions of the IBC, there is no bar for appointment of a person as Resolution Professional and that the power to replace the IRP/RP is vested with the COC and not with the individual person.
- (7) Thus, contending the applicant prayed this Tribunal to accord leave to the applicant for implementing the resolution for replacement of the present RP by the RP whose name was approved by the CoC.
- II(i). *Per Contra*, the Resolution Professional contends that the first agenda item i.e., replacement of RP was deleted as he felt it is in conflict of the appeal pending before Hon'ble NCLAT. It is further contended that, the COC which includes the Applicant, constituting 89.65% *forced* him to take up the first agenda and passed the resolution for his replacement, without following due procedure stipulated under Section 27 of the IBC.
- (ii) It is further contended that the agenda items were also put for e-voting from 30.03.2022 to 31.3.2022 and CoC passed the agenda (i) and (ii) with 90% voting, however the CoC rejected Agenda (iii) which pertains to CIRP costs.



- (iii) It is further submitted that COC has proceeded arbitrarily and violated the provisions of the Code. The consent of the proposed RP was not placed before the CoC for their consideration. The RP has also filed an email received from one of the members of CoC, criticizing the CoC for violating the provisions of the IBC with regard to passing the resolution for replacement of RP.
- (iv) Thus, contending the resolution professional prayed this Tribunal not to allow the resolution to be implemented.
- (v) In support of the legal contentions the Resolution professional relied on the following rulings. Both sides have filed their written submission and also case laws.
- a) **Ramchandra Keshav Adke (dead) vs Govind Joti Chavare & Ors (1973) 1 Supreme Court Cases 559**, wherein it was held that;
- "A century ago, in *Taylor v. Taylor* [1876] Ch. D. 426, Jassel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in *Nazir Ahmed v. Emperor* MANU/PR/0020/1936 and later by this Court in several cases *Shiv Bahadur Singh v. State of U.P.* MANU/SC/0053/1954 : 1954CriLJ910 : *Deep Chand v. State of Rajasthan* MANU/SC/0118/1961 : [1962]1SCR662, to a Magistrate making a record under Sections 164 and 364 of the CrPC, 1898. This rule squarely applies "where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. *Maxwell's Interpretation of Statutes*, 11th Edn., pp. 362-363." The rule will be attracted with full force in the present case because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non-est for the purpose of Section 5(3)(b).



- b) Ramchandra Keshav Adke (Dead) by Lrs. and Ors. vs. Govind Joti Chavare and Ors. (04.03.1975 - SC): MANU/SC/0511/1975, wherein it was held that;

“The Wednesbury principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached to it.”

- c) Consumer Action Group and Anr vs State of T.N & Ors (2007) 7 Supreme Court Cases 425, wherein it was held that.

“Whenever any statute confers any power on any statutory authority including a delegate under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test to judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power. The question whether the power has been exercised validly by the delegate, in the present case, if yes, then it can only be for the furtherance of that policy. What is that policy? The policy is the development and use of rural and urban land including construction of, colonies, buildings etc. in accordance with the policy of the planning as laid down under the Act and the Rules. When such a wide power is given to any statutory authority including a delegate then it is obligatory on the part of the such authority to clearly record its reasons in the order itself for exercising such a power. Application of mind of such authority at that point of time could only be revealed when order records its reason. Even if Section is silent about recording of reason, it is obligatory on the Government while passing orders under Section 113 to record the reason. The scheme of the Act reveals, the Government is conferred with wide ranging power, including power to appoint all important statutory authorities; appoints Director and its members of Town and Country Planning under Section 4; constitutes Tamil Nadu Town and Country Planning Board under Section 5; Board to perform such functions as Government assigns under Section 6; appoints Madras Metropolitan Development Authority under Section 9-A; Government entrusted for making master plan or any other new plan; any plan or modification is subject to the approval of Government. In fact, every Statutory Committee is created by the Government and its planning is subject to the approval by the Government. It is because of this that very wide power is given to it under Section 113. In a given case, where a new development in rural or

AB

urban area may be required urgently and provisions under the Act and Rules would take long procedure, it may in exercise of its exemption power exempt some of the provisions of the Act and Rules to achieve the development activity faster or in a given case, if any hardship arises by following or having not followed the procedure as prescribed, the power of exemption could be exercised but each of these cases would be for furtherance of the development of that area”.

- d) Mohd. Yunus Khan vs State of Uttar Pradesh & Ors (2010) 10 Supreme Court Cases 539, wherein it was held that:

“The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute.”

- III. In the above back drop the Point that emerges for consideration of this Adjudicating Authority is:

Whether the Resolution by the CoC dated 28/03/2022 replacing Mr. K.K.Rao, the existing Resolution Professional by another RP Dr. G.V. Narasimha Rao, violates the provisions of IB Code?

- IV We have heard the Ld. Senior Counsel Shri Vivek Reddy for Shri Shabbir Ahmed Ld. Counsel for the Applicant and Shri L Ravichander, Ld. Senior Counsel for the Shri. A. Chandrasekhar, Ld. Counsel for the Resolution Professional, perused the record, the written submissions and the case laws.

Point.

Whether the Resolution of the CoC dated 28/03/2022 replacing Mr. K.K.Rao, the existing Resolution Professional by another RP Dr. G.V. Narasimha Rao, violates the provisions of IB Code?



- (1) At the outset we refer to our order dated 22.03.2022, in the very same IA, which is as follows:
 - (i) The RP is hereby directed to forthwith convene a meeting of the Members of the CoC;
 - (ii) The CoC shall finalize its agenda for the proposed meeting having regard to the fact of pendency of Appeal No. 325 of 2021, before the Hon'ble NCLAT, Chennai.
 - (iii) The resolution passed, if any, in the meeting of Members of CoC shall be placed before the Tribunal well before 31.03.2022.
- (2) Pursuant to the said order, the Resolution Professional, herein after referred to as "RP" Mr. K.K. Rao, on 28.03.2022 convened the 19th CoC meeting, however, by excluding one of the items in the agenda proposed by the COC, *namely*, the replacement of Mr. K.K. Rao the present RP by the proposed RP. In this backdrop the CoC took up the entire agenda including the item of replacement of RP and with almost 90% voting, passed the resolution for replacement of Mr. K.K.Rao the existing Resolution Professional by Dr. G.V. Narasimha Rao as the Resolution Professional. Now the present prayer of the applicant is for according approval for the said resolution.
- (3) Shri Vivek Reddy, the Ld. Senior Counsel for the Applicant, in his articulation, while strongly supporting the above resolution by the CoC, stated that the RP, in utter disregard to the agenda dated 23.03.2022 proposed by the CoC, refused to include the item of replacement of the RP in the Agenda of the notice of the meeting circulated by him on 25.03.2022 , hence the Applicant along with the other members of the COC have





objected to the RP's act of excluding the item in the pertaining to the change of RP agenda. Nonetheless, the following two resolutions were passed by the COC on 29.03.2022

- (i) Resolved that the permission of Hon'ble NCLT be sought to issue Form-G and invite fresh expressions of interest from the interested bidders for submitting Resolution Plans for the Corporate Debtor in the best of interests of our stake holders and maximization of asset value of Corporate Debtor.
 - (ii) Resolved that Mr. K.K. Rao be forthwith replaced by Dr. G.V. Narasimha Rao bearing IP No. IBBI/IPA-003/IP-N00093/2017-2018/10893 as new Resolution Professional for conducting the Corporate Insolvency Resolution Process of Corporate Debtor. The consent letter (Form 2) of Dr. G.V. Narasimha Rao dated 25.03.2022 and his declaration that he is not facing any disciplinary proceedings have been filed at Page No. 18 of the Applicant's Memo/CoC Report dated 31.03.2022.
- (4) Ld. Sr. Counsel would further submit that, the aforesaid two resolutions were approved by a majority of 90% of the members of the COC as evidenced through the e-voting result filed at page no.7 of the RP's Memo dated 04.04.2022.
- (5) According to the Ld. Sr. Counsel, the contention of the RP, that the inclusion of agenda pertaining to change of RP would be in conflict with the orders of this Hon'ble Tribunal and NCLAT is misconceived. Ld. Sr. Counsel contends that a plain reading of the Hon'ble NCLAT's order, does not even remotely suggest that (a) the RP cannot be changed in the present CIRP proceedings and (b) that it is only Mr.K.K.Rao (RP) has to



ensure that the company remains as a going concern and not any other new RP.

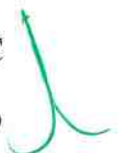
- (6) Ld. Sr. Counsel, further submitted that the RP has lost sight of the fact that even assuming that there is a change of RP, the new incoming RP will still be able to comply with the terms of the order of the Hon'ble NCLAT and run the company as a going concern. It was never the intention of Hon'ble NCLAT that only Mr. K.K. Rao, herein, has to continue as RP in order to comply with its order.
- (7) Ld. Sr. Counsel also invited our attention to Section 27 of the IBC, and submitted that in terms of the said section, it is the COC's prerogative to replace the RP, unlike under Section 31 of IBC, which according to the Ld. Counsel requires the satisfaction of this Hon'ble Tribunal, for approval of a Resolution Plan.
- (8) Ld. Sr. Counsel, in support of his contentions supra, placed reliance on the following rulings.
- (i) Bank of India Vs. Nithin Nutritions Pvt. Ltd. (Company Appeal No.497 of 2020), the Hon'ble NCLAT after perusing Sections 22 and 27 of the IBC, observed at para 6 that the law nowhere says that the COC is required to give reasons for the reason that the relationship between IRP/IP and the COC is that of confidence. The Hon'ble NCLAT further held that if there is loss of confidence and such combination is continued, the Corporate Debtor



would be put to loss because of the bad relationship between IRP/RP with COC.

- (ii) **State Bank of India Vs. Ram Dev International Ltd. (Company Appeal No.302 of 2018)**, the Hon'ble NCLAT observed at para 14 that when a RP is sought to be changed, it is not desirable for the COC to record its opinion since the recording of any adverse opinion will affect the RP for future appointments as a Resolution Professional.
- (iii) **Pallavi Joshi Bakhru and others Vs. Universal Buildwell Pvt. Ltd. and others (IB 456 (ND)/2018 and IA No.4575/2020)**, the Hon'ble NCLT, New Delhi Bench upon consideration of the law and other precedents on the subject, also observed at para 18 therein that it is only the COC which is empowered to replace the IRP/RP under Section 27(2) if it is approved by 66% voting shares and except for pendency of a disciplinary proceedings or ineligibility in terms of the provisions of the IBC, there is no bar for appointment of a person as Resolution Professional and that the power to replace the IRP/RP is vested with the COC and not with the individual person.
- (9) Thus, according to the Ld. Sr. Counsel, from a conspectus of Section 27 of the IBC and the decisions cited herein above, it is clear that (a) it is the sole prerogative of the COC to change the RP; (b) the COC need not assign reasons when a change of the RP is proposed and (c) the relationship between RP and COC being that of confidence, the Corporate Debtor would be put to



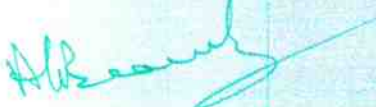


loss if there is loss of confidence on the RP. If at all reasons for his removal are relevant for any purpose, the said reasons and allegations are stated in detail in IA No. 27 of 2022.

- IV(1) Shri. L Ravichander, Ld. Sr. Counsel for the RP, while strongly refuting the afore stated submissions, strenuously contended that the incorporation of the item of replacement of the present RP by the proposed RP in the agenda, since was against the interim order of Hon'ble NCLAT, where under Hon'ble NCLAT directed the Resolution Professional to ensure that the Corporate Debtor remain as a going concern, tantamount to violation of the interim order of Hon'ble NCLAT, the RP has rightly excluded the same in the final agenda. Ld. Sr. Counsel, strongly opposed according approval for the impugned resolution, till the outcome of the appeal before Hon'ble NCLAT as the Hon'ble Appellate Tribunal, and allow the existing RP to ensure that the Corporate Debtor remains as a going concern.
- (2) According to the Ld. Sr. Counsel, Judicial propriety requires that the order of the superior Court/Tribunal need to be followed in letter and spirit and hence it would be appropriate to wait for the outcome of the Appeal and not to go against the orders of Hon'ble NCLAT. Ld. Sr Counsel submits that the applicant can approach Hon'ble NCLAT for any relief, instead of trying to persuade this Tribunal to interpret the orders of Hon'ble NCLAT to suit their convenience.



- (3) Ld. Sr. Counsel also submitted that, pursuant to the order of this Tribunal in IA 27 of 2022 dated 23/03/2022, the CoC meeting was convened on 28.03.2022 as scheduled and out of 28 CoC members, only 7 CoC members have attended physically and virtually and 21 members of CoC were not present in the meeting. When the meeting started, ARCIL, the petitioner herein, had insisted that CoC should discuss about the removal of RP and appointing a new RP. To this some of the CoC members present had raised objection saying that this is against the orders of Hon'ble NCLT/NCLAT, and as per the orders of Hon'ble NCLT dt.22.03.2022, the items in the agenda should not be in conflict with the orders passed in the appeal pending before Hon'ble NCLAT. In spite of raising objection, ARCIL, SBI, Canara Bank and IARC have overruled the objections of the members and passed a resolution for removing the RP and appointing a new RP and also insisted this is to be put to E-Voting subsequently.
- (4) According to the Ld. Sr. Counsel, the above action of the applicant is against the provisions of IBC and against the orders of Hon'ble NCLT/NCLAT, first and foremost, being, as per the provisions of IBC, after the CIRP period comes to an end, CoC has no right to remove RP and equally there is no right to appoint a new RP. Removal of RP since was not the item in the agenda, as such, the large number of the members of CoC who were not present in the meeting had no opportunity to discuss, debate and deliberate on a very important aspect like this.



Removal of RP and appointing a new RP has lot of bearing on the CIRP process, particularly the stage in which the CIRP process is in. There are number of cases pending against CD and there are many complicated issues as CD is a running organisation and at the fag end of the CIRP process to remove RP without any valid reason will have lot of adverse repercussions on the CD and will seriously affect the CD to remain as a going concern. There are no strong grounds for CoC to ask for the removal of the RP.

- (5) Ld. Sr. Counsel, referring to Section 23 (2) of IBC, which is as below,

Section 23 of IBC: Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:

[Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.]

contended that the resolution professional is liable to manage the operations of the CDR after the expiry of CIRP period and the Hon'ble NCLAT in consonance with the said provision of law and in its wisdom have ensured that the code is not violated and passed the order in the appeal filed challenging the order of this Tribunal dt.17.02.2021.



- (6) According to the Ld. Sr. Counsel, the legal interpretation of the order in effect means that 'The Hon'ble NCLAT issued directions to the existing RP only, who is Respondent, which means the person who is acting as the resolution professional presently but not a new person.'
- (7) Ld. Sr. Counsel would further contend that, this Tribunal only allowed IA 27 of 2022 partly and directed the R.P. to convene CoC meeting and to report the outcome of the meeting to Hon'ble NCLT before 31.03.2022. While passing the orders Hon'ble NCLT made it very clear that the agenda for the meeting should be fixed keeping in mind the pendency of the appeal in Hon'ble NCLAT, Chennai. Further in the order, this Tribunal had made it very clear that RP is functioning as per the interim directions given by Hon'ble NCLAT which is still continuing.
- (8) In so far as compliance of Sec. 27 is concerned Ld. Sr. Counsel pointed out that clause (2) of Section 27 of IB Code, has been violated in this case, as the written consent is required to be obtained and submitted to the CoC through. R.P. in the meeting so that all members of the CoC are aware of the credentials of proposed R.P. and therefore will be in a position to recommend the name of the new RP. Petitioner had mentioned that he had submitted the consent of the proposed RP to the adjudicating authority on 25.03.2022. No CoC members were aware of this, even RP was kept in dark about the submission of the consent letter of the proposed RP. This is clearly in violation of the



procedure laid down under Sec. 27 (2) of IBC and deprive the members of CoC to discuss on an important aspect of appointing a new RP. For this reason, also the prayer of the one of the CoC seeking appointment of a new RP is illegal and against the provisions of IBC.

(9) Thus, submitting Ld. Sr. Counsel prayed this Tribunal to dismiss the application with exemplary costs and pass such other order or orders as this Tribunal may deem fit and proper in the circumstances of the case.

V(i). Thus, it is evident from the contest put forth, the main challenge to the impugned resolution replacing the existing RP, is twofold.

(ii) Firstly, it is contended that the impugned resolution is violative of Clause 2 of Section 27 of IB Code, Nextly, that pending disposal of the Appeal before Hon'ble NCLAT, the RP cannot be replaced.

(ii). In order to appreciate first contention in a proper perspective, we wish to refer to the provision relating to replacement of resolution professional by committee of creditors contained in IB Code, which is as below;

Section 27 IB Code; [(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

(2) The committee of creditors may, at a meeting, by a vote of seventy-five per cent. of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.



(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.]

- (2) A bare reading of the above provision discloses that the if the CoC is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional at any time during the corporate insolvency resolution process, however by complying the above provision. Therefore, in order to uphold a resolution passed to replace an RP, due compliance of the above provision by CoC is necessary. In the case on hand, it is not in dispute that the members of CoC with 98% voting have resolved to replace the existing RP with another RP. The contention of the RP, that the prior written consent of the proposed RP was not obtained by the time of passing the impugned resolution by the CoC, stands falsified by the consent letter (Form 2) of the proposed RP Dr. G.V. Narasimha Rao dated 25.03.2022 which was filed as an annexure by the applicant. Necessary declaration by the RP proposed, that he is not facing any disciplinary proceedings also has been filed by the Applicant. Thus, the compliance of section 27 IBC stands established.



- (3) Moreover, in so far as the case on hand is concerned *loss of faith* in the present RP is *ex facie*, clear from the events and the record placed before us, in as much as admittedly the members of CoC have been complaining that the RP is not responding to their demands to render accounts, furnish expenditure statements and even to call the meetings of CoC. These complaints were however denied by the Resolution Professional. It is also on record the CoC lodged complaints against the present RP to the IBBI and the IBBI vide its proceedings dated 20.04.2020 had fined the RP.
- (4) In this backdrop, the rulings, in Bank of India Vs. Nithin Nutritions Pvt. Ltd. (Company Appeal No.497 of 2020), and State Bank of India Vs. Ram Dev International Ltd. (Company Appeal No.302 of 2018), by Hon'ble NCLAT and relied upon by the applicant, wherein Hon'ble NCLAT held that 'if there is loss of confidence and such combination is continued, the Corporate Debtor would be put to loss because of the bad relationship between IRP/RP with COC', is certainly relevant and in fact applicable.
- (5) Moreover, in Pallavi Joshi Bakhru and others Vs. Universal Buildwell Pvt. Ltd. and others (IB 456 (ND)/2018 Hon'ble NCLT, New Delhi Bench, held that 'it is only the COC which is empowered to replace the IRP/RP under Section 27(2) if it is approved by 66% voting shares and except for pendency of a disciplinary proceedings or ineligibility in terms of the provisions of the IBC, there is no bar for appointment of a person as Resolution Professional and that the power to replace



the IRP/RP is vested with the COC and not with the individual person”.

- (6) Now, coming to the rulings relied upon by the Ld. Senior Counsel for Resolution Professional in re, Ramchandra Keshav Adke (Dead) by Lrs. and Ors. vs. Govind Joti Chavare and Ors, wherein it was held that,

“A century ago, in *Taylor v. Taylor* [1876] Ch. D. 426, Jassel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time.”

and also in *Consumer Action Group and Anr vs State of T.N & Ors.*

Whenever any statute confers any power on any statutory authority including a delegate under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test to judicial scrutiny.

We are of the view that since we have already held that the resolution dated 28.03.2022 is in conformity with Section 27 of IBC, the ruling in *Taylor v Taylor* will come in support of the Applicant herein rather than the Resolution Professional, in as much as the CoC which is endowed with the power to change the Resolution Professional, however by following the procedure under Section 27 of I & B Code had followed the procedure while passing the resolutions

Likewise, the ruling in *Consumer Action Group and Anr vs State of T.N & Ors* supra, also in our view supports the action of CoC in this case in as much as, the resolution that was passed





by the CoC which is under challenge, is found to be well within the sphere and ambit of the powers conferred on CoC by the I&B Code.

In so far as the ruling in *Rameshwar Prasad*, relied on by the RP, is concerned, we have applied the test laid down in the said ruling to the resolution dated 28.03.2022 and found that the decisions reached under the resolution were well within the parameters set in the above ruling.

In so far as the ruling in *Mohd. Yunus Khan* relied upon by the Resolution Professional is concerned, undoubtedly, existence of element of bias renders any proceedings void.

However, in so far as the case on hand is concerned, the question of bias does not even arise in as much as it is the specific case of majority of CoC that they have lost faith in the existing Resolution Professional and that in their commercial wisdom it is required to replace the Resolution Professional, for fair and proper conduct of CIRP proceedings. Merely because the resolution that was passed resulted in change of the existing Resolution Professional, the resolution cannot be tainted with bias, by the Resolution Professional, without even placing any material substantiating the allegation of the bias.

Therefore, by virtue of our discussion and the case law, supra, we are fully convinced that the resolution dated 28/03/2022 replacing the existing RP by another RP is in absolute conformity with section 27 of IBC, besides that the continuation



of the present combination would result further deterioration of relationship between the present RP with CoC, which will not augur well for either side.

V. Now we shall deal with the *next* contention of the Ld. Sr. Counsel for the Resolution Professional, that the impugned resolutions are contrary to the interim direction dated 17/12/2021, passed by Hon'ble NCLAT, as such cannot be agreed to by this Tribunal.

(i) Before we proceed further, we feel it necessary to refer here in the interim order dated 17/12/2021 passed by the Hon'ble NCLAT, which is as follows.

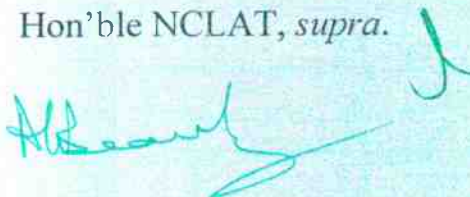
"In the interregnum, the IRP/RP will ensure that the Company remains as a going concern. He will pay salary and wages to the officers/employees/workers etc.

He will ensure that the person who is authorised to sign the Bank cheques, may issue the same after securing the approval of the IRP/RP, as the case may be. The Bank will also the Company (Corporate Debtor) to withdraw the amount(s) in terms of the approval of the IRP/

(ii) It is quite clear from the order above, that Hon'ble NCLAT, wanted the Resolution Professional to ensure that Company (CD) remains as a going concern and for the said purpose perform the functions stated in the order. Therefore, it needs to be seen at the whether the impugned resolution by CoC defeats the objective/purpose of the aforesaid order and thus results in violation of the order of Hon'ble NCLAT, supra.



- (iii) We have carefully perused the impugned resolution of the CoC dated 28/03/2022, in the back drop of the above-mentioned *interim* order of Hon'ble NCLAT, and found, firstly, the resolution says "that the permission of Hon'ble NCLT be sought to issue Form-G and invite fresh expressions of interest from the interested bidders for submitting Resolution Plans for the Corporate Debtor in the best of interests of our stake holders and maximization of asset value of Corporate Debtor. Nextly, it was also resolved that, "Mr. K.K. Rao forthwith be replaced by Dr. G.V. Narasimha Rao bearing IP No. IBBI/IPA-003/IP-N00093/2017-2018/10893 as new Resolution Professional, for conducting the Corporate Insolvency Resolution Process of Corporate Debtor. The consent letter (Form 2) of Dr. G.V. Narasimha Rao dated 25.03.2022 and his declaration that he is not facing any disciplinary proceedings have been filed at Page No. 18 of the Applicant's Memo/CoC Report dated 31.03.2022".
- (iv) We have already held by virtue of our discussion, *supra*, that the above resolution which is for *replacement*, is in accordance with Section 27 IBC. Whether passing of the above resolutions by the CoC, amounts to violation of the interim order of Hon'ble NCLAT, or not, we are not entitled to decide. Suffice, if we find that the impugned resolution does not offend Section 27 of IBC, or defeat the purpose and objective of the interim order of Hon'ble NCLAT, *supra*.



- (v) We, therefore have carefully examined the resolution from the said angle and having so done, we are unable to comprehend the submissions of the Ld. Sr. Counsel for the RP that the said resolution defeats the purpose and objective of the interim order of Hon'ble NCLAT.
- (vi) Furthermore, the submission of the Ld. Sr. Counsel for the RP that legal interpretation of the *interim* order in effect means that 'The Hon'ble NCLAT issued directions to the existing RP only as such no new RP can discharge the function of RP in the case on hand is also unacceptable both under law or on fact, *firstly*, for the reason that, the interim order is as clear as crystal and does not require any kind of *interpretation* much less legal interpretation. *Nextly*, such an interpretation if accepted then Section 27 of IB Code, certainly becomes redundant. The case law referred *supra*, also does not favour the so-called 'legal interpretation' that the Ld. Sr. Counsel for the RP endeavoured to make. We are quite clear in our view that the directions passed in the interim order of Hon'ble NCLAT dated 17/12/2021 are to the RP whom so ever it may be, but not limited to any individual such as Mr.K.K.Rao.
- (vii) Therefore, since the impugned resolution merely provides for the replacement of the existing proposed RP with another qualified RP, it goes without saying that, the proposed RP would continue to discharge the very same functions as were done by the present RP, in terms of the directions of the Hon'ble NCLAT, specified in its interim order dated 17/12/2021 and in accordance with the provisions of IB Code.




Thus, we are fully convinced that Section 27 of IB Code has been duly complied with by the CoC, and the only change that the impugned resolutions have brought in being a mere replacement of the existing RP by a new RP, and the rest of the matter remained the same, we are of the firm view that passing of orders in the present application need not be deferred till the disposal of the Appeal, by Hon'ble NCLAT, *especially*, when the members of CoC have openly expressed *lack of confidence* in the present RP .

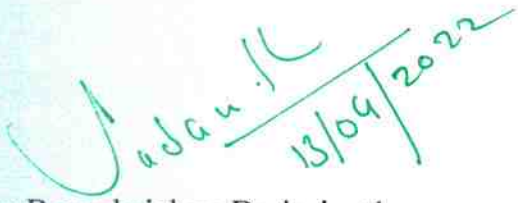
VII Therefore, in view of our discussion as afore mentioned, considering the submissions made by the Ld. Sr. Counsel for the parties, the record available before us and the case law, we are of the considered view that the resolutions of the CoC dated 28/03/2022, including the resolution replacing the present Resolution Professional, are fully inconformity with the provisions of IB Code and the relevant Regulation of IBBI, hence we accord our approval to the said resolutions. Accordingly, we pass the following directions in IA 27/2022.

- (i) Dr. G.V. Narasimha Rao bearing IP No. IBBI/IPA-003/IP-N00093/2017-2018/1089, will immediately take over charge from the outgoing RP, Shri K.K. Rao, who shall forthwith hand over all the records and all the documents, records and statements pertaining to the Corporate Debtor to the newly appointed RP Dr. G.V. Narasimha Rao.



- (ii) Dr. G.V. Narasimha Rao, the newly appointed RP, upon taking charge shall discharge the functions enshrined in the interim order of Hon'ble NCLAT dated 17/12//20201, in accordance with the provisions of IB Code and the Regulations of IBBI, and shall ensure that the Company (CD) continue to function as a going concern.
- (iii) Compliance report of handing/taking over charge, besides all the necessary records shall be submitted to the Tribunal by 20.04.2022.
- (iv) IA 27/20222 is disposed of accordingly. No order as to Costs.


Veera Brahma Rao Arekapudi
Member (Technical)


Dr. N. Venkata Ramakrishna Badarinath
Member (Judicial)

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