

IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

IA No.209/2022 IN CP (IB) No.174/ALD/2019

IN THE MATTER OF:

(An Application under Section 27 R/w 60 (5) of the Insolvency and Bankruptcy code, 2016 R/w Rule 11 of the NCLT rules, 2016)

IN THE MATTER OF:

M/s Mahajagdamba Tubes Pvt. Ltd. ... Operational Creditor

Vs

M/s Quality Steels Product Limited. ... Corporate Debtor

IN THE MATTER OF:

Committee of Creditors

OF

Quality Steels Product Limited,

Through Advent Infra Projects Pvt. Ltd. Applicant

Vs.

Varun Goel

Interim Resolution Professional

Quality Steels Product Private Limited. Respondent

Order reserved on 10.02.2023

Order pronounced on 02.03.2023

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CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances (via Video Conference)

Sh. Anil Mehrotra alongwith Srijan Mehrotra, Adv. : For the Applicant

Sh. Shubham Agarwal, Adv. : For the Respondent

ORDER

1. The present Application has been filed by the Committee of Creditors (CoC) through one of the Financial Creditor Namely Advent Infraprojects Private Limited having 76.51% voting percentage and is a member of CoC Under Section 27 R/w Section 60 (5) of the Insolvency and Bankruptcy Code,2016 (I&B Code) as well as R/w Rule 11 of the NCLT Rules,2016. The Applicant herein is seeking the replacement of Resolution Professional (RP).
2. This Tribunal Vide order dated 20.12.2021 admitted Section 9 Application and initiated Corporate Insolvency Resolution Process against the Corporate Debtor Namely M/s Quality Steels Products Limited, and appointed IRP namely Mr. Varul Goel. Subsequently, IRP Mr. Varul Goel conducted the 1st CoC meeting on 19.01.2022, whereby IRP was confirmed to be appointed as RP who undertook to perform its duties in accordance with the I&B Code,2016. Thereafter, the RP made a Public Announcement in terms of the I&B Code which has been published on the

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IBBI website on 22.12.2021 and the same has also been published in the newspaper on 23.12.2021 in Financial Express (English) and Jansatta (Hindi) Language wherein it was stated that the last date for receiving the claims was 03.01.2022.

3. Applicant/CoC submitted that the CoC in its 7th meeting held on 24.06.2022 has kept one of the agenda for voting as:-

“To Replace the existing Resolution Professional Of M/s Quality Steel Products Limited From Mr. Varun Goel to Mr. Gagan Gulati.”

4. The said agenda was taken in the 7th CoC meeting and the CoC has approved the replacement of the RP By 76.51% voting in favour of the aforementioned agenda. e-voting results is annexed as Annexure-04 at pg no. 37 of the present Application.

5. The result of the 7th CoC meeting is reproduced as under:-

“Pursuant to Section 27 (2) of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 and in accordance with the rules and regulations made thereunder, approval of the Committee of Creditors be and is hereby accorded for appointment of Mr. Gagan Gulati, Insolvency Professional, Registration No. IBBI/IPA-002/IP-N00893/2019 -2020/12832 who has already submitted his consent in the prescribed form AA

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as Resolution professional in the matter of Corporate Insolvency Resolution Process Of M/s Quality Steels Products Limited in place of Mr. Varun Goel.

Vote Cast:

Name of CoC Members	Voting Share (%)	For	Vote Case % Against	Abstained
Advent Infraprojects Private Limited	76.51	76.51	0	-
Central Bank of India	23.49	0	23.49	-
Total	100	76.51	23.49	0

Result: based on the aforesaid results, M/s advent Infraprojects Private Limited holding 76.51% voting power has voted in favour and Central Bank Of India Holding 23.49% voting power has voted against “

We have heard the Ld. Counsel Representing the Applicant and Resolution Professional and perused the material on record.

27. Replacement of resolution professional by committee of creditors. –

(1) Where, at any time during the corporate insolvency resolution process, the committee or creditors is of the

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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. 1

[(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting percent resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent on the proposed resolution professional in the specified form.]

(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 subsection (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

6. on a bare perusal of the above-quoted Section 27 of the I&B Code,2016 which states that a Resolution Professional may be replaced at any time during the Corporate Insolvency Resolution

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Process by the Committee of Creditors. Sub-section (1) of Section 27 of the IBC states that where, at any time during the CIRP, the CoC is of the opinion that a Resolution Professional appointed under Section 22 of the IBC is required to be replaced, it may replace him with another RP in the manner provided under Section 27 of the I&B Code.

7. Further, Sub-section (2) of Section 27 provides that the CoC may, at a meeting, by a vote of (66%) sixty-six percent of voting shares, propose to replace the RP appointed under Section 22 with another RP subject to written consent of the proposed RP. Therefore, from reading of Sub-section (1) of Section 27, it is evident that the CoC can resolve to replace the RP and pass an appropriate resolution with the requisite majority for the same. In the present circumstances, in the 7th CoC meeting which was held on 28.06.2022 whereby the CoC approved the replacement of RP by 76.51% voting in favour of the aforementioned agenda and the proposed RP Sh. Gagan Gulati has also provided his consent on affidavit which has been filed on 22.08.2022. The said consent of the RP is reflected in the said affidavit at page no. 11. Therefore, the requirement of Section 27 (2) of the I&B Code, 2016 is fully met.
8. In such case, the CoC is required to forward the name of the Proposed RP who is sought to be replaced by them to the tribunal for its confirmation, whereinafter the Proposed RP can be appointed in the same manner as provided under Section 16 of the IBC. In the present case, the CoC has proposed Mr. Gagan Gulati to act as RP.

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9. Though there are some allegations by present RP Sh. Varun Goel and & counter allegations by CoC raised, however, we are not going into the rival contentions on the merits of such contentions, as change of RP is strictly governed by the provision of section 27 (2) of the I&B Code,2016.
10. Hon'ble NCLAT in **Sumant Kumar Gupta Vs. Committee of Creditors of M/s Vallabh Textiles Company Ltd. in Company Appeal (AT) (Insolvency) No. 1037 of 2022** held as under:-

“7. In the present case, the CoC in its meeting dated 04.06.2022 with 100% vote has decided to replace the Appellant with another Resolution Professional. When we look into the scheme of Section 27 as delineated by the statute, it does not contemplate any opportunity of hearing to the Resolution Professionals be given by the Adjudicating Authority before approving the proposal of new Resolution Professional. Section 27 requires the CoC to forward the name of proposed Resolution Professional to the Adjudicating Authority and the Adjudicating Authority is required to forward the name of the proposed Resolution Professional to the Board for its confirmation. The scheme of Section 27 does not indicate that Resolution Profession is to be made party and is to be issued notice before taking decision to appoint another Resolution Professional. Looking to the purpose and object of the I&B Code, where timeline is the essential

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factor to be taken into consideration at all stages, there is no warrant to permit as *Lis* to be raised by the Resolution Professional challenging his replacement by the CoC. The decision taken by the CoC is a decision by vote of 66% and when the decision is by votes of a collective body, the decision is not easily assailable and replacement is complete as per Scheme of Section 27 when the resolution is passed with requisite 66% voting share.”

11. On bare perusal of the aforementioned Judgement of the Hon’ble NCLAT, it is amply clear that 27(1) clearly provides that when 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 in the manner provided under the Section 27(2). A resolution has to be passed at the CoC meeting by 66% voting share to replace the Resolution Professional, subject to written consent from the proposed resolution professional and the decision taken by the CoC is a decision by vote of 66% and when the decision is by votes of a collective body, the decision is not easily assailable. Replacement is complete as per the scheme of Section 27 when the resolution is passed with the requisite 66% voting share.
12. We are therefore of the view, that this application deserves to be allowed, and accordingly, Mr. Gagan Gulati Registration no. IBBI/IPA-002/IP-N00893/2019 -2020/12832 R/o A-179, First Floor, Sudershan Park, New Delhi, West, National Capital Territory of Delhi,110015 is hereby appointed as the RP in place of Mr.Varun Goel. Mr.Varun Goel shall hand

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over the record to the new RP as appointed hereinabove. CoC shall consider the dues payable to Mr. Varun Goel within a period of Two weeks. A Copy of the order shall be sent to the IBBI for information.

13. In the result, IA No.209/2022 is allowed and stands disposed of

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)