

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 1443 of 2022

(Arising out of judgement and order dated 28.11.2022 passed in IA No.2621/2021 in CP(IB) No.494/MB/2019 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai)

IN THE MATTER OF:

Srigopal Choudary
Resolution Professional of
Shree Ram Urban Infrastructure Ltd,
Flat 7J, Tower-3,
South City,
375 Prince Anwar Shah Road
Kolkata

...Appellant

Versus

SREI Equipment Finance Ltd
Vishwakarma,
86C,
Topsia Road,
Kokkata 700046
West Bengal

...Respondent

Present: For Appellant: Dr. U.K. Chaudhary, Sr. Advocate with Mr. Mansumyer Singh, Mr. Jaitegan Singh Khurana, Mr. Manpreet Kaur, Advocates

For Respondent: Mr. Krishnendu Datta, Sr. Advocate with Mr. Anirban Bhattacharya, Ms. P. Vora, Mr. S. Buxy, Mr. Srikanth, Mr. D. Sachdeva, Advocates for R-1.

Mr. P. Nagesh, Sr. Advocate with Mr. Rajeshwar Singh, Mr. Apoorva Agrawal, Mr. Sarthak, Mr. Hemant Sharma, Advocates for Indiabulls Housing.

Mr. Abhijeet Sinha, Mr. Akash Chatterjee, Mr. Shahanulla, Mr. Krishan Kumar, Advocates for IIRF

JUDGEMENT

(10th January, 2023)

JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL)

The present appeal has been preferred against an order dated 28.11.2022 passed by the Learned Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as 'Adjudicating Authority') in I.A. No.2621/2021 in CP(IB) No.494/MB/2019. By the said order dated 28.11.2022 the Adjudicating Authority, on three Interlocutory Applications filed which include IA No.2621/2021, directed the appellant who was Resolution Professional (hereinafter referred to as 'RP') of a Corporate Debtor namely Shree Ram Urban Infrastructure Ltd to be removed and was directed to hand over all records/documents to the newly appointed RP. On the same day i.e. 28.11.2022 one Mr. Sapan Mohan Garg was appointed as RP in place of appellant.

2. The impugned order was passed on 28.11.2022 and immediately on the next day i.e. 29.11.2022 the present appeal under Section 61 of the IBC was presented before this Tribunal. On the same day a scrutiny was done by the Registry and defects were intimated to the appellant's counsel and on the same day it was returned. Subsequently on 30.11.2022 the present appeal was presented for its filing and on the same date i.e. on 30.11.2022 it was mentioned before the Tribunal for its listing even with defects. However, since there were still some defects it could not be listed on 30.11.2022. On 01.12.2022 it was listed before a Bench of the Tribunal presided over by Hon'ble the Chairperson and thereafter it was listed before this Bench. The appeal was listed on 02.12.2022 and heard by us. Mr. U. K. Chaudhary, Learned Sr. Counsel assisted by Mr. Mansumyer Singh, learned counsel appeared for the appellant and Mr. Krishnendu Datta, Learned Sr. Counsel assisted by Mr. Anirban Bhattacharya, learned counsel appeared on advance notice on behalf of the sole respondent. However, when the appeal was taken up, Mr. P. Nagesh, Ld. Sr. Counsel assisted by Mr. Rajeshwar Singh, learned counsel tried to intervene on the plea that despite the fact that IA filed by Indiabull Housing vide IA

No.3537/2022 was allowed by the same impugned order, the Indiabull Housing was not impleaded as party respondent. Similar stand was taken by Mr. Abhijeet Sinha, learned counsel that before the Adjudicating Authority, IIRF had filed IA NO.1304/2022 which was allowed by the same impugned order, however, to the reasons best known to the appellant, IIRF was also not impleaded as party respondent. Both learned counsel orally submitted that the appeal is prima facie required to be rejected on the ground of non-joinder of the necessary parties. After hearing the parties on 02.12.2022 order was reserved.

3. It is really peculiar that once three IAs which were filed by three distinct persons for removal of appellant as RP of CD were filed and allowed by the impugned order there was no reason not to implead all the applicants as party respondent in the present appeal. The appeal was required to be dismissed primarily on the ground of non-joinder of necessary parties. However, we allowed Mr. U.K. Chaudhury, learned senior counsel to argue the appeal even in absence of necessary parties.

4. Before proceeding it would be necessary to delineate certain facts for proper adjudication of the present appeal.

5. Long back on 06.11.2019 an application filed under Section 7 of the IBC against the CD namely Shree Ram Urban Infrastructure Ltd was admitted and appellant namely Shri Gopal Choudury was appointed as IRP by the Adjudicating Authority and Corporate Insolvency Resolution Process (CIRP) was initiated. Surprisingly after being appointed as IRP of the CD first Committee of Creditors (hereinafter referred to as CoC) Meeting was held on 19.04.2021 i.e. after about one year and six months from the date of initiation of CIRP. Thereafter second CoC Meeting was held almost after two months from the date of first CoC Meeting for the purposes of raising interim finance to the tune of Rs.32 crores for functioning of the CD. It is reflected from the impugned order that the appellant did not try to raise finance. It further appears that during moratorium period even without consultation with the Members of the CoC the appellant as RP filed an IA seeking to execute conveyance of deed on behalf of the CD. It also appears that as CIRP cast the appellant had received Rs.17 lakhs for the period between 06.11.2019 and 05.04.2021.

Before the Adjudicating Authority a stand was taken by the applicant of IA No.2621/2021 who is respondent herein namely SREI Equipment Finance Ltd the appellant vide email dated 29.09.2021 requested to fix date for Meeting since 4th Meeting of CoC was cancelled. Again the applicant namely SREI Equipment Finance Ltd, respondent herein vide email dated 03.10.2021 requested the appellant/RP to conduct the CoC Meeting under the agenda for replacement of RP. However, the applicant was not replied to the said email nor the appellant/RP conducted the CoC Meeting.

6 In IA NO.1304/2022 which was filed by applicant IIRF India Reality XII Ltd and another prayer was made for removal of the appellant/RP on number of grounds. One of the grounds was that the RP/appellant's inaction has resulted in the breach of the mandatory timelines of the CIRP. It was alleged that the RP/appellant had not taken any concrete steps towards the CIRP process of the CD. The RP had not taken out an Expression of Interest (EOI) to gauge the interest of prospective resolution applicants. A further stand was taken by the applicant that majority of the CoC Members (with an aggregate voting shares of 69.86%) had

lost faith in the functioning of the RP/appellant. This applicant further highlighted that SREI Equipment Finance Ltd vide IA No.2621/2021 has approached the Tribunal seeking removal of RP.

7. Similarly IA No.3537/2022 was filed by Indiabull Housing Finance Ltd for removal of the appellant/RP and to appoint in his place appropriate person as RP and further direct the newly appointed RP to reconstitute the CoC. It was pleaded by the applicant of IA No.3537/2022 that applicant Indiabull Housing was one of the principal financial creditors of the CD and the applicant had an outstanding claim of Rs.14018695476/- (Rupees Fourteen hundred one crore eighty six lakhs ninety five thousand four hundred seventy six only) alongwith TDS amount of Rs.121656404/- (Rupees Twelve crore sixteen lakh fifty six thousand four hundred four only) from CD. In terms of the order dated 20.10.2021 passed in IA No.925/2021 in CP(IB) No.494/2019 the applicant was awaiting reconstituting of CoC. However, despite clear direction of the Adjudicating Authority the appellant/RP deliberately refused to do the same. Instead of reconstituting the CoC of CD the appellant/RP preferred an appeal before the Appellate Tribunal (NCLAT) against

the order of the Adjudicating Authority, however, vide Company Appeal (AT)(Ins) No.982/2021, the Appellate Tribunal did not stay the order for reconstitution of CoC but directed that CoC in the meanwhile shall not take any further steps in the matter. It was pleaded by the applicant before the Adjudicating Authority that there was no impediment of reconstitution of CoC as per directions of the Adjudicating Authority, however, the appellant/RP refused to comply with the direction of the Adjudicating Authority. It is further reflected from the impugned order itself that the applicant India Bull has taken a stand that an extraordinary situation has occurred wherein even through a vast majority of financial creditors (entitled to be Members of CoC) desire to replace the appellant as RP, however, absence of reconstitution COC was making it impossible to pass requisite resolution. Accordingly the applicant Indiabull Housing had filed application for replacement of RP/appellant under Rule 11 of NCLT Rules read with Section 27 of the IBC.

8. The Adjudicating Authority in the impugned order has dealt with all the three petitions i.e. IA No.2621/2021, 1304/2022 and 3537/2022 in deciding the matter for replacement of the

appellant/RP and directed for his replacement with one Mr. Mr. Sapan Mohan Garg. However, the appellant has preferred the present appeal only in respect of IA NO.2621/2021 which was filed by SREI Equipment Finance Ltd ignoring to implead those persons as respondents. It creates a situation to draw an adverse inference against the appellant.

9. Mr. U.K. Chaudhury, learned senior counsel appearing on behalf of the appellant has assailed the order primarily on the ground that neither under Section 22 nor under Section 27 of the IBC the Adjudicating Authority was having any jurisdiction to pass an order for replacement of the appellant as RP of the CD. He submits that the order passed by the Adjudicating Authority is contrary to the statutory provisions as contained under Section 22 and 27 of IBC and on the sole ground the order impugned is required to be set aside. Mr. Chaudhury, learned senior counsel while assailing the impugned order has taken us to Page No.26 O i.e. finding recorded by the Adjudicating Authority and submits that there is error of record. He submits that the Adjudicating Authority has incorrectly interpreted order dated 17.11.2021 as passed by NCLAT. He

submitted that NCLAT had never directed to reconstitute the CoC rather it directed that in the meanwhile CoC shall not take any further steps in the matter. He has placed photo copy of the order dated 17.11.2021 passed in Company Appeal (AT)(Ins) No.982/2021. He has further emphasized that the Adjudicating Authority has incorrectly relied on an order passed by NCLAT in Company Appeal (AT)(I) No.786/2020. He further submits that in any event the power was vested in the CoC to remove the RP, not the Adjudicating Authority was authorized to pass the order for removal of RP. He further submits that the application filed by the applicant/respondent was for removal of the RP was not maintainable, since the respondent was not having any locus to maintain application for removal of the "RP". Mr. Chaudhury, learned senior counsel has further placed reliance on para 24 to 26 of the judgment passed in Company Appeal (AT)(I) No.98/2020, Veeral Controls Pvt Ltd Vs M/s Regen Powertech Pvt Ltd. To elaborate his submissions he submits that it was only CoC to take the decision for removal of RP. Para 24 to 26 of the judgement in Veeral Controls Pvt Ltd is reproduced hereinbelow:

24. Although, an emphatic argument is projected on the side of the 'Appellant'/'Applicant' that the 'Appellant'/'Applicant' is empowered to prefer an 'Application' under Section 27 Read with Section 60 (5) of the I&B Code, 2016 this 'Tribunal' is of the considered view that the 'Appellant'/'Applicant' is not showered with any 'Locus' to prefer an 'Application' praying for 'Displacement'/'Replacement' of the 'Resolution Professional'. In fact, Section 27 speaks of 'Replacement' of 'Resolution Professional' by the 'Committee of Creditors'.

25. In reality, Section 60(5) deals with 'Question of Priority' or 'Question of fact' relating to the I&B Code. When there is an express Provision namely Section 27 of the Code, which unerringly deals with 'Replacement of Resolution Professional by the Committee of Creditors', then, the same is to be followed/adhered to by the 'Litigant'/'Stakeholders' and others connected with the I&B Code. In this regard, this 'Tribunal' is not accepting the submission made on behalf of the 'Appellant'/'Applicant' that the 'Appellant'/'Applicant' is entitled to file an 'Application under Section 27 read with 60(b) of the Code, because of the fact that Section 27 of Code does not speak of 'any person' other than the 'Replacement' of 'Resolution Professional' by the 'Committee of Creditors'. Suffice, it for this 'Tribunal' to point out that the

ingredients of Section 27(1) of the Code are 'self-explanatory' and admits of no exception.

26. Section 27 of the I&B Code deals with complaints against 'Insolvency Professional Agency' or its 'Member' or 'Information Utility'. Section 218 of the Code concerns with 'Investigation of Insolvency Professional Agency' or its 'Member' or 'Information Utility'. Section 220 of the I&B Code, 2016, pertains to 'Appointment of Disciplinary Committee'.

10. He further submits that the judgement in Anil Kumar Vs Allahabad Bank and another Supra on which the Adjudicating Authority has placed reliance does not lay down correct law. In sum and substance he has argued that the impugned order is liable to be set aside primarily on the ground of lack of jurisdiction in the Adjudicating Authority.

11. Mr. Krishanendu Dutta, learned senior counsel opposing the appeal has argued that the appeal is liable to be dismissed with imposition of heavy cost. He highlights that the misconduct of the appellant/RP is evident from the fact that 1st Meeting of CoC was conducted on 19.04.2021 whereas CIRP was initiated after the
Company Appeal (A)(Ins) No.1443/2022

admission of the application filed under Section 7 of the IBC which was admitted on 06.11.2019. He further submits that the situation which arose is due to approach of the appellant/RP which was alien to the IB Code. Despite request made by the respondent for holding CoC Meeting for the purposes of removal of the RP neither RP/appellant was responding to the request of the applicant nor he allowed convening of the CoC Meeting. He by way of referring to provision contained in Regulation 18 of IBC (CIRP) Regulations 2016 submits that it was appellant/RP who was to convene a Meeting of the CoC and since he was completely reluctant to convene Meeting with an Agenda for removal of the RP, the applicant was having no option but to approach the Adjudicating Authority for passing appropriate order for removal of the RP. He submits that in such eventuality the inherent jurisdiction was required to be invoked and as such the applicant rightly filed an application before the Adjudicating Authority and the Adjudicating Authority exercising its inherent jurisdiction has cured the defect by passing the impugned order. He submits that otherwise also it is the Adjudicating Authority who appoints the IRP/RP. He further submits that it is settled

principle of law that one who appoints is having jurisdiction to suspend or remove its appointee. This power is inherent. In support of his submission he has referred to Section 16 of the General Clauses Act, 1897. He submits that of course under Section 27 replacement of RC can be done by the CoC but in a situation which arose in the present case the Learned Adjudicating Authority has rightly exercised its inherent jurisdiction and passed the impugned order which requires no interference.

12. Besides hearing the learned counsel for the parties we have examined the material available on record particularly the impugned order. It is reflected from the impugned order that the CIRP was initiated long back in 2019, however, for more than one and half years, no step was taken by the Appellant/RP for revival of the CD or even for generating funds. There is no order of any 'Stay' regarding the convening of the said 'Meeting' placed before us. The CoC Meeting was delayed for such a long time. This conduct is sufficient to draw an adverse inference against the appellant as it has been noticed that though the applicant/respondent No.1 had intimated the RP for

convening Meeting for removal of the RP, the appellant did not respond to the request of the applicant nor did he convene any 'Meeting', compelling the applicant to approach the Adjudicating Authority for passing order for replacing of the RP. It is true that Section 27 empowers CoC for replacement of the RP but if there is a peculiar situation in which the RP, who under Regulation 18 of the IBC CIRP Regulation 2016, himself is sitting tight over the matter for convening Meeting of CoC, the Adjudicating Authority who is also the appointing authority of IRP cannot be allowed to be a mere spectator. So far as judgment of Veeral Controls Pvt Ltd (Supra) on which reliance was placed by learned senior counsel for the appellant, in view of the peculiar facts and circumstances of the present case, i.e. more than one and half year delay in convening 1st CoC Meeting, sitting tight over request for holding CoC Meeting for removal of RP etc, this appellant may not get any assistance from the said judgment.

The email dated 03.10.2021 is reproduced as hereunder:-

EXHIBIT-"H"

*From: Sumit Sharma /Operations/Srel <sumit.sharma@srel.com>
Date: Sun, Oct 3, 2021 at 2:42 PM Subject:*

Re: MINUTES OF MEETING-4TH COC MEETING-SHREE RAM URBAN INFRASTRUCTURE LIMITED

To: SRIGOPAL CHOUDHARY <irp.cirp.srul@gmail.com> Ce: BC Bhandari /F5G/Srel <bc.bhandari@srel.com>, Kumar Saurabh/SPG/Srei <kumar_saurabhisrel.com>, Ganesh Bagree /Financial Solutions Group/Srei <ganesh.bagree@srel.com>, Rajesh Agarwal/Operations/Srel <crajesh_agarwal@srel.com>, Jaita Sarkar /Operations/Srel <jalta_sarkar@srel.com>, <ashish_seksaria@srel.com>, Jagdish Kumar jagdish <kumar.pillal@gmail.com>, <jagdishkumarpillai@gmail.com>, Jagdish pillai <rilarjagdish2021@gmail.com>, Nitin Valani <cnitin@lapisindiacapital.com>, Arvind ILFS Accounts Dept <Arvind.lyengar@illsindia.com>, Vikas Kasliwal <Vikas_kasihwal@gmail.com>, vikas kasliwal <vsk@@skumars.co.in>, <ssk@skumars.co.in>, <dwank@yahoo.com>, Sakti Pada Banerjee <sphanerjee@mspelectronic.com>, Mr. N.K. Sethi <nareshseth:37@yahoo.co.in>

Dear Sir,

We are in receipt of your email dated 30th September 2021 wherein you have alleged questionable conduct on part of SREI Equipment Finance Limited, further you have also alleged that we are aiding and abetting the erstwhile promoter/director of the Corporate Debtor.

In response thereto, we have to state as under:

1. You were appointed as Interim Resolution Professional on an Application filed by SREI Equipment Finance Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("BC") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") of Shree Ram Urban infrastructure Limited ("Corporate Debtor").
2. Further, you have failed to adhere to the timelines as stipulated under the IBC The CIRP against the Corporate Debtor was initiated on 6th November 2019, thereafter you convened the 1st meeting of the Committee of Creditors ("CoC") on 19th April 2021 e, after 1 year and 6 months after initiation of CIRP.
3. Thereafter, you have taken charge as interim Resolution Professional of Corporate Debtor. We have to state that as per Section 21 read with Regulation 17 of the Code, CoC has to be constituted within 30 days from the date of initiation of CIRP by the RP and subsequent thereto RP to call for meeting of 1st CoC within 7 days. However, in complete disregard to the statutory provision you have

constituted the CoC only on 7th October 2020 and you convened the 1st meeting of the CoC on 19th April 2021 Le, after a delay of 1 year and 6 months from the date of initiation of CIRP. The application for appointing Alt was filed sometime in January 2021.

4. Further on our repeated requests to hold the 1st CoC meeting, you have by emails stated that you are unable convene CoC due to unavailability of records as they are in the custody of Ol however after delay of almost 1 years and 6 months without calling for the records from the OL you have convened the meeting in April 2021 without the records. The RP has not visited the site or Mumbai after February 2020 and is controlling from his office at Kolkata.

5. To further substantiate the that you have miserably failed to perform duties as the Resolution Professional as stipulated under the law, we would like to draw your attention to the following events that transpired after the admission order was passed:

a. By an affidavit dated 30th August 2021, you have consented to the Intern Application filed by Kalpataru Properties Pvt Limited, without first informing the CoC. We have to state here tha Section 28 (d) read with Regulation 25 of the CIRP Regulation stipulates that the Resolution Professional has to seek approval of the CoC by putting the said agenda for voting. However, not only did you fail to put the same before the CoC, but you have unilaterally and arbitrarily consented to such execution of Decree in favor of Kalpataru, speak volumes of your conduct and underhand dealings with third parties involved in the CIRP. It is on your failure to defend the Application of the Kalpataru Properties Pvt Limited, we were constrained to file an Interlocutory Application opposing the Interlocutory Application filed by Kalpataru Properties Pvt Limited and to safeguard our Interests and interests of other stakeholders and because of your such nonchalant behavior towards the members of CoC, we have incurred huge expenses in proceedings before the NCLT. Your conduct is further highlighted from the fact that in your reply to the application filed by Kalpataru, you have unilaterally sought modification of the CIRP admission order. This despite no such prayer even being sought for by Kalpataru, not to mention without any intimation of the CoC let alone approval. Thus, your conduct in the matter is far from being professional.

b. Further, during the hearing held on 28th September 2021 before the NCLT, Mumbai Bench, the Advocate appearing on your behalf submitted that they have filed a Supplementary Affidavit to the Interlocutory Application filed by you for CIRP Cost. It is indeed

- shocking that you have filed an Additional Affidavit, the same was filed with the NCLT, however you have conveniently failed to serve a copy of the same upon us, who you have made a Respondent in the IA. Your entire conduct during the CIRP of the Corporate Debtor has been of some ignorance and high handedness.*
- c. We further say that during the 2nd Meeting of the CoC held on 11th June 2021, the members of CoC had resolved to raise Interim finance to the tune of Rs. 32 Crores. However, till date you have failed to raise the said interim finance and you have till date kept the CoC in dark.*
 - d. You have further alleged that SHEI Equipment Finance Limited has made Indiabulls Housing Finance as a party Respondent in the Interlocutory Application No. 2205 of 2021 filed by us. We say that it was you who had admitted India Bulls Finance Limited as the Financial Creditor of the Corporate Debtor and thereafter removed them without intimating the CoC. In fact, we were not even aware that you had removed Indiabulls from the CoC. Had you intimated us or made us a party to your application before the NCLT, we would have no reason or occasion to make indiabulls a party to our application,*
 - e. Further we as members of CoC are unaware as to who is looking after the assets of Corporate Debtor at Mumbai and whether you have taken control and custody of Assets of the Corporate Debtor. One of the duties under the Code is to provide a list of creditors alongwith their security under Reg 13(2)(e), CAP Regulation, however the same was never shared.*
 - f. We have requested your good self to share information Memorandum prepared but you have failed to prepare the same citing unavailability of records. As per Reg 36(1) of CIRP Regulation, after the Insolvency Commencement Date you are required to prepare the Information Memorandum and share with CoC within 54 days.*
 - g. you have not provided details of total flats available, hats sold, balance in possession with you has been shared with CoC. You filed an application to NCLT for exclusion of 493 days from the CRP as you were unable to perform duties as a Resolution Professional, however the delays and laches during the CIP are on your account, it is you own case that you were unable to perform duties however, you continued to charge professional services to carry out ORP. Further you have appointed Legal Representatives without*

seeking approval of the CDC. This is a CoC agenda and voting item but you seemed to be least interested in taking our approval.

- h. You have reduced our claim substantially without adequate documentary proof so as to penalize us for not making payments which is prejudicial and clearly shows that you are hand in glove with the Promoters and third parties to the present case.*
- i. Further you have also asked for a success fee of 1.75% of the total Resolution Plan and further Rs.50,000/- per day to visits made to any cities of India outside Kolkata to scout for investors. It is clear evident that you do not seem to be Interested in the resolution of the Corporate Debtor or are interested in safeguarding the interests of the creditors of the Corporate Debtor.*

6. You have further created a talse record to absolve yourself from your duties under the Code by alleging that our reluctance to find CIRP Costs is by design and that SREI Equipment Finance Limited has been aided and abetted by the past promoter/director of the Corporate Debtor. This petty attempt by you to create a false record falls flat on your actions alone. You have at the instance of the erstwhile promoter/director reduced our claim arbitrarily without any substantiation, there are several communications with you and the erstwhile promoter to demonstrate the same. You have further filed an affidavit consenting to sale of property of Corporate Debtor to a third party in the guise of receiving money for the benefit of the Corporate Debtor is an abhorrent assumption on your account

7. Further, we requested you to convene the Meeting of the CoC urgently to discuss the issues pertaining to Kalpataru, India Bulls and other issues before the hearing of the Application of the Kalpatans on 20th September 2021. However, you failed to call for the meeting before the hearing of Kalpataru, therebycausing great prejudice to the members of the Coc.

8. After the 4th Meeting of CoC was concluded by you on 29th September 2021, you for the first-time shared copy of the supplementary affidavit filed by you in Application for CIRP Costs. Further, during the meeting of the CoC you have placed blame on members of CoC and specifically SREI for inactions. However, it is in fact your inactions for almost 2 years that has led to this situation. Further you abruptly without providing opportunity to the CoC members to present their views and concerns on the matters, closed the meeting on account that you had an urgent matter to attend to, speaks volumes of unprofessionalism and total disregard towards the

creditors of the Corporate Debtor. Moreover, you refused to conduct the voting for 4th Meeting of the CoC on the agenda items.

9. *By our email dated 29th September 2021, we request that the said meeting be kept adjourned and convened on the next date or any date convenient, however we have not received any response from your end.*

10. *Further 4th CoC meeting held on 29th September 2021 was convened at our request where Kalpataru ("KIL") matter was one of the agenda items. The CoC members raised the concern regarding the acceptance acceded by the RP before the Hon'ble Bombay High Court on 30th August 2021 (affidavit copy & High Court order dated 09th September 2021 is attached) and subsequently before NCLT, Mumbai. The CoC sought for the approval accorded by the CoC. The RP replied by stating that there are 6 references to the KIL matter in the CoC meetings and also mentioned about the verbal legal opinion disclosed to the CoC in the annexures to the agenda item (in the 1st CoC meeting agenda items). SREI and the Authorized Representative of Homebuyers shared their reservations as there was a moratorium and any transaction relating to sale of CD's asset cannot happen without CoC's approval. The RP also mentioned about the Supreme Court order whereby KL was allowed to execute the decree and now the CoC (Srei in particular) were against We have categorically stated in the CoC meeting that we are not against the SC order but wanted to check on the moratorium clause under IBC Mr. Vikas Kashiwal, the Promoter and one of the CoC participant countered the statement of RP by stating that how can RP conclude the transaction when he does not have the entire set documents at his disposal as it was still lying with the Official Liquidator and can reach to such a decision. The RP has himself stated that he went ahead with the decision as there was a crunch of funds.*

11. *Further, you have resorted to using unparliamentary language such as defaulter against SREI and have further resorted to creating false records. We further state that SREI has made payment of Rs 17.50 lakhs against nil payment by other CoC members but you have singled out SREI in an attempt to corner us and extort monies by mentioning that SREI is not making payments in spite of the ratification of CIRP costs by CoC which casts responsibility on other CoC members to contribute but you failed to mention other Financial Creditors on this matter. Further, CoC has already consented on the raising of interim finance but it was your inability to do so. You have also cited that order dated 31st May 2021. NCLT order which bars him to do anything except for calling the CoC meeting. It was the dereliction of RP's duty that he did not file IA on time so as to get the*

favorable order and is now placing blame on SREL for this unfortunate situation.

12. Secondly, you have alleged that SREI Equipment Finance Limited is a defaulter during the CoC and in the said email and has also suggested that it has defaulted in making payments towards the CIRP Expenses. Kindly note that we have already paid an amount of Rs. 17,50,000 towards the CIRP costs of the Corporate Debtor. Further, we would like to date here that such unprofessional, unethical conduct on your part has led the CIRP of Corporate Debtor to this situation. It is apparent from your conduct that you are hand in glove with the promoters of the Corporate Debtor on whose instance you have acted malafide towards the interest of the Members of CoC as well as interest of the Innocent home buyers

13. Further, on perusal of the Minutes of the 4 Meeting circulated by you, to our shock and surprise you have recorded our submissions and requisitions out of context. We state that we have categorically taken a stand that we are agreeable to pay our proportionate share towards CIRP costs but your attempt to place the entire CIRP cost of SREB Equipment Finance limited is misplaced and an attempt for unjust enrichment. Further, the minutes of the meetings are nothing but another attempt to create a false record against the SREI Equipment Finance Limited.

14. You have further stated that RP has engaged various professionals like Advocates and other professionals, however, the RP has never invited quotations from the legal advisors or the same has never been shared with the members of the CoC. You have without seeking approval of the CoC unilaterally appointed professionals without the prior approval of the members of the CoC. You have stated that right from the Insolvency Commencement Date you have engaged in the legal battles at various forum, therefore, it would have been just and prudent on your part to inform CoC or call for a meeting of CoC to appraise the members of the CoC of the anticipated expenses. However, without informing or seeking approval from the CoC, you have continued to engage advocates and counsels without first approving the expenditure from the members of the CoC. Further you have also sought exclusion of 493 days from the CAP period on account that the RP couldn't perform its duties under the Code, therefore. If you couldn't perform any duties as RP. the question of professional fees for the said period doesn't even arise. Therefore, your attempt to corner and hijack the entire CIRP is at your behest of total incompetence and nonchalant attitude towards the interest the Creditors and Innocent home buyers

15. *On further perusal of your email dated 30th September 2021, you have stated that "as per records In CoC we have defaulted in making payments and will be making payments after NCLT adjudicating, further that we keep defaulting on dues as approved In CoC Kindly note that these so-called minutes/records are prepared by you at your whims and fancies. Till date we have not been introduced to your team of professionals. You have unilaterally decided what is best for the Corporate Debtor, Financial Creditors and Home Buyers without first approaching us for our view. Further on hare perusal of the minutes of the meetings of the CoC, it is clearly evident that the gross incompetence on your part as being placed on SRES specifically. Further we have never objected to engaging Senior Advocates, however, you have taken contrary stands on moratorium before the Hon'ble NCLT, which speaks volumes of your gross negligence, high handedness and complete failure on your part.*

16. *In view thereof, we request your good self to correct the minutes of the meeting as envisaged under the small under reply We further request you to put our objections to the minutes of the meeting on record. We further request you to call for a meeting of the CoC forthwith with an agenda to replace the current Resolution Professional with another Resolution Professional*

We will share the scan copy of the above letter tomorrow.

Sumit Sharma

Vice President Srel Equipment Finance Limited 3831647360

(Emphasis Supplied)

13. In the present case the RP who was expected to convene the CoC Meeting was avoiding to convene the 'Meeting' despite a request made by the applicant/respondent herein vide email dated 06.10.2021 for convening the 'Meeting' with agenda to remove the RP. Accordingly the applicant was left with no option but to approach

the Adjudicating Authority and the Adjudicating Authority has rightly exercised its inherent jurisdiction. Moreover it is settled law that one who appoints can also remove/dismiss the appointee. This position is further clarified on examination of Section 16 of The General Clauses Act, 1897 which is quoted herein below:

“16. Power to appoint to include power to suspend or dismiss.-*Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.”*

The Hon’ble Supreme Court in M/s. Heckett Engineering Co. Vs. Their Workmen reported in (1977) 4 SCC 377 has held that the Appointing Authority can also dismiss the appointee.

14. We are of the opinion that the Adjudicating Authority being the appointing authority of IRP/RP was well within its jurisdiction to pass an order for removal of the RP particularly in a situation where

the RP had not taken any steps to convene a meeting of the CoC for the purposes of removal of RP.

15. At the cost of repetition, it is pertinent to mention that the CIRP was initiated vide order dated 06.11.2019 and the first CoC Meeting was conducted on 19.04.2021 after a lapse of one and half years and the Adjudicating Authority has categorically observed that the RP has 'miserably failed to adhere to the timelines stipulated in the Code'. We are conscious of the fact that the provision of Section 27 of the Code contemplates that the replacement of the Resolution Professional can be done by the CoC alone. But if the ingredients of Section 27 of the Code cannot be met i.e. in the event, the RP is not convening the meeting of CoC, which in turn has to decide the replacement of the RP himself, we are of the considered view that the Adjudicating Authority, in order not to delay the CIRP proceedings, on an application under Rule 11 of the NCLT Rules, 2016 has rightly invoked its inherent jurisdiction and passed the impugned order. Needless to add, this order shall not come in the way or impede any directions issued by the Hon'ble Apex Court in any connected matter and the Adjudicating Authority shall proceed in accordance with law.

16. After going through the material available on record we are satisfied that the Adjudicating Authority with an object to implement the provisions of IBC in its letter and spirit has rightly exercised its inherent jurisdiction by way of passing order of removing the appellant as RP of the CD. This fact which is reflected on record is sufficient to draw an inference that the Appellant was proceeding contrary to the statutory provisions as contained in the IBC and also delaying the smooth conclusion of CIRP. We are of the considered opinion that there is no defect in the impugned order warranting interference by this Tribunal. On the contrary the conduct of the appellant/RP which was observed by the Adjudicating Authority and reflected so in the impugned order is sufficient enough to direct IBBI to conduct an inquiry regarding the role played by the RP in this matter.

17. Accordingly, we do not find any merit in the appeal nor the appeal is maintainable in the absence of necessary parties and as such the appeal stands dismissed. We have only confined our observations to 'Removal of the Appellant/RP'. We have not expressed any opinion regarding the 'Name of the Person/RP' to be replaced in

place of the Appellant. Needless to add, the Adjudicating Authority shall proceed in accordance with law.

18. Before parting with this order, in view of the facts and circumstances which we have noticed hereinabove, we consider that it is a fit case in which a direction can be issued to IBBI to conduct an inquiry regarding the conduct of the appellant. Accordingly IBBI is directed to conduct an in depth enquiry in respect of the conduct of the appellant and take appropriate steps in accordance with law.

19. Let a copy of this order be communicated to the Chairperson, IBBI.

[Justice Rakesh Kumar]
Member (Judicial)

(Ms. Shreesha Merla)
Member(Technical)

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