

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)

CA Nos. 122/2017
with
C.A Nos.123/2017 & 124/2017
IN
CP (IB) No.37/Chd/Pb/2017

Under Section 19(2) and 19(3)
of the Insolvency and Bankruptcy Code, 2016

Anil Kumar
Interim Resolution Professional
303 Shri Kriti Apartments,
Chandra GHS Limited,
Plot No.64, Gold Course Road,
Sector-55, Gurgaon-122001.

...Applicant

And

Rolex Cycles Private Limited
726, Industrial Area-B,
Ludhiana (Punjab)-141003

...Respondent-1

Ashwini Kumar Prabhakar
Director
Rolex Cycles Pvt.Ltd.
726, Industrial Area-B,
Ludhiana 141003, India

...Respondent-2

Kanchan Prabhakar
Director
Rolex Cycles Pvt. Ltd.
726, Industrial Area-B,
Ludhiana 141003, India

...Respondent-3

Rajinder Kapoor
Proprietor
RK Kapoor & Co.
Chartered Accountants
B-XIX-770
Old DMC Road,
Civil Lines, Ludhiana-141001

...Respondent-4

Rajinder Kapoor

Order delivered on : 08.09.2017

Coram: Hon'ble Mr. Justice R.P.Nagrath, Memembr (Judicial)

For Applicant: 1) Mr.P.D.Sharma, Practising Company Secretary
2) Mr.G.S.Sarin, Pracitising Company Secretary
for Applicant and also Corporate Debtor.

For Ashwini Kumar
Prabhakar : 1) Mr.Sunish Bindlish, Advocate
Intervener 2) Mr.Ashish Bansal, Advocate.

ORDER

Anil Kumar, the Interim Resolution Professional (IRP) has filed an application CA No.122/2017 under sub-sections (2) and (3) of Section 19 of the Insolvency and Bankruptcy Code, 2016 (for brevity the 'Code) for issuing necessary directions because of the non-cooperative attitude of the personnel of the Corporate Debtor.

2. The petition filed under Section 9 of the 'code' titled "**Hero Steels Limited Vs. Rolex Cycles Private Limited.**" CP (IB) No.37/Chd/Pb/2017 was admitted on 13.07.2017 declaring moratorium as per section 14(1) of the Code and vide order dated 20.07.2017 Mr.Anil Kumar, registered Insolvency Professional bearing Registration No.IBBI/IPA-001/IP-P00144/2017-18/10308 was appointed as the Interim Resolution Professional with the following directions: -

- (i) The term of appointment of Mr. Anil Kumar shall be for a period of 30 days from the date of his appointment as Interim Resolution Professional or as may be determined by the committee of creditors whichever is earlier.

Signature

- (ii) In terms of Section 17 of the 'Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18(1)(f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor'.
- (iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral.
- (iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors at the earliest but not later than three weeks from the date of this order. It is hereby directed that the 'Corporate Debtor', its properties, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor'.
- (v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13(1)(b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'.

3. The Insolvency Resolution Professional (Applicant) visited the site of the Corporate Debtor to take control of the management at about 4.00 p.m on 21.07.2017. Mr.Ashwini Kumar Prabhakar, the Intervener was handed over copy of the orders passed by this Tribunal and copy of Form A of public announcement and a letter requesting him to hand over the control of the Corporate Debtor. He was also requested to call meeting of all the employees, workers and managers to inform them about the change of management from existing Board of Directors and also to give access to the Books of Accounts, and to hand over the User-ID and Password of the Accounting and Business Softwares. Mr.Ashwani Kumar Prabhakar (Respondent No.2 – R-2) refused to extend co-operation and advised the Applicant to come on 25.07.2017 at 11.00 a.m. The Applicant, however, informed him about the legal obligation to take over the charge of the company w.e.f. 20.7.2017 and run it as a going concern during the term of his appointment and after a lot of persuasion, R-2 agreed that the Applicant could come on 22.07.2017 to take charge of the "Corporate Debtor".

4. The events that happened on 22.07.2017 have also been described in detail. One Mr.Ravindra Sachdeva who was present at the site on 22.07.2017 at 11.30 a.m introduced himself as Consultant Chartered Accountant to the Corporate Debtor and informed the applicant that he has been deputed by R-2 and told that he was not in possession of any information or documents

relating to the Corporate Debtor and that there was no other person available in the entire premises except the Security Guard deployed at the entrance gate. On visit to the premises, it was found that there was not a single piece of Plant and Machinery, Spare Parts, Tool Kit, Raw Material, Work in Progress, finished goods or any other asset except the structure of plant shade standing on the iron Pillars. The applicant even did not find any Books of Account, records or any computer system in the office of respondent No.1.

5. On 24.07.2017 the Applicant along with Chief Managers of Canara Bank and Bank of Maharashtra, Financial Creditors, and a professional videographer visited the spot and video graphed the entire business premises including shop floor, stores, Generator Rooms and all other offices. They found no item of plant and machinery, spare parts, tools, raw material, work in progress, finished goods, records, computers and other stationery. Some still photographs were also captured. Copy of the visit report signed by the above persons and video CD of the visit are attached as Annexure-8.

6. The detailed information of the further visits of the premises has also been furnished suggesting that there was no co-operation from the respondents. There was even non-cooperation from the Statutory Auditors. The progress reports in this regard and the emails sent to the statutory auditors have also been annexed. In order to get control of the premises, the Applicant deputed Mr. Naresh Dhanuka for locking the factory premises but he was stopped by the Security Guard who introduced himself as an employee of the Corporate Debtor.

7. It is further highlighted that the Applicant got a phone call from Mobile No.+91 9501511455 by a fellow claiming to be a Police man from Ludhiana

police station stating that a complaint has been lodged against the Applicant. The Applicant has also filed progress reports of the events which are at Annexure 12 and 13. The aforesaid incident was also informed to the Financial Creditors, i.e. both the Banks.

8. The Applicant received email (Annexure 14) dated 04.08.17 from R-2 wherein it is stated that the Applicant tried to lock the premises and block the entry and exit points to the residence and a proprietorship concern housed in the same premises with further details.

9. Highlighting all these events, it is alleged that in the absence of required information, the Information Memorandum as required under Regulation 36 of IBBI(CIRP) Regulations, 2016, cannot be possibly prepared.

The Applicant has ultimately made the following prayers:-

- a) Issue necessary directions under Section 19(3) of the IBC,2016 to all the personnel of the Corporate Debtor and the Respondent-2 and 3 and also the Statutory Auditors to assist and co-operate with the Applicant and comply with the instructions of the applicant and provide him all information required by him and hand over the Management of the Corporate Debtor as required under the Code vide order dated 20.07.2017;
- b) Issue directions to the District Administration Ludhiana (Punjab) to provide necessary assistance to the Applicant including Police Protection in discharging his duties as Interim Resolution Professional of Respondent-1;



- c) Issue directions to the SSP Ludhiana to provide necessary Police Protection to the applicant in discharging his duties as Interim Resolution Professional of Respondent-1; and
- d) To pass such order as may be deemed fit, proper and necessary in the facts and circumstances of the case including levy of penalties under Section 70 of the I & B Code, 2016.

10. R-2, Director of the Corporate Debtor filed reply to this application. The preliminary objection raised is that after expiry of 30 days from the date of appointment, the Applicant became *functus officio* in terms of section 16(5) of the Code which was also a term of his appointment vide order dated 20.07.2017. This period of 30 days cannot be extended in the exercise of inherent powers of this Tribunal. The Applicant can only function now after the expiry of 30 days if he is appointed as Resolution Professional as provided under Section 22(3)(a) or under Section 22(5) of the Code. As per sub-section (1) of Section 22, first meeting of the Committee of Creditors is to be held within a period of 7 days of constitution of the Committee of Creditors which was constituted on 04.08.2017 and no meeting was held within the said period.

11. One of the pleas raised in reply is that the application filed by the Interim Resolution Professional (IRP) is dated 17.08.2017 but the affidavit in support of the application is on 11.08.2017. When the matter was listed on 25.08.2017 it was submitted by the authorised representative on behalf of the Applicant that the application in fact was initially prepared on time but due to certain objections the same was dated 17.8.2017 and was filed at a later date. The Applicant was therefore directed to file fresh affidavit in support of the application. The Applicant filed the affidavit on 29.08.2017 along with

additional documents. The applicant filed more documents on 04.09.2017 along with fresh affidavit of the applicant attested on 28.08.2017 in support of CA No.122/2017. It was contended that the fresh affidavit has been filed on 04.09.2017 as the affidavit filed earlier with the documents on 29.08.2017 was not the attested affidavit. With the aforesaid compliance, the contention of the respondent to challenge maintainability of the application on technical ground stands repelled.

12. On merits it was stated in the reply that the respondent and its personnel only objected to the illegal action of the Applicant who was acting in excess of the jurisdiction conferred on him by the Code. Otherwise, there was no opposition ever raised to the conduct of proceedings by the Applicant in accordance with the provisions of the Code.

13. It is further alleged that the Applicant illegally called for the information pertaining to the last 4 financial years in his email dated 24.07.2017 which is in conflict with the provisions of Section 18(1)(a)(i) and (ii) of the Code. Further, the Applicant tried to lock the premises which was objected to by the Security Guard as there is another business of proprietorship concern and major part of the premises is owned by the Directors in their individual names where they are keeping residence.

14. The respondents even sent emails to the Applicant explaining the reasons for not being able to supply the complete information to him. The respondents were unable to provide the required information in view of the complete exodus of staff and workers due to the distressing scenario arising on account of initiation of proceedings under Section 13(4) of the Securitization Act, 2004. Further, the advertisement was not published by the

Applicant in the newspapers which should be in wide circulation in the area where the Registered Office of the company is situated. It is admitted that a complaint dated 04.08.2017 was lodged with Police authorities alleging illegal acts committed by the Applicant. The complaint to the Police is at Annexure R-2/2 which is limited to the illegal action of the Applicant in seeking to lock the premises in question even when the factum of existence of ownership and residence of the directors and the business concern of the third party viz. M/s Prabhakar Cycles Industries was brought to the notice of the police. Regarding books of accounts, Plant and Machinery, computers etc., the same are not available as on date and had to be removed due to unfavourable market conditions of the Corporate Debtor and the respondents wanted to shift the business operation from manufacturing to an assembling unit.

15. Based on the above grounds, Mr. Ashwini Kumar Prabhakar, Director of the Company (who is also a shareholder) filed CA N.123/2017 with a prayer to annul the appointment of the Applicant as Interim Resolution Professional and staying the proceedings being conducted by him.

16. It is also alleged that the Applicant issued publication in the Chandigarh Edition of daily 'Business Standard' (English) Chandigarh Edition and not in Ludhiana Edition and with regard to the publication made in 'Rojana Spokesman' the regional language i.e. Punjabi the same is not in wide circulation in Ludhiana. Further the term of IRP has expired on 19.8.2017 and there is no application for extension of his term as such. Further the IRP has appointed two registered valuers but M/s Gats Financial Reconstructors Limited which was earlier de-panelled by the State Bank of India on 29.06.2011 and the order of the State Bank of India was challenged in CWP

No.24151 of 2011 before the Hon'ble High Court of Punjab and Haryana but that petition was dismissed. Copy of the order of Hon'ble High Court in **M/s Gats Financial Reconstructors Limited Vs. Union of India and Others** **CWP No.24151 of 2011 dated 29.05.2017** is at Annexure A-3. Mr. Ashwini Kumar Prabhakar aforesaid has also filed CA No.124/2017 for being impleaded as an Intervener.

17. The Applicant (IRP) has filed joint reply to both these applications filed on behalf of the proposed Intervener. It is contended that the Applicant has acted to the best of his ability in the manner explained in the reply. 'Business Standard' (English) daily newspaper is published in two languages – English and Hindi. Its edition comes from 13 regional centres – New Delhi, Kolkata, Bangalore, Coimbatore, Chennai, Ahmedabad, Hyderabad, **Chandigarh**, Pune, Lucknow, Raipur, Bhubaneswar and Kochi – and reaches readers in over 1000 towns and cities across India. Copy of the relevant information retrieved from 'Wikipedia' in support of the above allegation has also been attached at Annexure-1. 'Rozana Spokesman' (Punjabi) has been recognized by the department of DAVP of Government of India and has second largest circulation of all Punjabi-language newspapers. Annexure-2 attached with the reply is also the document in support of this contention retrieved from 'Wikipedia'.

18. It is further stated that the Corporate Debtor and its personnel did not provide any record, books of accounts, balance sheets etc. for the last 2 years as is clear from the 1st, 2nd and 3rd progress report submitted to this Tribunal on 28.07.2017, 11.08.2017, 21.08.2017 and 28.08.2017 etc.

19. The Applicant/IRP received 3 claims on the basis of the advertisement and admitted those claims on 04.08.2017. Meetings of Committee of Creditors is required to be convened within 7 days of filing of the report with the Adjudicating Authority in terms of Regulation 17(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short, the 'Regulations'). The report with regard to constituting of the Committee of Creditors was filed in the Tribunal on 14.08.2017 and meeting was scheduled to be held on 19.08.2017 which was the last date of tenure of IRP. The date of meeting was extended at the request of Canara Bank which is the Lead Bank and the meeting was scheduled to be held on 26.8.2017 and then 28.8.2017. There is email sent by the Applicant (IRP) on 21.08.2017 at page 25 of the reply, to both the financial creditors intimating them that the date of Committee of Creditors meeting was changed from 26.08.2017 to 28.08.2017 on the request of financial creditors. Copies of the emails received from the Financial Creditors are also relied upon. It is further stated that the Interim Resolution Professional took photographs of the premises and made videography and even he later on tried to contact the Corporate Debtor but Mr.Ashwini Kumar Prabhakar never picked up the call. Detailed reply has been given to the rest of the allegations. The Applicant also filed additional documents with index dated 22.08.2017, 29.08.2017 and 04.09.2017.

20. Authorised Representatives of the Applicant and learned counsel for Mr.Ashwini Kumar Prabhakar have been heard and the record carefully perused.



21. The facts of the case would clearly reveal absolutely non-co-operative attitude of the key managerial personnel of the Corporate Debtor who should have assisted the Interim Resolution Professional in the performance of his time bound duties.

22. The basic point in issue was whether the Applicant as an Interim Resolution Professional can function as such after the expiry of his original term of appointment which was for 30 days.. Sub-section (5) of Section 16 of the Code says that the term of the IRP **shall not exceed** 30 days from his date of appointment which expired on 19.08.2017 and it is contended that there is no extension to his functioning as such. It was further contended that Committee of Creditors was admittedly constituted on 04.08.2017 and first meeting of Committee of Creditors was supposed to be held within 7 days therefrom in accordance with the sub-section (1) of Section 22 of the Code. Learned counsel for the Intervener, therefore, submitted that this meeting could be held by 11.08.2017 whereas the present application was filed only on 17.08.2017 without even seeking the prayer for extension of his term. The learned counsel for the Intervener submitted that with the negative words are used sub-section (5) of section 16 there cannot be the scope of extending the tenure of the IRP.

23. In support of his contention learned counsel for the Intervener relied upon the judgement of Hon'ble Supreme Court of India in **Commissioner of Income Tax, Mumbai Vs. Anjum M.H.Ghaswal and Ors. 2002(1) SCC 633** wherein contention that the Settlement Commission constituted under Income Tax Act has inherent power which includes the power to waive or reduce the interest was not sustained. It was further held that assuming that there is any

inherent power, that cannot be exercised contrary to the express provisions of the Act. It was also held that there being express provision in regard to the levy of interest under Part F of Chapter XVII even if there is any inherent power in the Commission such power cannot be exercised contrary to the provisions of the said Chapter.

24. I am of the view that the principle held under the Income Tax Law can be made applicable to the present case, because the Insolvency and Bankruptcy Code is complete Code in itself and the consequences of non-appointment of Resolution Professional before the expiry of 30 days period of IRP have not been provided in the Code. The proceedings before the IRP or the Resolution Professional, as the case may be, cannot be left in the lurch as there is a specific period for completion of insolvency process provided in Section 12 of the Code which reads as under:-

"(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

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25. Even the judgements passed under the Rent Control Act or Tamil Nadu Rent Recovery Act cannot be made applicable to the case in hand. Learned counsel in that regard relied upon the judgements of Hon'ble Supreme Court of India in **Nasiruddin and Others Vs. Sita Ram Agarwal Civil Appeal No.5077 of 1998 decided on 28.01.2003; E.Palanisamy Vs. Palanisamy (D) by Lrs. & Ors. Civil Appeal Nos. 501-502 of 2001 decided on 31.10.2002; and The Tahsildar, Taluk Office, Thanjore & Ors. Vs. G.Thambidurai & Another Civil Appeal No.6435 of 2017 decided on 09.05.2017.** Hon'ble Supreme Court held in **Naziruddin and Ors.** (supra) which was a case under Rajasthan Premises (Control of Rent and Eviction) Act, 1950 that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory but the intention of the legislature must be found out from the scheme of the Act. It was also held that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character. That was a case where the tenant did not deposit the arrears of rent within the period specified in the order of the Trial Court and therefore, consequence was eviction. The law relating to the eviction of the tenants cannot apply to the proceedings under Code to make the order of admission passed by this Tribunal as redundant.

26. The question here is that the provision of Section 16(5) of the Code fixing the term of the Interim Resolution Professional as 30 days is mandatory or directory requirements. This can be found in the provisions of the Code and the Regulations framed thereunder.

27. The Applicant's representative referred to Regulation 17 of IBBI (CIRP) Regulations, 2016 which says in Clause (1) that the IRP shall file the report

certifying the constitution of the Committee of Creditors to the Adjudicating Authority on or before expiry of 30 days from the date of his appointment. This compliance has been made as the report was filed on 14.08.2017. Clause (2) of this Regulation further says that IRP shall convene first meeting of the Committee of Creditors within 7 days of filing of the report under this Regulation. The first meeting of COC was scheduled for 19.08.2017. Therefore, the scheme of the Act coupled with the Regulations make the intention of the legislature quite clear. It is apparent from the record that Canara Bank is totally non co-operative with the IRP in the holding of meeting of COC.

28. The agenda for the meeting of the Committee of Creditors which was scheduled for 19.08.2017 was sent by email dated 14.08.2017 at page 8 of the documents filed with index dated 22.08.2017 and was addressed to both the Financial Creditors, i.e. Canara Bank and Bank of Maharashtra and it is admitted that only two of the Financial Creditors submitted their claims to the IRP. On 20.08.2017 it was intimated by the IRP that Chief Manager of Canara Bank had been delaying the holding of the meeting on one pretext or the other. Date of the meeting was earlier changed to 26.08.2017 vide email dated 16.08.2017 sent to both the Financial Creditors and the directors of the Corporate Debtor as at page-10 of the documents dated 22.08.2017. There is also an email on this page dated 19.08.2017 sent by the Applicant to Chief Manager of Canara Bank and copy to Bank of Maharashtra that as requested the meeting of the Committee of Creditors was postponed to 28.08.2017 from 26.08.2017 and the revised agenda of the meeting was also sent. In another email of even date at page-11 of the documents written to both the Banks, the

Applicant had expressed that the information is not being supplied by the Corporate Debtor and they are not responding to the phone calls nor to the letters or emails being sent relentlessly from the date of his appointment as IRP. It is also stated that as per the portal of MCA, the financials of the company for the last two years are not available. He has also expressed in this mail the police action threat followed by legal action given by the director of the corporate debtor vide email dated 07.08.2017 to stop him from the efforts. It is also indicated to the Financial Creditors that despite hardship the Applicant had been in constant touch through emails, phone, whatsapp and SMS messages for conducting first meeting of COC before 20.8.2017 but due to non-availability and engagement in other assignments of the Chief Managers of the Bank, the meeting could not be held. These documents also refer to an email sent on 14.08.2017 attaching draft of the agenda for the proposed meeting fixed on 19.8.2017 but the same was not responded.

29. Strangely enough, the Canara Bank vide their email dated 19.8.2017 wrote to the IRP seeking his views for not holding the meeting of COC which was supposed to be held within 7 days of the constitution of COC.

30. Canara Bank also sent email as at page-1 of Annexure-A of the documents filed on 29.08.2017 to the Applicant stating that since there are only two secured creditors who are the members of the Committee of Creditors, Mr.D.K.Mahajan, Chief Manager, Bank of Maharashtra was not available on 28.08.2017 and therefore a request was made to postpone the meeting to first week of September, 2017. This stand of Canara Bank has been belied by Bank of Maharashtra vide email dated 25.08.2017 as at page 6 of these documents, that Bank of Maharashtra is very much ready and

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prepared to attend the meeting on 28.08.2017 even if its local Chief Manager Mr. Davinder Kumar Mahajan is not available on the said date. It was stated that Chandigarh Zonal Office of Bank of Maharashtra would make necessary arrangements for the meeting. Therefore, a big question arises as to what was the *locus standi* of the Chief Manager of Canara Bank in seeking to postpone the meeting of COC scheduled for 28.08.2017? The meeting scheduled for 28.08.2017 could not be held as Canara Bank did not represent itself in the meeting of COC held on 28.08.2017 though the excuse sent by Canara Bank was that the Chief Manager of Bank of Maharashtra was not available. There was a representative of Bank of Maharashtra attending the meeting but it holds only 14.6% of the voting share whereas Canara Bank holds 85% of the voting share. The decision thus could not have been taken in the meeting of COC as per minutes of the meeting at Annexure B attached with these documents filed on 29.08.2017, the quorum of the meeting being incomplete.

31. The Applicant (IRP) recorded the minutes in accordance with the Regulation 22 of IBBI(CIRP)Regulations, 2016 and the provision reads as under:-

"(1) A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means:

Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.

(2) Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided

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otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.

(3) In the event a meeting of the committee is adjourned in accordance with sub-regulation (2), the adjourned meeting shall be quorate with the members of the committee attending the meeting.

32. Accordingly, the meeting was scheduled for 29.08.2017 at 12 O'clock in the noon at the venue mentioned in the minutes of the meeting.

33. The above facts are self-explanatory reflecting as to under what stressful and difficult circumstances the Applicant is working and facing an uphill task. With the additional documents filed on 04.09.2017 by the authorised representative of the Applicant supported by an affidavit of Interim Resolution Professional, the minutes of the meeting of the Committee of Creditors held by e-voting process dated 01.09.2017 have been attached as Annexure B. Agenda item No.1 was to approve and ratify raising of interim finance; item No.2 was to approve and ratify a debit transaction from the corporate debtor's bank accounts; item No.3 was to approve and ratify delegation of the authority of Interim Resolution Professional to any other person; and item No.4 was to appoint the Applicant as a Resolution Professional and the latter is most relevant for consideration at this stage. The explanatory statement has also been described along with proposed resolution. Agenda item No.5 was to ratify and approve the remuneration of the Applicant-IRP/Resolution Professional.

34. The e-voting agreement was entered into with the CDSL, an agency for the purpose of e-voting. The e-voting result is Annexure-D with these

documents. The result shows that both the Financial Creditors participated in the meeting and there was 100% voting cast against all the five agenda items.

35. Therefore, it was the duty of the Committee of Creditors to file an application before the Adjudicating Authority for appointment of a Resolution Professional in terms of sub-section (3)(b) of the Insolvency and Bankruptcy Code, 2016. No such application has been filed so far.

36. Looking into the aforesaid circumstances and the dilly dallying tactics of the Financial Creditors especially Canara bank, necessary directions apart from the directions to the responsible officers of Canara Bank need to be issued. It is further held that consequence thereof is that the Applicant appointed by this Tribunal would continue to function as a Resolution Professional in terms of the Code and the Regulations framed therein till he is replaced. It is thus held that the Interim Resolution Professional does not become functus officio to stall the resolution process in the petition which has been already admitted by this Tribunal as Adjudicating Authority.

37. The Hon'ble Company Law Appellate Board held in **Company Appeal (AT) No.09 of 2017 titled JK Jute Mills Company Limited Vs M/s Surendra Trading Company** that the term allowed to "Interim resolution professional" is 30 days. Thereby "Interim resolution professional" cannot exceed 30 days from the date of his appointment as per sub-section(5) of section 16. However, as the Regular resolution professional starts functioning on completion of period of Interim resolution professional the performance of the duties of Interim resolution professional cannot be held to be mandatory though the period is required to be counted for completion of the interim resolution

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process i.e. 180 days and in appropriate case another 90 days can be granted i.e. maximum 270 days which is mandatory.

38. With regard to the contention that the advertisement was not published in the newspapers with wide circulation in the locality where the office of the Corporate Debtor is situated, learned counsel for the Intervener referred to the list of the highly circulated newspapers prepared by Audit Bureau of Circulations which shows that the name of 'Business Standard' (English) newspaper does not figure and with regard to the Punjabi newspaper, the highest circulation is in dailies 'Ajit' and 'Jag Bani'.

39. I am of the clear view that the Intervener has *no locus standi* to raise this issue especially when there is a total non-co-operative attitude on his part. I am of the view that it is not required that such an advertisement should be published in the highest circulated newspapers and the best possible effort has been made in this case by the Applicant to know about the circulation of 'Business Standard' and 'Jag Bani' from the site of Wikipedia, as at Annexure-1 and Annexure-2 of the reply of Interim Resolution Professional.

40. The other contention was that one of the valuer appointed was dis-empanelled by the State Bank of India. Learned counsel for the Intervener referred to judgement of Hon'ble High Court of Punjab and Haryana in **M/s Gats Financial Reconstructors Limited Vs. Union of India and Others** CWP No.24151 of 2011 decided on 29.05.2017 whereby the appeal of one of the valuers was dismissed.

41. It would be seen that the Hon'ble High Court observed that the said valuer had used intemperate language against the officers of the respondent-Bank i.e. State Bank of India and at the same time was claiming to continue

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with the Bank. Hon'ble High Court further held that in the absence of any legal right created by any agreement, it cannot be said that the action of the respondents in de-panelling the petitioner before the Hon'ble High Court, was vitiated. The above contention of the learned counsel for Intervener is without substance. Simply because State Bank of India has dis-empanelled Gats Financial Reconstructors Limited that cannot ipso facto apply in case of both the Banks who are the Financial Creditors. It is not disputed that Gats Financial Reconstructors Limited is a registered valuer. The submission of authorised representative of the Applicant was that the information of the Valuers was searched from Internet. The message was sent at the email of Gats Financial Reconstructors Limited. The aforesaid valuer sent email (Annexure 4) dated 23.08.2017 attached with reply to the application of the Intervenor that he is empanelled with Bank of Maharashtra, Oriental Bank of Commerce, Punjab National Bank, Karnataka Bank Limited, IFCI Limited, Bank of Baroda and other Banks. In any case, if the Financial Creditors had any dis-satisfaction with the report of this valuer, the Committee of Creditors could consider appointment of another valuer to rectify the mistake, if any, but this cannot be a ground available to the Intervener to stall the functioning of the IRP or the Resolution Professional, as the case may be.

42. Therefore, finding no merit in CA 123/2017 the same is dismissed. As a result of whereof CA 124/2017 for intervention would also stand disposed of.

43. However, before passing further directions it would be appropriate to deal with the kind of serious situation that has arisen in this case. It is submitted on behalf of the Applicant that in exercise of his duties to protect the

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assets of the Corporate Debtor, he wanted to lock the premises so that these are not removed. But on the objections being raised on behalf of personnel of the Corporate Debtor the premises was not locked. In these circumstances, it becomes a matter of concern as to how police can intervene in the functioning of the Applicant appointed by this Tribunal by giving him a call while he was present at the spot.

44. The contention that the IRP has exceeded his authority in calling for the information relating to the books of accounts for the past four financial years that is hardly a ground, which can be raised by the intervener to dispute the functioning of the IRP as the Corporate Debtor could in any case provide the financial statements for the last two years instead of four years and not to challenge the authority of the Interim Resolution Professional on that ground. It is neither the case of the intervener that he has provided the financial statements for the past two years, rather, the latest master data of the Company (Annexure 6) attached with CA No.122 of 2017 shows that the last balance sheet was filed only upto 31.03.2014.

45. The facts discussed above would also make it quite clear that there has not been proper monitoring by the Regional Office of Canara Bank holding major voting share in the committee of creditors and when the continuation of interim resolution professional was not accepted, application was supposed to have been filed in terms of sub-section (3) of Section 22 of the Code for replacement of the IRP.


46. In view of the above, the following directions are issued:-

- i) Notice be issued to the Chief Manager, Canara Bank and the Chief Manager, Bank of Maharashtra to appear in person on 25.09.2017 and to show cause as to why an application has not been made so far for replacement of the IRP in terms of Section 22 of the Code.
- ii) Notice also to the Regional Manager, Canara Bank, Chandigarh to file a report before 25.09.2017 as to why the proper monitoring of the sensitive matter like the resolution process under the I.B.Code, 2016 is not being done.
- iii) Notice to Mr.R.K.Kapoor, Chartered Accountant, C/o R.K.Kapoor & company, the statutory auditors of the company to appear in person on 25.9.2017 and to file an affidavit explaining the circumstances as to why the statutory record has not been handed over to the IRP and to show cause as to why the proceedings for violation of the directions of this Tribunal while appointing Interim Resolution Professional be not initiated.
- iv) Notice to the Intervener Mr.Ashwani Kumar Prabhakar, the Director of the Corporate Debtor to file his affidavit and to appear in person on 25.09.2017 to show cause as to why action be not initiated for not complying with the instructions of the Interim Resolution Professional in the collection of information and handing over management of the Corporate Debtor.
- v) Commissioner of Police, Ludhiana to provide necessary police protection/assistance to Mr. Anil Kumar, Interim Resolution

Professional in the performance of his functions, as and when Mr. Anil Kumar makes a request to the police department in the discharge of his duties.

47. Notices shall be collected 'dasti' by the Applicant to be served upon the aforesaid persons/authorities by collecting the same from the Registry.

48. CA No.123 of 2017 filed by the intervener is dismissed. Consequently, CA No.122 of 2017 stands disposed of. The other Misc. applications, if any, also stand disposed of.


(Justice R.P.Nagrath)
Member (Judicial)

Sept 08, 2017
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