
(2021) 07 NCLT CK 0041

In the National Company Law Appellate Tribunal

Case No : IA/2024/(ND)/2020 With IA/2195/(ND)/2021 Connected with IB-876/(ND)/2020

M/S Dhankalash Distributors Pvt. Ltd

APPELLANT

Vs

M/S Piyush It Solutions Private Limited

RESPONDENT

Date of Decision : 22-07-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 27(2), 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2021) 07 NCLT CK 0041

Hon'ble Judges : P.S.N. Prasad, Member (J); Narender Kumar Bhola, Member (T)

Bench : Division Bench

Advocate : Abhishek Kumar, Utkarsh Joshi, Vaibhav Sharma

Final Decision : Allowed/Disposed Of

Judgement

P.S.N. Prasad, Member (Judicial)

1. This order shall dispose of I.A. No. 2024/ND/2021 along with I.A. No. 2195/ND/2020 by common order since the prayers sought in both the

applications are of similar nature.

2. The I.A. No. 2024/ND/2021 has been filed by the Insolvency and Bankruptcy Board of India under section 60(5) of the IBC, 2016 read with rule

11 of NCLT Rules, 2016 for seeking directions for replacement of Mr. Pawan Kumar Singhal, IRP with another Insolvency Professional.

3. It was stated that an application under section 7 of the IBC, 2016 was filed by the Financial Creditor M/s Dhankalash Distributors Pvt. Ltd. to

initiate CIRP of M/s Piyush IT Solutions Private limited. That vide order dated 28.10.2020 the Hon'ble Adjudicating Authority initiated the CIRP of

the Corporate Debtor and appointed Mr. Pawan Kumar Singhal having

Registration No. IBBI/IPA-001 / IP-P01172 / 2018-19 / 12229 as the Interim Resolution Professional.

4. Â The Applicant further submitted that the Authorized Representative vide email dated 11.04.2021 to Mr. Pawan Kumar Singhal, IRP shared the list of home buyers who wished to replace IRP and to include the said agenda in the 4th COC meeting. The applicant submitted that despite the express intention for replacement the IRP did not include the agenda in coming 4th COC Meeting. Further it was submitted as the item B-2 in the minutes of the 4th COC meeting placed as:

... At this stage, Mr. Pawan Kumar Goyal, AR informed the meeting that he had received large number of emails from homebuyers expressing intention to replace IRP with another IP, namely, Mr. Manish Gupta.

Accordingly, after some discussion, CoC decided to defer this item and unanimously asked chairman not to put up the proposed resolution regarding appointment of IRP to RP for voting.

5. Â The Applicant further submitted that the IRP Mr. Pawan Kumar Singhal has violated the Regulation 18, 19 and 21 of CIRP Regulations, 2016.

6. Â The Respondent No. 1 i.e., IRP, Mr. Pawan Kumar Singhal has filed his reply in the said application and submitted that no violation of any law or regulations has been conducted by the Respondent as alleged by the Applicant.

7. Â The Respondent further submitted that the notice dated 07.04.2021 was circulated along with the agenda for convening 4th COC meeting on 12.04.2021. That the Authorized Representative vide email dated 11.04.2021 forwarded emails received from homebuyers to the IRP when there were less than 24 hours left for the scheduled time of the 4th COC meeting.

8. Â The Respondent alleges that the Authorized Representative neither confirmed the authenticity of emails nor sent any agenda items. It was also submitted that the other two financial Creditors in the COC objected to such last-minute attempted change of IRP without giving adequate notice.

Thus, the Respondent submits that his actions were in strict accordance with the code of conduct prescribed for insolvency professionals.

9. Â The I.A. No. 2024/ND/2021 has been filed by the Applicant, who is a member of the COC seeking to replace the Interim Resolution

Professional Mr. Pawan Kumar Singhal with the Proposed resolution professional

Mr. Ayyagaari Viswanadha Sarma (IBBI/IPA-OOI/IP-PO
1524/2018-19/ 12396).

10. The Applicant submitted that in the fifth meeting of the CoC held on 03.05.2021, 73.19% of the members of the CoC have confirmed the appointment of the proposed RP as the Corporate Debtor's Resolution Professional. That on 03.05.2021, in the fifth meeting of the CoC, the IRP put the following resolution for the consideration of the CoC:

RESOLVED THAT Mr Ayyagiri Viswanadha Sarma, an Insolvency Professional (Registration No IBBI /IPA-001/IP-P01524/2018-19/12396) be and is hereby appointed as Resolution Professional to replace Mr. Pawan Kumar Singhal - Interim Resolution Professional (Registration No IBBI/IPA-001 /IP-P01172/2018-2019/12229) in the matter of Corporate Insolvency Resolution Process of Piyush IT Solutions Private Limited;

RESOLVED FURTHER THAT any financial creditor who is member of CoC be and is hereby authorized to file necessary application with Adjudication Authority for the appointment of aforesaid Resolution Professional".

That as per the results of the e-voting dated 08.05.2021, the aforesaid resolution has been accepted by the members of the COC.

11. The Respondent No. 1, i.e., IRP Mr. Pawan Kumar Singhal while replying to the said application has submitted that the present application is not maintainable as the Respondent that under section 22 of IBC, 2016 it is only the Committee of Creditors that has the power to invoke the provision of section 22 of the IBC, 2016 whereas, the present application has been filed by an individual Applicant thus, it is not maintainable.

12. The Learned Counsels for all the parties in both the Applications i.e., IA/2024/ND/2021 and IA/2195/ND/2021 were present and heard at length, as in both the applications the applicants have prayed for the replacement of IRP. It is pertinent to mention that vide dated 10.06.2021, the existing Resolution Professional has submitted before the Tribunal that he has no objection to get replaced with a new resolution professional in the said matter.

13. On perusal of the application as well as the reply filed by the parties, we hereby allow prayer made in LA/2024/ND/2021 i.e., to replace Mr.

Pawan Kumar Singhal, IRP with another Insolvency Professional. Along with that we allow the prayer made in IA/2195/ND/2021 i.e., to replace the

Interim Resolution Professional Mr. Pawan Kumar Singhal with the Proposed Resolution Professional, Mr. Ayyagari Viswandha Sarma (IBBI/IPA-

001 /IP-P01524/2018-19 / 12396) as the said resolution was passed by the COC by more than 73.19% of the COC members which is more than sixty

six percent and is in accordance to the section 27(2) of IBC, 2016 which states that:

â??27(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed

under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form. â??

We allow both the applications in terms of Prayers and thereby directing to replace the existing IRP, Mr. Pawan Kumar Singhal with Mr. Ayyagari

Viswandha Sarma (IBBI/IPA-001/IP- P01524/2018-19/12396) thereby, forwarding this name to the IBBI for its confirmation pursuant to section

22(3)(b) read with 22(4) of the IBC, 2016.

15. Â Thus, IA/2024/ND/2021 and IA/2195/ND/2021 are allowed and disposed of in terms of the order above.

Let the copy of the order be served to the parties.