

(2020) 12 NCLT CK 0185

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 2051 Of 2020 In Company Petition (IB) No. 4087/MB Of 2018

Supreme Hydra Engineering Private Limited

APPELLANT

Vs

Dolphin Offshore Enterprise (India) Limited

RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulation, 2016 — Regulation 3(IA)
Insolvency And Bankruptcy Code, 2016 — Section 22, 22(2), 22(3)(b), 27

Citation : (2020) 12 NCLT CK 0185

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Rohan Agrawal, Almira Lasrado

Final Decision : Allowed

Judgement

1. This is an application filed by one of the Financial Creditors seeking replacement of IRP. The Applicant Financial Creditor has 74.79% voting share in the CoC.

2. The brief facts that led to the Application are as follows. This Bench by an order dated 16.07.2020 admitted the Company Petition (CP (IB) No.

4087/MB/2018) and directed initiation of the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor. It appointed Mr. Vinit

Gangwal as the Interim Resolution Professional (IRP). The Committee of Creditors (CoC), of which the present applicant is a member, in its 3rd

meeting on 19.10.2020 resolved to replace the IRP and appoint one Mr. Dinesh Kumar Aggarwal (IBBI/IPA-002/IP-N00890/2019- 2020/12843) as

the Resolution Professional (RP). The said Resolution was voted in favor by

92.44% CoC. The Applicant accordingly filed the present application.

3. The Applicant has enclosed the copy of the Resolution, voting result as well as the written consent of the proposed Resolution Professional in Form

AA of the Regulation 3(IA) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation,

2016.

4. Sub-section 2 of Section 22 of the Insolvency and Bankruptcy Code (the Code) provides that the CoC may in its first meeting by a majority vote of

not less than 66% of the voting share of the Financial Creditors resolve to replace the IRP by another RP. The present Application is brought about on

the basis of the resolution of the 3rd meeting of the CoC.

5. It is beneficial to refer to the Judgement of Honâ??ble NCLAT in Company Appeals (AT) (Ins) Nos. 497, 498, 499, 500 and 501 of 2020 - Bank

of India Vs. Nithin Nutritions Pvt. Ltd., wherein the Appellate Authority have observed as follows:

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4. The learned Counsel for the Appellants states that this Tribunal has already in the matter of ""Punjab National Bank v. Mr. Kiran Shah"" -

Company Appeal (AT) (Ins) 749 of 2019 (in para - 2) which was pronounced on 6th August, 2019 and in the matter of ""Axis Bank Ltd. vs.

Sixth Dimension Project Solution Ltd."" - Company Appeal (AT) (Ins) No. 356 of 2019 dated 16th August, 2019 held that when it relates to

matter of replacing the IRP, reading Section 22 with Section 27 of IBC, it is not necessary for COC to record reasons for replacing the

IRP/RP and it is not necessary for the Adjudicating Authority to call for reasons or decide whether there are sufficient reasons.

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8. The Counsel is submitting that these provisions make it clear that even if in the first meeting, it remains for COC to change the IRP, there

is no bar as such that in subsequent meeting, the IRP who has continued, cannot be changed.

9. Considering these provisions, we have no doubt that the COC has the requisite powers to propose change of the Interim Resolution

Professional even in meeting/s subsequent to the first meeting mentioned in Section 22(2) of IBC. There is no requirement that they should

give particular reasons for the change.

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6. Having heard the Counsel for the Applicant and relying upon the observations of Honâ??ble NCLAT (supra), the present Application may be allowed. Hence ordered.

ORDER

The Application is allowed. Shri Dinesh Kumar Aggarwal is appointed as Resolution Professional of the Corporate Debtor in place of Shri Vinit

Gangwal, IRP, in terms of section 22 (3)(b) of the Code, if there is no proceeding pending against him. The CoC shall release the fees and costs

incurred by the IRP Shri Gangwal, on his furnishing proof in support thereof. The same shall be reckoned towards Resolution Process costs. Shri

Gangwal shall hand over charge to Shri Aggarwal forthwith. The RP shall make all endeavour to complete the resolution process expeditiously within

the stipulated period.