

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

APPLICATION UNDER SECTION 60(5) AND SECTION 22(3)(B) OF THE INSOLVENCY  
AND BANKRUPTCY CODE, 2016 AND REGULATION 17(3) OF THE IBBI  
REGULATIONS READ WITH RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL  
RULES, 2016

IN THE MATTER OF

M/s Arena Superstructures Private Limited ...                      Corporate Debtor

**I.A.No.2217 of 2021**

**In**

**(IB) 875(PB)/2020**

Between:

Vishwanath Sharma,

S/o Lt Sh Gopalji Sharma, C-1903,

Sunshine Helios, Sector 78 Noida – 201301

Email: [vsharma8513@gmail.com](mailto:vsharma8513@gmail.com)

... Applicant

Versus

1. Pawan Kumar Singal, Interim Resolution Professional,

Piyush IT Solutions Pvt Ltd, MP – 114,

Pitampura, Delhi – 110034,

Email: [pawansingal50@gmail.com](mailto:pawansingal50@gmail.com)

... Respondent No 1

2. Insolvency and Bankruptcy Board of India,

2nd Floor, Jeevan Vihar Building,

Parliament Street, New Delhi Email:

[Pro forma Respondent]

... Respondent No 2

IN THE MATTER OF:

M/s Dhankalash Distributors Pvt Ltd Unit  
No 710, 7th Floor, Todi Mansion,  
1 Lu Shun Sarani, Kolkata, West Bengal – 700 073,  
IBBI No: IBBI/IPA-001/IP-P01172/2018-19/12229  
Email: [dhankalashdistributorspltd@gmail.com](mailto:dhankalashdistributorspltd@gmail.com) ... Financial Creditor

Versus

Arena Superstructures Pvt Ltd,  
Flat No 14, Ground Floor,  
PulPehladPur, DDA MIG, Suraj Apartment,  
New Delhi – 110044,  
Email: IRP: [pawansingal50@gmail.com](mailto:pawansingal50@gmail.com)  
MCA data: [cirp.arena@avmresolution.com](mailto:cirp.arena@avmresolution.com) ... Corporate Debtor

CORAM

**Sh. R.Varadharajan, Hon'ble Actg. President**

**Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)**

**PRESENT:**

For the applicant: Mr. Virender Ganda Sr. Adv. alongwith Mr. Rajnish Sinha, Mr. Zorawar Singh, Ms. Shreya Kohli and Mr. Ayandeb Mitra counsel for the Financial Creditor  
Mr. Abhijeet Sinha, Mr. Utkarsh Joshi, Mr. Shrey Patnaik, Advs. in IA No 2217 of 2021

Mr. Raj Shekar Rao, Senior Advocate and Mr. Sanyam Saxena, Adv. for PNB Housing Finance Limited.

**ORDER**

**Per: Sh. R.Varadharajan, Hon'ble Actg. President**

1. This is an Application filed by one of the Financial Creditor being part of the CoC under Section 60(5) r/w Section 22(3)(b) of the Insolvency & Bankruptcy Code, 2016 (IBC, 2016) and Regulation 17(3) of the IBBI Regulations relating to Insolvency Resolution for Corporate Persons read with Rule 11 of the NCLT Rules, 2016 seeking for forwarding the name of the proposed Resolution Professional (RP) to IBBI for its confirmation.
2. Perusal of the relief portion shows the following reliefs as sought for.

*“A. Pass an order to replace the interim resolution professional, Mr Pawan Kumar Singal, with the proposed resolution professional Mr Ayyagari Viswanadha Sarma (IBBI/IPA/001/IP-P01524/2018-19/12396) in accordance with the approved resolution of the CoC passed by more than 68.87% of the CoC members and forward his name to the IBBI for its confirmation pursuant to Section 22(3)(b) read with 22(4) of the IBC; and / or*

*B. Pass any other order that this Hon'ble Tribunal may be pleased to pass in the facts of the present case”*

In support of the above reliefs, it is averred in the Application that one Mr. Pawan Kumar Singal who had been acting as an Interim Resolution Professional (IRP) of the Corporate Debtor hitherto is sought to be replaced with one **Mr. Ayyagari Viswanadha Sarma having Reg. No. (IBBI/IPA/001/IP-P01524/2018-19/12396)** who is proposed as the RP to carry forward the CIRP of the Corporate Debtor.

3. It is further averred in the Application that based on the action of the IRP, a meeting of the CoC was convened on 04.05.2021 being the 5<sup>th</sup> meeting of the CoC and that in the said meeting 68.87% of the members of the CoC have confirmed the appointment of the proposed RP as the RP in relation to the Corporate Debtor.
4. In relation to the Respondents impleaded in the Application, it is averred in the Application that the present IRP namely, Mr. Pawan Kumar Singal who has not been confirmed as the RP and sought to be replaced has been made as R1 and that IBBI has been made as R2, in view of the application filed by IBBI dated 22.04.2021 before this Adjudicating Authority for the replacement of the said IRP namely, R1 on account of multifarious violations

of the IBC in the sister corporate insolvency process of Piyush IT Solution Pvt. Ltd in CP(IB)/876(ND)/2020. The IRP being the IRP for the said company as well and that the Corporate Debtor is responsible for the construction for the real estate project of Lotus Arena. It is further averred that R2 has been made the proforma Respondent in the array in the Application.

5. Perusal of the Application also brings out the fact that the CIRP of the Corporate Debtor was initiated on 29.10.2020.

6. In relation to the Application filed by IBBI being proforma Respondent in this Application, the same it is averred was filed on 22.04.2020 and as already narrated replacement has been sought by the IBBI in relation to the IRP of the Corporate Debtor based on the allegations contained therein. In relation to the circumstances regarding the convening of the meeting on 04.05.2021, it is stated that on 24.04.2021 the Applicant sent an e-mail to the authorized representative of the homebuyers proposing the name of Mr. Ayyagari Viswanadha Sarma as the RP proposed of the Corporate Debtor and that a meeting be convened for the confirmation of the said RP proposed as the RP. Pursuant

to the same on 28.04.2021, the RP who is sought to be replaced had sent a notice of the 5<sup>th</sup> meeting of the CoC wherein Agenda Item-B1 contained an item for the appointment of the RP. It is also brought to the notice of this Tribunal that the following resolution for consideration of the CoC (para 12 of the Application) was put up as extracted hereunder.

*“12. That on 4 May 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/IPP01524/2018-19/12396) be and is hereby appointed as Resolution Professional to replace Mr Pawan Kumar Singal – 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 authorised to file necessary application with Adjudication Authority for the appointment of aforesaid Resolution Professional.”*

7. It is also stated that 68.87% of the CoC voted in favour of the proposed RP. Hitherto the IRP who is sought to be replaced has been acting as the RP in view of Regulation 17(3) of IBBI Regulations as there has been a delay in the appointment of RP which had enabled the IRP to function as RP thereby enabling him to function as such, till an RP is appointed under Section 22

of IBC, 2016 and also in view of the fact that the RP had put the name of the proposed RP for confirmation as the RP only recently. Since the mandate as provided under Section 22 in relation to voting share has been duly complied with being 66% or more in terms of Section 22 of the IBC, 2016 the relief as sought for may it is submitted may be granted.

8. No reply seems to have been filed by R1, however, in relation to R2 - IBBI at the time of hearing it was represented by its Counsel who placed reliance in the earlier Application which has been filed by IBBI on 22.04.2021 under the circumstances narrated in the paragraph supra of the present order seeking for replacement of the IRP at present with another RP.
9. It was also expressed by the Counsel for R2 that in relation to the proposed RP, the IBBI does not have any objection in him being appointed as the RP.
10. Before going any further in relation to the instant order it is required to be noted that as per the composition of the CoC of the Corporate Debtor, as evident from e-voting details which has

been provided by the IRP who is proposed to be replaced at page nos.82 to 84 therefrom and it is evident from a perusal of the typed set filed along with the Application at page No.082 to 084 in this regard being Annexure-A8.

11. Perusal of the tabulation at page No.084 discloses that the following voting share in respect of each of the Financial Creditors is evident namely, Punjab National Bank Housing Finance Ltd having a voting share 30.82%, Dhankalash Distributors Pvt. Ltd having voting share of 0.31% and Homebuyers being in a class having voting share of 68.87%. Out of the above voting share, it is seen that 68.87% of the Homebuyers have affirmed the replacement of Mr.Pawan Kumar Singal, IRP with Mr Ayyagari Viswanadha Sarma as the RP as per the details furnished by the IRP itself.

12. On the other hand, Dhankalash Distributors Pvt. Ltd has voted against the resolution having a miniscule voting share of 0.31%. In relation to Punjab National Bank Housing Finance Ltd having a voting share of 30.82% it has abstained from voting



itself in relation to the resolution seeking to change the IRP to the RP.

13. However, it is also curious to note that Punjab National Bank Housing Finance Ltd for reasons only best known to it has sought to file an Application seeking intervention in the present Application seeking for the replacement of the IRP to RP as proposed but has also filed a reply to the above said Application.

14. This Tribunal takes a strong exception to the attitude of Punjab National Bank Housing Finance Ltd on the one hand abstaining from attending the meeting altogether and/or also failing to exercise its voting share at least through e-voting, but however, raising objections before this Tribunal in relation to the change of IRP to RP.

15. In the circumstances, we are unable to consider the objection of Punjab National Bank Housing Finance Ltd in this regard and the same is brushed aside. On its part in relation to Dhankalash Distributors Pvt. Ltd, Ld. Senior Counsel Mr.Ganda appearing for the said Financial Creditor having a miniscule

voting share of 0.31% contends that without disposing of the Applications filed by the said Financial Creditor, this Tribunal should not dispose of the present Application as in the said Applications the very constitution of the CoC having their voting share presently as disclosed by the IRP is sought to be challenged as the mode of computing the claim in relation to the Homebuyers as well as their proportionate voting share is being questioned.

16. It is also contended by the Ld. Senior Counsel appearing for the said Financial Creditor namely, Dhankalash Distributors Pvt. Ltd that the Application as filed by the Applicant is also not maintainable taking into consideration the provisions of Section 22 of IBC, 2016 where under Section 22(3) it is the CoC as a collective which is required to file the Application and not by a member of the CoC being a Financial Creditor enabling him to file the Application. This plea is taken as a preliminary objection to the maintainability of the Application itself.

17. However, in relation to the arguments put forth by the Ld. Senior Counsel Mr.Ganda, we are unable to be convinced for the

reason that from the resolution as extracted above as certified to be passed in the 5<sup>th</sup> CoC meeting of the Corporate Debtor dated 04.05.2021 by R1 IRP itself it is evident that any Financial Creditor has been given an opportunity to move the Application before this Tribunal. Since the CoC has taken a conscious view taking into consideration the prevalent facts and circumstances as it was being confronted with, the CoC has applied its mind by passing the resolution, pursuant to which the Application has been filed, it should be noted by the member of the CoC and not outside of it.

18. In this regard, even though an objection was sought to be raised by the Ld. Senior Counsel Mr.Ganda as well as by the Counsel for Punjab National Bank Housing Finance Ltd that the authorization given by the Homebuyers are also not in consonance with authorization which are duly required to be given. However, this plea/submission do not also not carry much weight in light of the specific resolution which has been passed by the CoC dated 04.05.2021 as stated earlier conscious of the prevalent facts and circumstances being confronted by it

particularly by the Homebuyers and in the circumstances with the voting percent of more than 66% being the minimum voting strength required under the provisions of the IBC, 2016 namely, Section 22, a resolution has been passed.

19. It is required to be noted that repeatedly the Hon'ble Supreme Court has held that the commercial decision taken by the CoC brooks no interference by this Adjudicating Authority. Be it in the case of approval of the resolution plan or in the case of liquidation of the Corporate Debtor.

20. Similarly, it is also required to be noted as correctly pointed out by the Ld. Counsel for the Applicant that the Hon'ble NCLAT has held in numerous decisions as rendered by it and as cited before this Tribunal that replacement of IRP to RP either under Section 22 and in relation to also Section 27 of IBC, 2016 does not call for the interference of this Adjudicating Authority and further that no reason is also required to be ascribed for such a change.

21. In relation to repeated assertion made by Senior Counsel Mr. Ganda that without disposing of the Application filed by Dhankalash Distributors Pvt. Ltd in IA-2116/2021 and IA-2184/2021 challenging the constitution of the voting share percentage of the Homebuyers, which will have a significant impact on the voting share percentage of the other financial creditors as well and in relation to the 4<sup>th</sup> COC meeting convened, this Tribunal is of the view that the same can be effectively considered by the incoming RP in a manner as provided under the provisions of the IBC, 2016 r/w the attendant Regulations as required if at all which the Financial Creditor namely, Dhankalash Distributors Pvt. Ltd has raised is in relation to the action of the IRP who is sought to be replaced and hence the pendency of the said applications cannot be used as a subterfuge to stifle the voting of the Home Buyers.

22. It is also required to be noted that the pendency of the said Applications cannot prevent this Tribunal in disposing of the instant Application seeking for replacement of IRP to RP as resolved by the members of the CoC having requisite voting

share on the given date namely, 04.05.2021 and since the CIRP is required to be a seamless procedure in light of the provisions of IBC and in this regard it is to be observed that if there is any change in the constitution of the CoC in view of any change in the computation of the claim the same shall take effect only prospectively and will not affect the decisions of the CoC taken in the past in relation to the CIRP of the Corporate Debtor taking into consideration Regulation 12 and Regulation 14 of the regulations framed by IBBI in this regard for CIRP of a Corporate Debtor.

23. Taking into consideration the above facts and circumstances of the case and also keeping in mind the decision of the CoC being a commercial decision made by more than 66% of the Homebuyers constituting the CoC having their voting share on the given date, namely 04.05.2020, **this Tribunal is required to perforce allow this Application.** As a consequence of allowing this Application taking into consideration Section 22(4) of IBC, 2016 the name as recommended by the CoC for appointment of Resolution Professional (RP) being Mr Ayyagari Viswanadha

Sarma, is required to be forwarded to the IBBI for its confirmation, however since the Counsel for IBBI has made a statement that IBBI will not have any objection to his name and that no disciplinary proceedings pending, the requirement with regard to Section 22(4) stands obviated. In the circumstances on and from this day Mr Ayyagari Viswanadha Sarma shall act as the Resolution Professional of the Corporate Debtor and the present IRP replaced shall hand over all records collated and assets of the Corporate Debtor which are in his custody and obtain a due discharge in relation to the same from the incoming RP.

With the above directions this Application stands **disposed off**.

Sd/-

**(Hemant Kumar Sarangi)**  
**Member (Technical)**

09.06.2021  
Ritu Sharma

Sd/-

**(R.Varadharajan)**  
**Actg. President**