

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COURT VI

Item No. 5

IA(I.B.C)/3433(MB)2024 IN C.P. (IB)/915(MB)2023

CORAM:

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **18.07.2024**

NAME OF THE PARTIES : **Piramal Capital & Housing Finance limited**

Vs

Notion Real Estate Private Limited

For FC : Counsel Nausher Kohli a/w Adv. Nanki Grewal & Adv. Yesha
Badani i/b Wadia Ghandy & Co.

For CD : Not Given

Sec. 7 of IBC

ORDER

I.A. 3433/2024

1. We admitted Notion Real Estate Private Limited, the Corporate Debtor (CD), into Corporate Insolvency Resolution Process (CIRP), in CP (IB) No. 915/2023 by our order dated 09.01.2024.
2. This I.A. is taken out by the applicant praying for replacement of the Interim Resolution Professional (IRP) with a new Resolution Professional (RP), being an Insolvency Professional Entity (IPE), under Section 22(3)(b) of the Insolvency and Bankruptcy Code 2016 (IBC). The Ld. Counsel for the Committee of Creditors (CoC) submits that appointment of the proposed IPE to replace the IRP, has been passed by 100% voting of the CoC, and is, in accordance with the Insolvency and Bankruptcy Board of India (Insolvency

Professionals) Regulations, 2016 (IP Regulations). On the last date of listing, we sought clarification as to whether appointment of IPEs as RPs is in consonance with the scheme of IBC. Consequently, Ld. Counsel submits that although IBC *prima facie* recognises only three entities such as Information Utility (IU), Insolvency Professional (IP) and Insolvency Professional Agency (IPA) as professional service providers, IPEs are also recognised and regulated, with certain conditions, under Regulation 12 of the IP Regulations made by the Insolvency and Bankruptcy Board of India (IBBI), which grants certificate of registration to IPEs, in terms of Regulation 13 of the IP Regulations.

3. Chapter IV of Part III of IBC dealing with IPs does not make room for IPEs. In this connection, Section 206 deserves consideration:

“206.- No person shall render his services as insolvency professional under the Code without being enrolled as a member of an insolvency professional agency and registered with the Board.” (Emphasis supplied).

Further, Section 207(1) states:

“Every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register himself with the Board within such time, in such manner and on payment of such fees, as may be specified by regulations.”

A conjoint reading of Sections 206 and 207(1) of IBC implies that an IP is an individual eligible to render his professional services if he is enrolled with an IPA and has registered as such with IBBI. This does not clearly indicate that a professional entity or body is entitled to render professional services as an IP. It may be because the intention of the law is to authorise only individual persons to practice insolvency profession as it would be easier to address issues relating to their professional conduct, discipline, etc., as compared to professional entities. Section 196 of IBC that deals with powers and functions of IBBI also deals with clear provisions, under clauses (a), (aa), (c), (d), (f), (g),

(h), (p), (q) and (r) of sub-section (2) as regards regulatory matters of IPs, IPAs and IUs and not IPEs.

4. The Ld. Counsel, therefore, submits that it is necessary to examine definition of the term “insolvency professional” under Section 3(19) of IBC. It defines IP as “...a **person** enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as insolvency professional under section 207.” (Emphasis supplied). The term “resolution professional” is defined under Section 5(27) of IBC as an “insolvency professional.....” The Ld. Counsel further argues that the term “person” includes a limited liability partnership (LLP) in terms of Section 3(23)(f) of IBC. The proposed IPE herein is an LLP.
5. As we have seen, Chapter III of Part IV of the IBC recognises IPAs, IPs and IUs. However, there is no reference of a fourth entity, namely, IPE to practice insolvency profession under this Chapter. However, Ld. Counsel submits that IBBI recognises IPEs under the IP Regulations. He further submits that IBBI is empowered under Section 240(2)(zzi) of the IBC, to make regulations as regards “*the categories of professionals or persons, the qualifications and experience and the fields under sub-section (2) of section 207.*” Hence, according to him, IBBI is justified in making regulations to govern IPEs also although there is no express provision in the IBC for the same. The Ld. Counsel further argues that the term “person” has been defined in Section 3(23)(f), to include LLP also, and, hence, the IBBI’s power to recognise and regulate natural and other persons is justified.
6. The sum and substance of the submissions of the Ld. Counsel for CoC is that an IPE can also be appointed as IP to carry out the duties and functions under IBC and IP Regulations. The IBBI has registered IPEs as IPs and they have also been issued valid Authorisation for Assignments. The IBBI has also issued Circulars and Clarifications regarding their eligibility to be engaged as RPs and published the same on its website for general consumption of the stakeholders. Hence, according to him, appointment of IPE as RP is valid in law; and we have taken the above submissions on record.

7. It is seen that the CoC has resolved to replace the IRP and has filed this I.A. for appointment of M/s Incorp Restructuring Services LLP, an IPE as IP, under sub-section (3)(b) of Section 22 of IBC. We find that the written consent by M/s Incorp Restructuring Services LLP, is purported to have been given under Regulation 3(1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 (CIRP Regulations) in Form AA. However, we find that Form AA is devised for consent of individual IP alone and not for IPEs as is evident from the language employed in paragraphs 1 and 3(a) to (e) of Form AA. Paragraph 1 of Form AA (consent form) states that the CoC proposes to appoint “me” (individual IP) as RP under Section 22(3)(a)/22(3)(b)/27(2) of IBC. Further, the declarations under paragraph 3 of Form AA as to (a) registration as IP; (b) disciplinary proceedings; (c) disability; (d) eligibility to be appointed as IP; (e) disclosures; and (f) the number of processes in hand, are all to be provided by individual IP and not by an entity such as IPE. Hence, it can be concluded that there is no separate form specified for an IPE to make such declarations. The written consent of M/s Incorp Restructuring Services LLP submitted in Form AA is one that is modified by the IPE to suit its consent.
8. The above being the background and law, considering the fact that the CoC has resolved to appoint M/s Incorp Restructuring Services LLP with 100% voting and, keeping in mind the timeline mandated by the IBC, we hereby appoint M/s Incorp Restructuring Services LLP, as RP in place of IRP in the matter, subject to Regulation 34B read with Schedule II of the CIRP Regulations, to conduct CIRP of the CD. The IRP is directed to hand over CIRP of the CD to the IPE forthwith.
9. Ordered accordingly and **I.A. 3433/2024 is disposed of.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

//RA//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)