

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. 2367/ND/2022

IN

Company Petition No. (IB)-17(ND)/2019

IN THE MATTER OF:

M/s. Ample Infrastructure Private Limited

...Applicant/Financial Creditor

Versus

M/s. Intellicity Business Park Private Limited

...Respondent

AND IN THE MATTER OF IA. 2367/ND/2022:

Mr. Vivek Raheja

Authorized Representative of Financial Creditors
in a Class (Home Buyers/Allottees) of
Intellicity Business Park Private Limited
Having its registered office at :
JD, 2C, 2nd Floor Pitampura,
New Delhi - 110034

...Applicant

Versus

Mr. Sarvesh Kashyap

Resolution Professional of
M/s. Intellicity Business Park Private Limited
Kashyap & Associates,
101, Nipun Plaza, Sector-1,
Vaishali, Ghaziabad,
Uttar Pradesh - 201010

...Respondent

Order Delivered on: 14.10.2022

SECTION: Section 27 of IBC 2016

CORAM :

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Nikhil Jain

For the RP : Mr. Sarvesh Kashyap

ORDER

PER SHRI. L.N. GUPTA, MEMBER (T)

The present IA No. 2367 of 2022 has been filed by Mr. Vivek Raheja, Authorized Representative of M/s. Intellicity Business Park Private Limited (hereinafter referred to as the '**Applicant**') under Section 27 of IBC, 2016 seeking the following reliefs :

- "a) *Allow the present application.*
- b) *Replace the existing Resolution Professional/Respondent Mr. Sarvesh Kashyap with Mr. Manoj Kulshrestha bearing Registration No. IBBI/IPA-003/IP-N00005/2016-17/10024 and email id <costadvisor@hotmail.com> as Resolution Professional of Corporate Debtor;*
- c) *Direct the existing Resolution Professional/Respondent to handover the complete custody and control of assets/claims/documents and other relevant information of the Corporate Debtor as required for performance of necessary duties as required under the Code and relevant Regulations framed there under.*
- d) *Pass such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the instant case."*

2. It is submitted by the Applicant that the Applicant is an Authorised Representative (AR) of the creditors in class/homebuyers and is a member of the CoC holding 99.2% of Voting Share.

3. It is further stated by the Applicant that the CIRP of the Corporate Debtor was initiated vide order dated 27.05.2019 of this Adjudicating Authority and Mr. Sarvesh Kashyap was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. Later, he was confirmed and continued as RP of the Corporate Debtor.

4. It is stated by the Applicant that vide order dated 05.05.2022 passed in IA-1973 of 2022, this Adjudicating Authority had directed the present RP/Respondent to place the agenda submitted by the Applicant therein (for replacement of Resolution Professional) before the CoC within a week from 05.05.2022, with a liberty to consider the agenda.

5. It is further stated by the Applicant that pursuant to the aforesaid direction, the RP/Respondent had placed the agenda for replacement of RP in the 12th meeting of the CoC convened on 11.05.2022 through video conferencing. The following resolution was considered by the CoC and put to vote.

"RESOLVED THAT pursuant of section 27 (2) of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions if any of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, approval of committee of creditors be and is hereby accorded for replacement of Mr. Sarvesh Kashyap as Resolution Professional of M/s Intellicity Business Park Private Limited."

Mr. Vivek Raheja, Authorized Representative of the Financial Creditors in the class (Home Buyers) noted the same and took the vote of Financial Creditors in the class (Home Buyers) as per the provision of IBC and Rules and Regulations made thereunder and from other financial creditors from Saturday, 14-05-2022 at 12:00 Noon to Sunday, 15-05-2022 at 12:00 Noon. The voting result is as under:-

Total 634 members exercised their voting rights. Out of total voted 81.67% gave assent, 18.33% gave dissent and 0% abstained from voting. Passed with requisite majority of 81.67% of the voting right.

Particulars	Voting Rights in %
Assent	81.67%
Dissent	18.33%
Abstained from voting	0.00%
Total	100.00%

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6. It is stated by the Applicant that the aforesaid resolution was passed by CoC by 99.2 % of majority. Further, it has been submitted that in the same meeting of CoC, it was also resolved to appoint Mr. Manoj Kulshrestha IP as RP of the Corporate Debtor in place of the present RP with 99.2 % of majority. The relevant resolution/ extracts of the minutes of the meeting are reproduced below :

(B) Appointment of Mr. Manoj Kulshreshtha as new Resolution Professional and fix his fees.

"RESOLVED THAT pursuant of section 27(2) of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions if any of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, approval of committee of creditors be and is hereby accorded for appointment of Mr. Manoj Kulshreshtha, Insolvency Professional Registration No. IBBI/PA-003/IP-N005/2016-17/10024 as Resolution Professional in the matter of Corporate Insolvency Resolution Process of M/s Intellicity Business Park Private Limited in place of Mr. Sarvesh Kashyap

"FURTHER RESOLVED THAT Mr. Manoj Kulshreshtha will be paid a fees of Rs.1,00,000/- (Rupees One Lakh Only) per month plus applicable taxes be and is hereby approved. Such fees shall also be form part of the Corporate Insolvency Resolution Process cost."

Mr. Vivek Raheja, Authorized Representative of the Financial Creditors in the class (Home Buyers) noted the same and took the vote of Financial Creditors in the class (Home Buyers) as per the provision of IBC and Rules and Regulations made thereunder and from other financial creditors from Saturday, 14-05-2022 at 12 00 Noon to Sunday, 15-05-2022 at 12:00 Noon. The voting result is as under-

Total 634 members exercised their voting rights. Out of total voted 58.66% gave assent, 41.33% gave dissent and 0% abstained from voting. Passed as 58.66% of total voted assented.

Particulars	Voting %
Assent	58.66%
Dissent	41.33%
Abstained from voting	0.00%
Total	100.00%

As per section 27 of the Insolvency and Bankruptcy Code, 2016, for replacement of RP, affirmative vote of 66% of the CoC is required. However, the present resolution is deemed to have been passed with affirmative votes of

58.66% of CoC as it is case of creditors in class (homebuyers) representing 99.20% voting share. Accordingly, as per sub-section (3A) of section 25A of the Code, the resolution is considered to have been approved by 99.20% of votes of the Committee of Creditors.

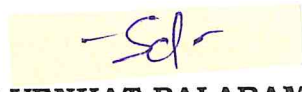
7. During the course of hearing 04.10.2022, the Ld. Counsel appearing for the present RP/Respondent stated that it has no objection to the replacement, if the present application is allowed.

8. In view of the Resolution of the CoC passed with requisite majority and the submissions made by the parties, the present IA is allowed and Mr. Manoj Kulshrestha IP (email id : costadvisor@hotmail.com) bearing Registration No. IBBI/IPA-003/IP-N00005/2016-17/10024 is appointed as Resolution Professional of the Corporate Debtor with immediate effect. He is directed to take complete charge of the Corporate Debtor and all proceedings initiated/under progress on behalf of the Corporate Debtor immediately.

9. Mr. Sarvesh Kashyap IP is discharged from his duties as RP and he is directed to handover all the Assets/Records/Documents/Information of and relating to the Corporate Debtor to Mr. Manoj Kulshrestha IP within three days of this Order. The CoC will take necessary steps to reimburse his fee and expenses till date as per the terms agreed upon.

10. **The Application is allowed in the aforesaid terms.**


(L. N. GUPTA)
MEMBER (T)


(BACHU VENKAT BALARAM DAS)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. 2365/ND/2022

IN

Company Petition No. (IB)-17(ND)/2019

IN THE MATTER OF:

M/s. Ample Infrastructure Private Limited

...Applicant/Financial Creditor

Versus

M/s. Intellicity Business Park Private Limited

...Respondent

AND IN THE MATTER OF IA. 2365/ND/2022:

Airwil Intellicity Social Welfare Society

Through its President

Having its registered office at :

O 1207, Amrapali Zodiac,

Sector 120, Noida

...Applicant

Versus

Mr. Sarvesh Kashyap, RP of

M/s. Intellicity Business Park Private Limited

Having its registered office at :

M-167, Vikaspuri,

Near Syndicate Bank,

New Delhi - 110018

...Respondent

Order Delivered on: 14.10.2022

SECTION: Section 27 of IBC 2016

CORAM :

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Kumar Mihir

For the RP : Adv. Sameer Rastogi & Mr. Sarvesh
Kashyap, RP

ORDER

PER SH. L.N. GUPTA, MEMBER (T)

The present IA No. 2365 of 2022 has been filed by Airwill Intellicity Social Welfare Society through its President representing the Interest of Home Buyers (hereinafter referred to as the '**Applicants/Financial Creditors**') under Section 27(3) of IBC, 2016 seeking the following relief :

- "a) *Replace the existing Resolution Professional/Respondent Mr. Sarvesh Kashyap with Mr. Manoj Kulshrestha bearing Registration No. IBBI/IPA-003/IP-N00005/2016-17/10024 and email id <costadvisor@hotmail.com> as Resolution Professional of Corporate Debtor;*
- b) *Direct the existing Resolution Professional to handover the complete custody and control of assets/claims/documents and other relevant information as required for performance of necessary duties as required under the Code and relevant Regulations framed there under to Mr. Manoj Kulshrestha.*

2. As the similar prayer has already been allowed by order of this Adjudicating Authority dated 14.10.2022 in IA No. 2367/2022, this IA has become infructuous.

3. **Accordingly, the present IA is dismissed being infructuous.**


(L. N. GUPTA)
MEMBER (T)


(BACHU VENKAT BALARAM DAS)
MEMBER (J)