

Reply on the email dated 14th August 2019 received from Association

Dear Members,

With reference to email received through Mr. Manish Agarwal Authorised Representative, who has forwarded the below queries of some Buyers. Their queries are as:-

1. CIRP process in our NCLT matter commenced on 28th June 2018 and the same was quashed by Honble NCLT on 31st Jan 2019. For the period from 28th June 2018 to 30th Jan 2019, there is no specific order of Honble NCLT which stays or put any hold on the CIRP process. During this time the RP has not carried out any function relating to CIRP. We wish to understand reasons for the lack of action ?
2. The allotted period of 180 days for CIRP was over on 26th Nov 2018, neither RP applied for it extension nor Honble NCLT has passed any order in this regard. After 26th Nov 2018, there should not be any existence of COC. Why such negligence on the part of RP ? We believe this has again been under the false assumption of RP that there was stay on the CIRP proceedings.
3. In 2nd COC meeting held on 17th June, COC members approved by 100% voice vote that collection of Rs. 50 lacs will be done by AOP (Association of Persons) and RP will not collect any amount from any Buyer directly to his account. Why RP has not recorded the same in MOM ?. Subsequently also, he had been assuring and reconfirming to Members that RP will not collect/accept any amount from any member directly, then why contradictory Notification on website on 18th July and Subsequent mail to members for direct transfer of funds at arbitrary rates .
4. Even if mistake has been understood, why RP did not go for revised Notification or e voting on this contradictory issue till now ?

Given below are the replies on their queries from my side.

1. On 30th May 2018, the Hon'ble NCLT has admitted the matter and Mr. Alok Kuchhal was appointed as an IRP by Hon'ble NCLT. After completion of initial one month tenure, the IRP has filed the application with the Hon'ble NCLT for the appointment of RP (Jitender Arora) by replacing the existing IRP (Mr. Alok Kuchhal).

Thereafter three applications CA 569(PB)/2018; CA 570(PB)/2018 and CA 571(PB)/ 2018 in IB Petition - 104(PB)/2018 were filed informing the Court about the High Court order appointing Official Liquidator as Provisional Liquidator. On 12th July 2018, the Hon'ble NCLT has after considering the matter pending Hon'ble High Court, the Hon'ble NCLT has provided the remedy for the same to get the application transferred from High Court to NCLT (either the applicant file or any party of the matter pending in High Court). The Hon'ble High Court has further given the liberty to applicant to file an appropriate application with Ld Company Judge of High Court to avoid continuation of parallel proceedings. **The order is very much clear stating that the Application filed in respect of avoiding duplicate proceedings is disposed off by suggesting the remedy of transferring the matter from Hon'ble High Court to Hon'ble NCLT.** The other application (in respect to the confirmation of appointment of RP) is remain pending.

So, the above order shows the intention of the Hon'ble Court that the parallel proceedings to be avoided. Giving the liberty to Mr. Tek Chand (Financial Creditor) for getting transfer the **case is the remedy provided by Hon'ble NCLT.** As the **appointment of RP was not confirmed by Hon'ble NCLT** which means the matter gets **suspended till the order of NCLT confirming the appointment of Jitender Arora as RP.**

Thereafter, **the applicant Mr. Tek Chand** has filed the application with the Hon'ble High Court for the transfer to Hon'ble NCLT. The order is reserved and pending for pronouncement as on date. The applicant has filed the updates of Hon'ble High Court to the Hon'ble NCLT from time to time.

On 30th January 2019, the Hon'ble NCLT has rejected the application of applicant and said no further proceedings can be continue in this petition before this Tribunal as there cannot be any two processes in respect of the same

corporate debtor. Accordingly, the petition is disposed of and leaving the parties to file their claims before the Official Liquidator.

The applicant Tek Chand, Financial Creditor has thereafter again filed the application for recalling the order in light of various judgments passed by the Supreme Court.

On 11th March, 2019 the Hon'ble NCLT has accepted the application and on the basis of Principles defined by Supreme Court in another matter, the NCLT has directed to restore the application 104(PB)/2018 and stated the name of Alok Kuchhal as RP

Again application filed for rectification of name of RP. The Hon'ble NCLT has corrected the name in the order dated 26th March 2019.

Secondly, my appointment was confirmed by adjudicating authority on 26th March 2019 only and I have no power or right to intervene in the matter before confirmation of my appointment.

Further Section 22(4) & (5) of IBC also clearly states that the name of proposed RP (replacement from IRP to RP), the Adjudicating authority shall forward the name of RP to Board for its confirmation and shall make such appointment after confirmation by the Board. Sec 22 (5) of IBC provides that in case the Board doesn't confirm the name of proposed RP within 10 days of the receipt of the name proposed RP, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Hence, I have no power to intervene in the matter without the confirmation by Adjudicating Authority.

Hope, the learned Financial Creditors understand that there is no violation of the provisions. The time period is not expired. There was no requirement of filing of extension at that time with any authority during that period mentioned in your query.

There is no Lack of Action from RP Jitender arora.

No Negligence on part of RP Jitender Arora.

Hope the above reply also satisfies your Question no.1 & 2 also.

3. You all need to understand the legitimate purpose of the IBC, 2016, the process, procedure, requirements, duties & responsibilities embedded to Resolution Professional defined under the Insolvency Code, 2016.

Kindly read the notice calling 2nd Meeting of Committee of Creditors for 16th June 2019, the item no. 15, the explanation provided in the agenda item is very clear in its wordings and language, the proposed resolution simply proposed with the intention that to meet the expenses of CIR Process, the Committee of Creditors are empowering the Resolution Professional to raise interim finance upto 2 Crores with or without security or with or without interest from bankers/ FI's/ Class of Creditors including home buyers/ association of Class of Creditors.

Due to unavailability of quorum, the meeting on 16th June 2019 gets adjourned to 17th June, 2019. During the meeting, the Chairman explained the requirement of funds and also explain that this fund is most likely to be refunded under both scenarios if the CIR process get success and the Resolution Applicant proposal get approved by CoC & NCLT, the proposed resolution applicant will meet this Cost first before taking over. Or in case of failure, the Company may go to Liquidation Process, then from the realization of its assets. Further, It was discussed that amount to be reduced to 50 lacs in place of proposed 2 Crores, No borrowings to be taken from Banks or Financial

Institutions etc. and interest free contribution from buyers / Association of buyers will contribute the desired funding to meet the expenses.

After discussion, it is decided RP is empowered to Collect or borrow the money upto Rs. 50 lacs on interest free basis from the Buyers/ Association of Buyers on refundable basis subject to the successful resolution process & in case it failed then on the realization from the liquidation process.

After considering all facts the Chairman has taken the view on the basis of Principle of Natural Justice that an opportunity to be provided to all the buyers to choose their own way of Contribution. Accordingly, the minutes were drafted and placed on the portal for the voting. The members of the Committee of creditors have passed the resolution with votes of more than 66% of voting share of the financial creditors

As per the question no. 3 wherein you have raised the issue that - 100% voice vote that all Rs. 50 Lacs will be collected by Association of Persons- is not recorded. Firstly, there was no such proposal. Secondly, such type of proposals which are not on the basis of Principle of Natural Justice or violating the fundamental right of any person, are not acceptable during any legal proceeding. Considering such illegal proposals are outside the purview of the Insolvency & Bankruptcy Code, 2016. The resolution proposed is for the purpose of empowering the Resolution Professional to raise the funds for contribution towards CIRP and not empowering any Association of Buyers or Association of Persons.

The extract of resolution passed given below is very clear-

“RESOLVED THAT Mr Jitender Arora Resolution Professional be & is hereby empowered to raise the interim finance of Rs. 50 Lacss (INR Fifty Lacs only) as fixed by the Committee of Creditors in pursuant to the provisions of Sec 20, 25 & 28 of the IB Code, 2016 from Property/ Home Buyer/ or an association of Property/ home buyer(s) on interest free basis and without creating any security interest over the assets of the Company.

FURTHER RESOLVED THAT the Mr. Jitender Arora, Resolution Professional is authorized to do all such things, action and deeds as he may deem fit to give effect this resolution.”

However, if we read the language of resolution passed, it is very clear that the Association of Buyers may contribute the funds for meeting expense.

Further it is the own working of the Association of buyer, how they approach to the buyers and collect the funds from the fellow buyers of this Project. Resolution Professional has no power to direct any buyer to approach any specific association or advertise any specific association. It is the independent decision of each buyer, to choose the way of contribution, whom to approach, the Association of Buyer or Resolution Professional for their contribution.

Furthermore, the Financial Creditor(s) are contributing their money in the New Bank Account opened in the name & style of:-

**Premia Projects Limited
Current Account no. 38576774171
IFSC No. SBIN0015660,
STATE BANK OF INDIA, BRANCH SHAKARPUR,
DELHI- 110092.**

The money deposited in the account is for the purpose of meeting the CIRP expenses. The account is not personal account of Resolution Professional.

As per the IBC, 2016 all CIRP expenses need to be done by from the accounts of Corporate Debtor which shall be maintained by the Resolution Professional.

And the intent of raising of funds by RP is very much clearly intended in the initial Notice & agenda of 2nd CoC and in the same spirit the resolution was discussed & passed by the Committee of Creditors, recorded in minutes of Meeting of Committee of Creditors & circulated on which e-voting has been done.

So, nothing wrong has been done on part of RP.

4. There is no mistake done or committed by RP and RP has carried his duties prudently, in the fiduciary capacity with clear intention of giving justified, reasonable & fair opportunity to the entire Financial Creditors (falling under the Home Buyers) category. Hence, no revised notification or e-voting is required.

It looks that there are **some people whose target is to collect the money only, and they are not interested in the revival of the Project**. Infact, they are continuously spreading the wrong information among the whole Buyers fraternity that the RP is not doing anything. I would request all the Buyer(s) not to get involved in such wrong information, kindly feel the matter and respond accordingly.

If RP was sitting idle, he could not have make up the strategies, not collated the claims, didn't run to various agencies for collecting information, didn't met consultants again and again, didn't filed the petitions / application with the Court, didn't called up the COC meeting(s), didn't created the IM and also didn't appointed any Consultants for their specialized work.

But as an RP, I have done all such actions prudently in the interest of Financial creditor under the category of Home Buyers and our consultants has also obliged us by doing their respective jobs without even receiving any single penny.

Thanks
Regards

Sd/-
Jitender Arora
Resolution Professional of Premia Projects Ltd.