THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 197 of 2025

Under Section 60(5) of Insolvency and Bankruptcy Code, 2016

SAGAR SHARMA & ANR.

...**Applicant**

V/s

ROHIT MEHRA

...**Respondent**

In the matter of

C.P.(IB) NO. 1241 OF 2022

ASSET CARE & RECONSTRUCTION LIMITED

...Financial Creditor

V/s

HOTEL HORIZON PRIVATE LIMITED

...Corporate Debtor

Order delivered on: 10.07.2025

Coram:

Shri Prabhat Kumar Hon'ble Member (Technical)	**Justice Shri V.G. Bisht** Hon'ble Member (Judicial)

Appearances:

For the Applicant : Pulkit Sharma a/w Rohan Agrawal and Akash Agarwal

For Respondent / RP	:	Adv. Ameya Gokhale, Adv. Rishabh Jaisani, Adv. Kriti Kalyani a/w Adv. Pravin R Navandar

ORDER

1. This Application IA No.197 of 2025 filed by the Applicant, Sagar Sharma & Vishal Sharma ("Applicants") who are suspended member of the Board of Directors, on 11.01.2025 in the Corporate Insolvency Resolution Process ("CIRP") of M/s Hotel Horizon Private Limited ("Corporate Debor") against Respondent Rohit Mehra, the erstwhile Interim Resolution Professional of the Corporate Debtor ("Respondent"), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. The Applicant has made following prayers:

   a. *set aside all the actions / acts / decisions, of the IRP taken during the CIRP of the Corporate Debtor including but not limited to the issuance of Form G dated December 19, 2024;*

   b. *initiate disciplinary action against the IRP - Mr. Rohit Mehra for all the illegal acts undertaken by him which are detrimental to the Corporate Debtor;*

   c. *pending the hearing and final disposal of the present Application, stay all the actions undertaken by the IRP including but not limited to implementation of Form G and effects thereto, considerations of EOis, acceptance of earnest money deposits from the PRAs and further meetings of the CoC;*

   d. *pending the hearing and final disposal of the present Application, restrain the Respondent from taking any further steps under CIRP in any manner whatsoever;*

e. *pending the hearing and final disposal of the present Application, the IRP be directed to produce the audio recording of the 1st CoC meeting;*

f. *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case*.

2. The Applicants have raised four issues in the present application i.e. (a) IRP was not qualified to take up the assignment on date of commencement of CIRP as he was already holding more than 3 assignments having claims exceeding Rs. 1,000 Crores; (b) Form G was issued without affording an opportunity to the CoC members to vote upon the issuance of Form G and eligibility criteria of the PRAs; (c) IRP cannot publish Form G inviting Expression of Interest (EOIs) in terms of Regulation 36A(1) of the CIRP Regulations; (d) IRP conducted 2nd Meeting of the CoC without providing the approved minimum notice of 24 hours and the 1st CoC meeting was conducted only through audio conference and there was no video verification of the attendees; (e) Hon’ble Delhi High Court has initiated disciplinary proceedings against the IRP vide its Order dated 25th October, 2024.

3. The CIRP commenced on 19th November 2024 in the case of Corporate Debtor and the Respondent was appointed as Interim Resolution Professional (“IRP”). The Respondent published the Public Announcement as per Form A with the last date of claim submission being December 3, 2024.

Applicant’s case

4. On 5th December 2024, the Applicants, vide email requested the IRP for his contact details to contact him in connection with the CIRP. Applicant No.2 provided his contact details in case the IRP wishes to contact him.

5. The IRP vide his email intimated the Applicants about the 1st Committee of Creditors (“CoC”) meeting of the Corporate Debtor to be held on December 11, 2024. In the notice, Union Bank of India (“UBI”), Asset Care &

Reconstruction Enterprise (" ACRE /Petitioner") and JM Financial ARC ("JM Financial") were reflecting in list of members of CoC.

6. The IRP had rejected the claim received from another financial institution Phoenix ARC Pvt. Ltd. ("Phoenix ARC") on the basis it being a time barred debt. Accordingly, Phoenix ARC challenged the decision of the IRP and sought an order from this Tribunal not to constitute the CoC until the IRP decides on the claim filed by Phoenix ARC. On 10th December 2024, this Tribunal directed the IRP to decide the claim filed by Phoenix ARC within three (3) days. IRP uploaded a statement of claims on the website of Insolvency and Bankruptcy Board of India's ("IBBI") by accepting Phoenix ARC's claim which was rejected earlier being a time barred debt. Accordingly, the IRP addressed another email, attaching a revised notice, issued by the IRP calling for the 1st CoC meeting on December 18, 2024, along with Agenda of the 1st CoC meeting.

7. The 1st CoC meeting took place, where the IRP sought views from the CoC members whether to vote on all six (6) items or some of them as set out in the Agenda in the 1st CoC meeting itself or put toe-vote. In the 1st CoC meeting, the members decided to vote upon Form G and e-vote for rest of the items. Without CoC members casting their independent vote on the Agenda of eligibility criteria of the PRAs and the marketing strategy thereto, the IRP published the Form G in the newspapers. The IRP conducted an e-voting for the members to cast their vote on the other items of Agenda of the 1st CoC 2024 meeting.

8. The IRP vide his email, circulated the results of e-voting of the other items of the Agenda of the 1st CoC meeting which were to be voted upon subsequently. The IRP addressed an email to the Applicants informing about 2nd CoC meeting scheduled on January 9, 2025, at pm, 3:30 pm.

9. The Applicants vide email immediately objected to the 2nd CoC meeting by stating that no clear 24 hours' notice was given to the Applicants about the

2nd CoC meeting as mandated as per the IBBI Regulation. Moreover, no agenda and notice were served upon the Applicants, hence, the Applicants were unaware of the agenda of the 2nd CoC meeting.

10. It was only when the Applicants pointed out various violations of the IBBI regulations by the IRP, the IRP vide his email served the notice of the 2nd CoC meeting to be held on January 9, 2025, at 3:00 pm.

11. Being aggrieved and dissatisfied with the illegal and malafide conduct of the IRP, the Applicants are constrained to approach this Hon'ble Tribunal challenging the same.

Respondent’s Submissions

12. The Respondent filed the reply stating that (a) the Applicants have absolutely no locus standi to file the captioned Application; (b) The Respondent on 20 December 2024 sent an email and informed the members of the CoC that due to some personal exigencies; he will not be able to take up assignment as the resolution professional of the Corporate Debtor and requested the members of the CoC to consider replacing the IRP with any other insolvency professional as the resolution professional of the Corporate Debtor; (c) the restriction on the number of assignments that an Insolvency Professional ("IP") can take is a matter of the Code of Conduct between the regulator IBBI and the regulated entity, i.e., the IP; (d) the Hon'ble Delhi High Court has merely directed the IBBI to consider the writ petition therein as a representation on behalf of the petitioner therein and.-directed IBBI to decide the same afresh in accordance with law. Thus, the same does not mean (as alleged by the Applicants) that the Hon'ble Delhi High Court has initiated the purported "disciplinary action" against the IRP; (e) all the members of CoC of the Corporate Debtor in their commercial wisdom duly approved the proposed timelines for issuance of Form G and eligibility criteria to be provided to the PRAs for the EOI to submit the resolution plans by physical voting in the meeting itself; (f) Regulation 23 (Participation through video conferencing) of the CIRP

Regulations itself provides that the meetings can be conducted through video conferencing or other audio and visual means. In fact, this absurd contention is nothing but a feeble attempt to raise baseless grounds as the Code or the regulations framed thereunder, do not require the video to be switched on by all participants during a CoC meeting; (g) The term “Resolution Professional” defined in Section 5(27) of the Code includes “Interim Resolution Professional” as well; (h) The notice of the 2nd CoC meeting was sent to all members and participants of the CoC. Emails dated January 8,2025, sent at 11:44 AM and 7:11 PM, clearly show that the suspended directors were marked in these emails; (i) During the 2nd CoC meeting of the Corporate Debtor it has already been clarified to the Applicant that the reference to "sale process" was in context of sale of Corporate Debtor by way of a resolution plan and had to be construed accordingly and there was no proposal for sale of assets; (j) They have further alleged that as per the audio recording of the 1st CoC Meeting, there was no discussion or voting on the timeline of issuance of Form G, whereas it has been recorded in the minutes that the timeline was discussed, and towards the same Applicants have sought audio recordings of the 1st CoC meeting. In this regard, it is humbly submitted that the Applicants should be put to strict proof of making such allegations. A pertinent dichotomy is observed; (k) The Applicants are habitual litigants and have repeatedly raised baseless, false, and incorrect allegations. and have been completely non-cooperative with the Respondent since the initiation of CIRP of the Corporate Debtor.

Analysis and Decision

13. Heard the Learned Counsel and perused the material on record.

14. Before we proceed further, it is pertinent to observation of Co-ordinate Bench of this Tribunal in case of M/s. Central Bank of India v. K.S.M. Spinning Mills Limited, CP (IB) No.250/Chd/PB/2018, wherein the Hon'ble National Company Law Tribunal, Chandigarh Bench held that

"19... It is not the role of the Suspended Director to carry out a post-mortem of the activities of the RP and the Resolution Process but to give suggestions in the CoC meetings for the smooth functioning of the Resolution Process. It is pertinent to mention here that the Suspended Directors being instrumental in bringing about the financial indebtedness of the corporate debtor, have not been accorded the status of a decision-maker during the resolution process, and the same lies with the Committee of Creditors after the initiation of the CIRP ....

25. The role assigned to the Suspended Director under the IBC, as reflected in the aforementioned extracts, is to assist the CoC on determining whether the Resolution Plan addresses the cause of default by the company, which is a mandatory requirement for the Resolution Plan. The Suspended Directors are, therefore, given the right to participate in the meetings of the CoC and give suggestions... "

15. The above observation clearly sets the tone in this case. We note that the applicants, instead of contributing to the successful resolution of the Corporate Debtor's financial stress, are more concerned with loss of control of the Corporate Debtor and have been clinging upon it even after commencement of CIRP. A person, who himself is on the wrong side, does not have right to demand equitable consideration. Nonetheless, we consider it appropriate to deal with the issues raised by the Applicants in the following paras.

16. The Applicant has raised the issue of disqualification of the Respondent arising from his holding of more than 3 CIRP assignments with more than 1000 crores claims. This stipulation is a part of the Code of Conduct and in terms of the IP Regulations, is a matter of regulation between the Insolvency and Bankruptcy Board of India ("IBBI") and the insolvency professionals. Regulation 3 of CIRP Regulations dealing with 'Eligibility for Resolution

Professional' does not enlist any such disqualification. Accordingly, this is purely a issue pertaining to Code of Conduct which binds the Insolvency Professional to such stipulation, which is advisory in nature, as the word 'may' has been used therein, accordingly, this Tribunal does not find any merit in the contention of the Applicant alleging ineligibility of the Respondent to act as IRP.

17. The minutes of 1st CoC meeting records that "*All the members of CoC approved the above proposed timelines for issuance of Form G and eligibility criteria to be provided the PRAs for the EOI to submit the resolution plans by physical voting in the meeting itself.*" The Applicants have taken objection that the resolution for approval of Form G was never put to vote in the meeting and the said minutes under point B of 'List of matters discussed at the meeting" records that "*To meet the objective of faster resolution of the Corporate debtor and conclude the CIRP in a time bound manner, the IRP proceeded to present and sought approval from the members of CoC for the issuance of Form G, along with the below eligibility criteria to be provided to the Prospective Resolution Applicants ("PRAs") for the submission of the Expression of Interest ("EOI") to submit the resolution plans, as per the provisions of Section 25 (2) (h) of the Code read with CIRP Regulations*". Regulation 36A of the CIRP Regulations provide that "*The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule-I at the earliest, not later than sixtieth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.*" It is pertinent to note that the clarification to said Regulation contemplate approval of CoC only where Project wise Insolvency in case of Real Estate Project is contemplated. Further, Section 25(2)(h) of the I B Code requires a Resolution Professional to "*invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of*

operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans". Accordingly, we are of considered view that the Scheme of Code does not contemplate specific approval of CoC for issuance of Form G, however, we note that Respondent has been diligent enough to keep the CoC informed about what he had contemplated. Further, the definition of Resolution Professional explicitly includes "Interim Resolution Professional" within its ambit, hence the action taken by the Respondent as IRP, in the absence of RP, can not held to be illegal.

18. Further, minutes of 1st CoC further records that a resolution no. 3 was proposed as "*RESOLVED THAT, pursuant to Section 25(2)(h) of the Insolvency & Bankruptcy Code, 2016, the CoC hereby approves the eligibility criteria, having regard to the complexity and scale of operations of the business of the Corporate Debtor, for inviting prospective resolution applicants to submit a resolution plan or plans for the Corporate Debtor, as included in the detailed Invitation or Expression of Interest.*" The said minutes further records as follows :

> *"All the members of the CoC, approved the Voting Item 3 with 100% majority i.e.*
>
> *i. The eligibility criteria for PRAs, having regard to the complexity and scale of operations of the business of the Corporate debtor, to submit a resolution plan; and*
>
> *ii. The marketing strategy and its implementation.*
>
> *Post further deliberation, the CoC members requested for voting for the balance items to be undertaken by electronic means and accordingly their request was taken on record. The IRP informed the members of the CoC that E-Voting modalities have been provided for the CoC Members."*

19. None of the CoC members had objected to these minutes of the meeting, hence, it can not be said that voting never took place. Accordingly, we do not find any merit in Applicant's contention in this relation as well.

20. The email communication dated 8.1.2025 for Second Meeting of the Committee of Creditors to be held at 3:00 p.m. on 09th January 2025, Thursday through video conferencing, was sent at 11:44 AM to vs@hotelhorizon.net; vhsharma@gmail.com; vishal@hotelhorizon.net. Further, there is no requirement in the Code or CIRP Regulations to circulate audio recordings of each meeting and the Respondent's submission that "*the Applicants have not sent any communication with any specific details / observations of what their objection to the minutes are and what have not been captured in the minutes*" has not been controverted by the Applicants by any cogent evidence. Accordingly, we do not find any merit in Applicant's contention in this relation as well.

21. As regards allegation that Hon'ble Delhi High Court has initiated disciplinary proceedings against the IRP vide its Order dated 25th October, 2024, we find these allegations are arising from incorrect appreciation of the order of Hon'ble Delhi High Court. Nonetheless, the Applicants have not brought on record any order passed by IBBI pursuant to such directions by Hon'ble Delhi High Court. Hence, this contention of Applicants is also rejected.

22. As regards admission of claim of Phoenix ARC, the said issue is already under consideration before this Tribunal in another application filed by the Applicants challenging the admission of claims of all the financial creditors. Nonetheless, this application has raised concern about admission of the claim of Pheonix ARC, which was earlier rejected as Time-barred by Respondent. We note that the said claim was verified again in terms of direction of this Tribunal and no adverse inference can be drawn if the verification process adopted by IRP was not biased or perverse. The claim of Phoenix ARC involves legal question, and lack of understanding of legal position in relation

the issue involved therein, even if there is found to be one later on, can not held to be biased or perverse. The Financial Creditors of a Corporate Debtor have a right to challenge claim of other creditors incorrectly admitted by the IRP/RP. Hence, no adverse inference can be drawn from this act also.

23. In view of the foregoing, we are of considered view that the present application is devoid of any merit, hence, liable to be dismissed.

24. Accordingly, IA 197 of 2025 is dismissed and disposed of accordingly.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Justice V.G. Bisht
Member (Judicial)