

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP(IB) No. 593/KB/2017

In the matter of:

State Bank of India

... Applicant

-versus-

Coastal Projects Ltd.

.... Respondent

Coram: Mr. Jinan K.R., Member(Judicial)

Mr. Ravi Sankar Devarakonda, Resolution Professional

For the Resolution Professional

S Mitra, Advocate

S Das, Advocate

Mr. Rishad Medora, Advocate

For the Resolution Applicant :

Rajarshi Dutta, Advocate

M Das, Advocate

For AFCONS

Mr. Lokenath Chatterjee, Advocate



Ms. Sanchari Chakraborty, Advocate
Mr. S Chakraborty, Advocate
Ms. Debleena Ganguly, Advocate

For NHPL

Mrs. Manju Bhuteria, Advocate
Mr. Atish Ghosh, Advocate
Mr. S Ghosh, Advocate

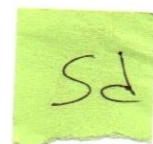
Date of pronouncement of Order : 6th December, 2018

Per Shri Jinan K. R., Member(Judicial)

O R D E R

1. The CP(IB) No. 593/KB/2017 was filed by the State Bank of India/financial Creditor for initiating the Corporate Insolvency Resolution Process as against the Corporate debtor, Coastal Projects Limited as per section 7 of the Insolvency & bankruptcy code, 2016.

2. Vide Order dated 5th January, 2018, the application was admitted by appointing Mr. Ravi Sankar Devarakonda as the Interim Resolution Professional. Public announcement, as well as publication of expression of interest inviting prospective Resolution Applicant was issued by him. Resolution Plan was submitted by only one Resolution Applicant, namely, Mantena Engitec Private Limited. It seems to have filed in compliance of sub-section 2 of Section 30 of the IB code, 2016. The Resolution Professional has submitted the Resolution Plan before the Committee of Creditors for its favourable consideration.

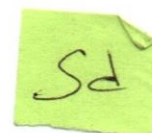


3. From the records available, it is understood that there is no other Resolution Applicant who showed interest in taking over the stressed assets of the Corporate Debtor other than the resolution plan of Mantena Engitec Private Limited . The Ld. RP has submitted that the Resolution Plan of M/s. Mantena Engitec Private Limited (MEPL) has undergone various negotiations, deliberations at the various meetings convened by the Committee of Creditors and as per the result of negotiations with the Resolution Applicant, the resolution Applicant had submitted its revised Resolution Plan to the Resolution Professional on 07-09-2018. That Resolution Plan is seen placed before the COC in the meeting held on 19-09-2018. However, no decision was taken on that day and the consideration of the resolution Plan was thereafter referred to 14th meeting of the COC held on 24-09-2018. After negotiation and deliberation, the Plan was put to vote on 26-09-2018 through E-voting facility. However, the majority of the Members of the Committee of Creditors did not vote in favour of the Plan. 88.04% voted against the Resolution Plan and only 11.96% vote shares were cast in favour of the Resolution Plan. Thereby, the Resolution Professional was unsuccessful in getting the approval of only one resolution Plan received by him to take over the stressed assets of the Corporate Debtor and in the meanwhile, the extended period of CIRP was expired on 1st October, 2018.

4. When this case was taken up for hearing on 29-10-2018, three applications were filed, i.e., CA(IB) No. 582/KB/2018, CA(IB) No. 955/KB/2018 and CA(IB) No. 965/KB/2018. Two other applications also came up for consideration which were filed by the two Operational Creditors contending that their claims have not been admitted by the Resolution Professional.

5. In the meanwhile, the Resolution Applicant also filed CA(IB) No. 965/KB/2018 for reconsideration of the resolution Plan by the Committee of Creditors.

6. All these applications came up for consideration after the expiry of the mandatory period of the CIRP process. Therefore, none of the Applications requires any consideration and therefore, those applications are not elaborately discussed here in this case.
7. When the case was posted on 03-10-2018 for filing the final report by the RP, the RP has submitted that no Resolution Application was under consideration and he was intending to move an Application for liquidation. Thereby, the case was adjourned to 11-10-2018. Thereafter, the case was adjourned because of filing of interim Applications. Lastly, it was heard on 30-11-2018.
8. The Ld. Counsel appearing for the Resolution Applicant in CA(IB) No. 965/KB/2018 has submitted that the period taken by the RP and the COC in regard to finalisation of the approval of the Resolution Plan if excluded, one more opportunity can be availed by the Resolution applicant for submitting his revised Resolution Plan. The said submission seems to deserve no consideration at the stage when the Committee of Creditors has, by majority decision, decided to proceed with liquidation. Moreover, the period of CIRP has already expired.
9. As per Section 12 of the I&B code, 2016, time limit for completion of the Insolvency Resolution Process shall expire firstly upon completion of 180 days and if it is extended, it would lastly expire within 270 days. That 270 days has expired on 01-10-2018.
10. Proviso to Section 12 mandate that the Adjudicating Authority shall not pass an order for extension of the period of CIRP under Section 12 for more than once. Therefore, the request on the side of the resolution Applicant in CA(IB) No. 965/KB/2018 for a reconsideration of the Resolution



Plan after the expiry of 270 days could not be entertained by me at this stage.

11. Here in the instant case, it appears to me that the rejection of the Resolution Plan by the majority vote share was not on sound reason. The reason for rejection communicated to the Resolution Applicant reads as follows :

".. further based on your e. mail dated September 24, 2018 requesting waiver of furnishing unconditional and irrevocable performance bank guarantee of INR 50,00,00,000/- with respect to implementation of the successful Resolution plan by Mantena Engitec Private Limited, I put the same as well to vote by Committee of Creditors members for their approval. Based on voting results of Committee of Creditors, I would like to inform you that the Committee of Creditors has rejected the Resolution Plan as well as request for waiver of furnishing Performance Bank Guarantee of INR 50,00,00,000/- with respect to implementation of the successful Resolution Plan. (Annexure B in CA(IB) No. 965/KB/2018).

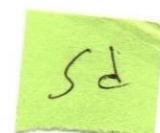
12. It is significant to note that the Plan of the resolution Applicant has been under consideration of the Resolution Professional as well as before the Committee of creditors from 29th June, 2018 onwards i.e. before the 180 days from the starting period of CIRP. The 180 days expired on 03-07-2018. The RP was obliged to identify Resolution Applicant finally prior to 03-07-2018. It has not happened in the case in hand.

13. The Committee of Creditors has undergone discussion with the Resolution Applicant for modification up to 24-09-2018 i.e. about three months have been taken by the Committee of Creditors for completing negotiation with the only one Resolution Applicant. On 26-09-2018, the Resolution Plan was put in for voting and it was not successful. Even on 26-09-2018, there were few more days left for completion of the CIRP period.

No effort seems to have been made from the Resolution Professional or from the Committee of Creditors to see that the Plan is to be modified to suit the demand on the side of the Resolution Applicant for waiver of furnishing Performance Bank Guarantee. What is the modification expected from Resolution Applicant is also not brought to the notice of the Resolution Applicant. The Resolution Applicant and the COC were aware of the expiry date of CIRP.

14. On 1st October, 2018, the Resolution Applicant at his own interest approached the Resolution Professional and submitted the revised Resolution Plan. That Plan was not discussed. The Resolution Professional has submitted that the revised Resolution Plan has not been considered by the Committee of creditors for the reason of expiry of the period of CIRP. However, it is understood that at the instance of the Resolution Professional, a meeting has been convened on 08-10-2018 in Hyderabad to discuss with the Members on the status of the CIRP and future course of action with respect to the revised Resolution Plan received on 01-10-2018. In the said meeting, out of 31 Members, only 19 members attended the meeting in person. 6 Members attended the meeting via Audio conference and 6 Members did not attend the meeting at all. The Members expressed that as the CIRP period is over, the Committee of Creditors cannot consider the fresh Resolution Plan unless special direction is received from the NCLT and the Committee of Creditors decided to go on with liquidation process by permitting the Resolution Professional to file the liquidation plan.

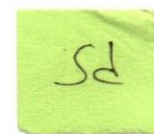
15. I regret to take note of the observation of the Committee of Creditors taken in the meeting held on 08-10-2018. The Resolution Professional or the Committee of Creditors had not approached the Adjudicating Authority (in short AA) before the expiry of the period so as to exclude any days which were unutilised for the purpose of identifying the Resolution Plan and put pressure on the AA that if AA chooses to grant time beyond 270- days, it can consider the Resolution Plan knowing very well that the AA shall not



extend the period more than once. The Resolution Professional is duty bound to act diligently keeping in mind the time line.

16. As per the amended provision 40A of IBBI(IRP for Corporate Persons) Regulation, 2016, model time line for CIRP is laid down by the IBBI. It is good to read that Model time line so as to have a cross check to see that time line has been complied with by the Committee of Creditors and the Resolution Professional in the case in hand. Model time-line for corporate insolvency resolution process is shown below:-

Section/Regulation	Description of activity	Norm	Latest Timeline
Section 16(1)	Commencing of CIRP and appointment of IRP	...	T
Regulation 6(1)	Public announcement inviting claims	Within 3 days of Appointment of IRP	T+3
Section 15(1) (c) Regulations 6(2)(c) and 12(1)	Submission of claims	For 14 days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Upto 90 th day of commencement	T+90
Regulation 13(1)	Verification of claims received under Regulation 12(1)	Within 7 days from the receipt of the claim	T+21
Regulation 13(2)	Verification of claims received		T+97



	under Regulation 12(2)		
Section 21(6A)(b)/Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of COC		T+23
Section 22(1)/Regulation 19(1)	1 st meeting of the COC	Within 7 days of the constitution of the COC, but with seven days' notice	T+30
Section 22(2)	Resolution to appoint RP by the COC	In the first meeting of the COC	T+30
Section 16(5)	Appointment of RP	On approval by the AA
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed	If RP is not appointed by 40 th day of commencement	T+40
Regulation 27	Appointment of Valuer	Within 7 days of appointment of RP, but not later than 40 th day of commencement	T+47

Section 12(A)/Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EOI	W
	COC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of COC, whichever is later	W+7
	Filing application of withdrawal, if approved by COC with 90% majority voting, by RP to AA	Within 3 days of approval by COC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file application to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36(1)	Submission of IM to COC	Within 2 weeks of appointment of RP, but not	T+54

		later than 54 th day of commencement	
Regulation 36A	Publish Form G	Within 75 days of commencement	T+75
	Invitation of EOI		
	Submission of EOI	At least 15 days from issue of EOI(assume 15 days)	T+90
	Provisional List of RAs by RP	Within 10 days from the date of provisional list	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final List of Ras by RP	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP(assume 30 days)	T+135
Regulation 39(4)	Submission of COC approved Resolution Plan to AA	As soon as approved by the COC	T+165

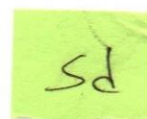
Section 31(1)	Approval of resolution plan by AA		T=180
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17. Having cross checked with the above time line, I am afraid, the only one Resolution Plan submitted before the consideration of the committee of Creditors has not been seriously dealt with in the time frame. If the CoC and RP would have taken adequate care to have negotiation with the resolution applicant day by day, bearing in mind the very object of the Code which is Resolution and maximisation of value, chances of success in having a resolution in the case in hand was not too remote. The laxity in dealing with negotiation with the resolution applicant for having a resolution is visible from the mode of discussion process entertained by the CoC in the case in hand. Thereby, the chance of revival has been blocked.

18. In view of the above said discussion, I am of the considered opinion that I could not extend the period of CIRP for any reasons advanced on the side of the Ld. RP as well as on the side of the Resolution Applicant, as Section 12 mandates, no further extension beyond 270 days is to be granted in the like case.

19. Having failed in obtaining the Resolution Plan within the mandatory period of 270 days and since the Committee of Creditors has decided to have liquidation of the Corporate debtor, I have no other alternative than to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the Chapter III read with Section 33 of the I&B Code, 2016.

20. The CA(IB) No. 965/KB/2018, upon the reason highlighted above, requires no consideration and it is liable to be dismissed. The CA(IB) No. 955/KB/2018 is an Application for admitting the claim put forward by the Operational Creditor. Since an order of liquidation is passed, this CA also

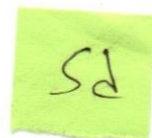


requires no consideration. It is liable to be dismissed. However, with a liberty to submit the claim, if any, to the Liquidator. The Resolution Professional in the instant case has consented to continue the liquidation process as a Liquidator. Therefore, he is to be appointed as the Liquidator in CP(IB) No. 593/KB/2017.

21. In view of the above said discussions, I am passing an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter III read with section 33 of I&B Code upon the following orders:

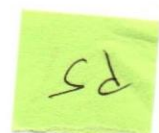
ORDER

- i) Mr. Ravi Sankar Devarakonda is appointed as the Liquidator
- ii) Issue notice of appointment to the Liquidator forthwith via E-Mail, calling him to produce written consent within one week of receipt of the Order.
- iii) Mr. Ravi Sankar Devarkonda is directed to issue public announcement in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016.
- iv) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.



- v) The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.
- vi) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.
- vii) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.
- viii) Upon proceeding with the liquidation the Liquidator shall file a **preliminary report** as per regulation 5 read with Reg.13 of the IBBI(Liquidation) Regulations,2016 at the registry within 75 days from the liquidation commencement date and continue to file **progress reports** as per Reg.15(1) with in 15 days after the end of the quarter in which he is appointed.
- ix) The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations,2016.
- x) CA(IB) No. 965/KB/2018 is dismissed. However no order as to cost.
- xi) The CA(IB) No. 955/KB/2018 is dismissed, however with a liberty to submits its claim if any to the liquidator in accordance with I&B code and Regulations.
- xii) The CP(IB) No. 593/KB/2017 is disposed of accordingly. .

22. The free copy of this order is to be sent to the Liquidator, Financial Creditor and to the Corporate Debtor for information and for taking necessary steps.



23. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Sd

(Jinan K.R.)
Member (Judicial)

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