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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

IA/(IBC)/61/CHE/2023 in CP(IB)/1352/IB/2018

(Filed under Section 33(2) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of *Prasad Properties and Investments Private Limited*

Ms. Sripriya Kumar,
Resolution Professional of
Prasad Properties and Investments Private Limited
224 (New346/1) (Next to National Public School)
Avvai Shanmugam Salai, Gopalapuram,
Chennai – 600 086

... Applicant /Resolution Professional

Order Pronounced on 22nd March, 2023

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : *N.P.Vijay Kumar, Advocate*

ORDER

Per: JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT

This is an application filed under Section 33(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows:

- (i) To pass an order of liquidation and appoint the Resolution Professional/ Applicant as the Liquidator of Prasad Properties and Investments Private Limited;



- (ii) that all and any consequent orders pursuant to the order of liquidation of the said Corporate Debtor be passed.
- (iii) Such other and further reliefs as the nature and circumstances of the case may require.

2. The relevant facts of the case is as follows:

- a) From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated under section 7 of the IBC, 2016 and one Mr. Shyam Sundar was appointed as IRP on 05.11.2019. IRP caused public announcement calling for claims from the Creditors of the Corporate Debtor by virtue of publication dated 05.10.2019. Upon receiving the claims, IRP constituted the Committee of Creditors on 31.10.2019 and reconstituted the Committee of Creditors on 22.11.2019.
- b) It is further seen from the application that the erstwhile RP had placed an Information Memorandum dated 22.11.2019 to the members of the CoC and RP had conducted three meetings of the CoC.
- c) In the 3rd CoC meeting held on 26.12.2019, the CoC decided to replace the erstwhile RP and appointed the applicant herein viz. Sripriya Kumar as the RP and the same was also allowed by this Tribunal vide order dated 26.02.2020 in MA/74/2020.



- d) The Applicant was informed by the erstwhile RP that the Corporate Debtor maintained its bank account with Andhra Bank. The Applicant has taken charge of the said account and requested for debit freeze of the said account by letter dated 09.03.2020.
- e) The Applicant had been corresponding with suspended directors of the Company to take stock of the assets, and properties of the corporate debtor so that further steps can be taken for preparing of Information Memorandum and for inviting expression of interest. However due to the non-cooperation of the suspended directors even to the erstwhile RP, which was brought to the attention of the CoC members in the Fourth meeting of the Committee of Creditors held on 13.03. 2020, no effective CIRP could be carried out from the commencement viz 20.09.2019.
- f) It is seen in para 14 of the application that no financial records, tally, books of accounts or secretarial records were handed over to the erstwhile RP or Applicant. There were significant bank transactions since the last filed financial statements as at March 31, 2015 and no complete listing of the assets including land and building owned by the Company as reconciled to the financial data was made available to the RP. Hence, RP had filed an application bearing IA/787/IB/2020 under Section 19(2) of the IBC, 2016 on 24.06.2020 and the same is pending adjudication.



- g) The Applicant filed for an extension of CIRP period in IA/632/IB/2020 in August 2020 for a period of 90 days from 02.04.2020.
- h) In the meantime, the suspended Director of the Corporate Debtor had filed an Appeal before the Hon'ble NCLAT against the order of admission passed by this Tribunal and the Hon'ble NCLAT had quashed and set aside the order of CIRP passed by this Tribunal vide order dated 24.11.2020 in Company Appeal (AT) (Insolvency) No. 1406 of 2019.
- i) Pursuant to the order of Hon'ble NCLAT, the Applicant filed a memo on 30.12.2020 by stating that the Applicant stood discharged from obligation as a Resolution Professional (RP) and the RP has informed various authorities and bankers on 16.12.2020 regarding the end of CIRP.
- j) Aggrieved by the order of NCLAT, Financial Creditor viz, the Kotak Mahindra Bank preferred an appeal bearing Civil Appeal No.689 of 2021 wherein the Hon'ble Supreme Court set aside the order of the Hon'ble NCLAT vide order dated 30.05.2022 and the order of the Apex Court is placed at *Annexure-6* of the Application Typeset. It is further stated that the RP has been informed that a Review Petition has been filed before the Hon'ble Supreme Court.

- k) Pursuant to the order of Hon'ble Supreme Court, the RP once again filed a memo before this Tribunal on 17.06.2022 bringing to its notice of this Tribunal, the order of the Hon'ble Supreme Court and intimating that the RP is resuming her duties as in respect of the Corporate Debtor and the RP had also intimated various authorities and bankers regarding the re-initiation of CIRP pursuant to the order of the Hon'ble Supreme Court.
- l) The Applicant herein has also updated the Information Memorandum to encapsulate the status of the Corporate Debtor based on earlier IM prepared by the erstwhile RP.

3. The erstwhile RP and the Applicant have filed list of claims and CoC details to NCLT on the following dates as under:

DATE	FILED BY	CLAIMS AS ADMITTED
29.10.2019	Previous IRP	Rs. 10,10,75,97,461
22.11.2019	Previous IRP	Rs.10,15,20,32,674
09.06.2020	Present RP	Rs.10,10,75,97,461
02.09.2022	Present RP	Rs.10,37,85,54,464

4. A revised list of claimants as filed with NCLT on 02.09.2022 as an IA and the CoC has been constituted with Kotak Mahindra Bank as the Sole Financial Creditor:



Name	Form Ref	Form Date	Amount Claimed	Secured	Admitted (Rs.)	Voting Share
Kotak Mahindra Bank Limited	Form C	21-10-2019	10,10,75,97,461	Yes	10,10,75,97,461	100.00%
Green Gardens Private Limited	Form C (*)	19-08-2022	22,65,00,000	No	22,65,21,790	0.00%
Gemini Arts Private Limited	Form C	21-10-2019	4,44,35,213	No	4,44,35,213	0.00%
Dewan Housing Finance Limited	Form C	22-06-2020	1,63,92,72,522	No	-	0.00%
			12,01,78,05,196		10,37,85,54,464	100.00%

5. It was submitted that Dewan Housing Finance Corporation Limited filed a belated claim on 22.06.2020 and approached NCLT to condone such delay and they were intimated about the NCLAT and Supreme Court orders, as well as the status of their claim vide emails dated 17.06.2022 and 19.08.2022. No response has been received from them till date and this claim is kept in abeyance as a contingent claim as a matter of caution.

6. It was submitted that due to the judicial intervention by NCLAT and Hon'ble Supreme Court, an application bearing IA No. 763 of 2022 had been filed before this Tribunal seeking an exclusion of 968 days and a fresh period of 180 days to complete the CIRP based on the directions in the 7th CoC meeting held on 23 June 2022 after the order of the Hon'ble Supreme Court and this Tribunal had granted extension to 21.09.2022 and the CIRP was extended till 26.11.2022.

7. While this being the fact, the CoC in the 9th meeting resolved to proceed with the Liquidation of the Corporate Debtor. It is seen from para 42 of the application that while considering the decision to Liquidate the Corporate Debtor, the following aspects have been discussed in the 9th CoC meeting stated *supra* and the same is contained in minutes which is appended as 'Annexure 11' to this Application :

- a) Decision for Liquidation under Regulation 40 D
- b) Assessment of Compromise and Arrangement under Regulation 39BA
- c) Sale as a Going Concern under Regulation 39C
- d) Fee of the Liquidator under Regulation 39D
- e) Meeting Liquidation cost under Regulation 39B

8. It is averred in para 43 of the Application that in the 9th COC meeting held on 25.10.2022, the CoC after discussions and deliberations resolved to liquidate the Corporate Debtor with 100 % voting. The minutes of the 9th COC meeting are annexed at Annexure 10 of the Application typeset and the extract of Resolution is reproduced hereunder:



"RESOLVED THAT the unanimous decision of the Committee of Creditors to liquidate the Corporate Debtor be intimated to the Adjudicating Authority in accordance with Section 33(2) of the

IBC, 2016 and the Resolution Professional is hereby directed to prefer an application to seek the orders of the Adjudicating Authority for liquidation of the Corporate Debtor as per the applicable provisions of Insolvency and Bankruptcy Code 2016"

"RESOLVED THAT Ms. Sripriya Kumar, Insolvency Professional, be and is hereby approved to be appointed as the Liquidator of Prasad Properties and Investments Private Limited on and upon receipt of necessary orders from Hon'ble NCLT, Chennai for commencement of the Liquidation process under the IBCode"

"RESOLVED THAT Ms. Sripriya Kumar, Resolution Professional, be and is hereby further authorized to do all such acts and deeds as is required to give effect to the above resolution"

9. The Form-H has been filed and annexed at Annexure 12 of the Application typeset. The proposed Liquidator, Ms. Sripriya Kumar has also filed her written consent to act as the Liquidator of the Corporate Debtor and also on verification from the IBBI Website, it is seen that the Authorization for Assignment (AFA) for the RP is valid up to 20.12.2023.

10. Upon perusal of the Application, it is seen that the Committee of Creditors in the 9th CoC meeting held on 25.10.2022 had unanimously resolved to liquidate the Corporate Debtor. In such circumstances, this Adjudicating Authority concludes that this present application deserves to be allowed.

11. Thus, it can be seen that it satisfies the mandate of 66% voting share under Section 33 (2) of the IBC, 2016. The Section 33 (2) of the IBC, 2016 is extracted hereunder:-

Section 33 (2)

“Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

12. As a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33(1)(a) of IBC, 2016. We hereby appoint **Mr.Sripriya Kumar**, with (*Reg. No: IBBI/IPA-001/IP-P00771/2017-2018/11316 and e-mail Id: sripriya@spka.in*) as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

- j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

13. With the above said directions, IA/61/CHE/2023 filed for Liquidation of the Corporate Debtor stands **allowed**.

 - Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

 - Sd -

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram Ananth .V