

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

5. I.A. 2800/2022

I.A. 1541/2021

M.A. 2703/2019

M.A. 2652/2019

IN

C.P.(IB)-3683(MB)/2018

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **10.05.2023**

NAME OF THE PARTIES: Asit C. Mehta Investment Intermediates Ltd

V/s.

Brajesh Construction Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Viraj Parekh a/w Adv. Umang Mehta appearing for the applicant and Adv. Pulkit Sharma a/w Adv. Vikrant Zunjarrao i/b Zunjarrao & Co for Respondent No.5 and Abhishek Adke for Respondent No.2 in IA 1541 of 2021. Mr. Aniruth Purushothman, counsel appearing for the Resolution Professional are present through virtual hearing. Ms. Aparjita Chandra, counsel appearing for the Applicant in I.A. 2800/2022 is present physically.

M.A. 2703/2019

The above application is filed by the Resolution Professional for liquidation of the Corporate Debtor.

Heard the counsel appearing for the Resolution Professional. The above application is allowed. Detailed order would follow:

I.A. 2800/2022

Heard Mrs. Aparjita Chandra counsel appearing for the Applicant. The above application is filed by the applicant, M/s Asit C. Mehta Intermediates ltd. seeking certain directions including direction to the Resolution Professional

to reconstitute the COC under Section 33 of the Code. The main grievance of the applicant is as follows:

- a. *That the petitioner has filed the claim with RP as a Financial Creditor as on 02.12.2019 for the amount of Rs. 4,46,41,226/- (Rupees Four Crore Forty-Six Lakh Forty-One Thousand Two Hundred and Twenty-six only) being the claim towards amount as paid for purchase of flats, registration charges, amount of interest as there on and the claim as filed by the petitioner have accepted by the said RP and the RP informed on email that the claim of the petitioner as a Financial Creditor is accepted and that he is the only financial creditor for the Corporate Debtor.*
- b. *That no resolution plan has been submitted for the Corporate Debtor till date nor the liquidation application filed by the RP has been approved by Adjudicating Authority and the IBC proceeding are still continuing, but till date no committee of creditors (COC) for the Corporate Debtor as per Section 21 of the Insolvency and Bankruptcy Code, 2016 is constituted which is the onerous Duty of the Resolution Professional. On request once convened the meeting of the Creditors terming it as a meeting of lenders for the corporate Debtor, and not the meeting of the Committee of Creditors. The RP in spite of request has not been reconstituting the committee of creditors. She has been under the guise of lenders meeting involving all the operational creditor of the corporate debtor also which is against the provisions of IBC rules. The operational creditors appears to have been the part of the COC only till date.*
- c. *The petitioner is thus in dark of the entire proceeding as have occurred in respect of the corporate debtor from the date of the initiation of the IBC proceedings for the corporate debtor till date and has no access to the papers/documents of the corporate debtor in spite of being the only financial creditor of the corporate debtor.*

Contrary to the above allegations of the applicant, the resolution professional filed another application bearing M.A. No. 2703/2019 for ordering liquidation against the Corporate Debtor in which the liquidator has clearly mentioned that a COC has been duly constituted and a report certifying the same was submitted before this tribunal on 28.02.2019. It was also mentioned that the

COC in its 7th meeting held on 24.07.2019 unanimously resolved with 100% voting to make an application before the adjudicating authority for liquidation of the Corporate Debtor. It is surprising to note that the petitioner herein M/s Asit C. Mehta Intermediate Ltd. represented by Mr. Jaideep Vaidya was also present in the said meeting. Therefore, the above allegations of the applicant that no COC was constituted by the RP and the Applicant is in dark etc. are out and out false.

Be that as it may, since this tribunal has allowed M.A. 2703/2019 by ordering liquidation, the above I.A. 2800/2022 filed by petitioner has no legs to stand and is accordingly disposed directing the applicant to submit their claim afresh before the liquidator.

Common Order in I.A. 1541/2021 & M.A. 2652/2019

1. The above application is filed by Applicant, M/s Akme Sarvoday Dreamventures & ors. praying following reliefs:

A) That this Hon'ble Tribunal be pleased to declare that entire proceedings i.e., Company Petition No. 3683 of 2018 was filed for purpose other than the resolution process or liquidation and with malicious intent and further pass necessary orders RY DRA and direction under Section 65, against Respondent no. 2 and Mr. Asit C. Mehta;

RELIEF IN RESPECT OF DISMISSAL/WITHDRAWAL OF PETITION

B) That this Hon'ble Tribunal be pleased to dismiss the present Company Petition being Company Petition No. 3683 of 2018 and withdraw the consequential orders; Or in alternative to Prayer (B)

C) That this Hon'ble Tribunal be pleased to allow withdrawal of the present Company Petition No. 3683 of 2018 in view of the fact that entire payment to Respondent No.1 is made and Respondent No. 2 has already arrived at settlement with the Applicants;

RELIEF IN RESPECT OF RP'S CONDUCT AND FEES

- D) That this Hon'ble Tribunal be pleased to declare that the Resolution Professional has not conducted the process of CIRP in accordance with law and failed to comply with her obligations as well as duties;
- E) That this Hon'ble Tribunal be pleased to direct Insolvency and Bankruptcy Board of India, to consider the present case and allegation against the Respondent No.1, Resolution Professional and take appropriate decision after following due process under law:
- F) That this Hon'ble Tribunal be please to declare that Resolution Professional is not entitled to any fees in the present facts and circumstances;

In alternative to Prayer (F)

- G) That this Hon'ble Tribunal, in view of the above-mentioned facts and circumstances fix the fees of the Resolution Professional, and in the event this Hon'ble Tribunal is allowing relief of withdrawal or dismissal, grant time of 45 days to the Applicants herein to make payment of such fees as may be determined by this Hon'ble Tribunal;

CONSEQUENTIAL RELIEF

- H) That this Hon'ble Tribunal be pleased to direct the Resolution Professional to handover possession of the property back to the Applicants and restore status quo ante, within a period of 2 week of the order being passed or any time as it may deem fit to this Hon'ble Tribunal;
- I) That this Hon'ble Tribunal be pleased to vacate and/or modify the order dated 18th November,2019 to the extent it directs for depositing the title deeds with the Hon'ble Tribunal;

AD-INTERIM RELIEF

- J) That pending the hearing and final disposal of the present Application this Hon'ble Tribunal be pleased to keep the order dated 18 November 2019 passed by this Hon'ble Tribunal in abeyance;
- K) That pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to direct the Resolution Professional to file

status report of the Corporate Debtor and further direct the Resolution Professional to submit the list of work undertaken in this matter;

L) Any other order as it may deem fit to this Hon'ble Tribunal;

M) Cost.

M.A. 2652/2019

2. The above application is also filed by Applicant, M/s Akme Sarvoday Dreamventures & ors. praying following reliefs:

A) The Honourable Adjudicating Authority may be pleased to pass an Order and/ or necessary directions to Respondent No. 4, i.e. Resolution Professional, to execute and register the Deed of Conveyance to convey the entire right, title and interest of the Corporate Debtor in respect of the parcel of land being Residential Plot No. 1A admeasuring about 4,22,150 sq. Ft., bearing Khasara No. 2507 to 2509, 2510 mi, 2475, 2476, 3556/2510, situated at Revenue Village Titardi, Tehsil Girwa, District Udaipur, Rajasthan in favour of the Applicants/ Intervenors.

B) That pending the hearing and final disposal of the present Application, no steps be taken in the present captioned matter including any steps to initiate liquidation proceedings of the Corporate Debtor;

C) Ad-interim reliefs in terms of prayer clause (b) hereinabove.

D) The Honourable Adjudicating Authority may be pleased to grant such other reliefs as the Honourable Bench may deem fit in the interest of justice.

3. Heard Mr. Viraj Patil, counsel appearing for the Applicant and Mr. Aniruth Purushothman, counsel appearing for the RP and also Mr. Abhidhek Adke, counsel appearing for the Operational Creditor on whose behest the above Company Petition was admitted and perused the record. The main grievance of the Applicant broadly in both the above Interlocutory Applications is that the applicant has paid a substantial amount on behalf of Corporate Debtor to DHFL directly who has granted an OTS settlement to the Corporate Debtor with an understanding that the Corporate Debtor would sell the property situated at plot no. 1A admeasuring about 4,22,150

sq. ft., bearing Khasara No. 2507 to 2509, 2510 mi, 2475, 2476, 3556/251, at Revenue Village Titardi, Tehsil Girwa, District Udaipur, Rajasthan to the petitioner. Subsequently, the Corporate Debtor also executed an agreement for dated 24.01.2019 for transfer of the project to the applicant upon payment of balance amount under OTS agreement. It is also the case of the petitioner that the DHFL also handed over the original title deeds of the Corporate Debtor directly to the Petitioner. Therefore, the applicant addressed an email after coming to know about commencement of the CIRP to RP requesting RP to include the applicant in the COC as they have stepped into the shoes of the corporate debtor and also called upon the RP to execute the sale deed in their favour for the project land and also filed M.A. 2652/2019 before this bench for direction to the RP to execute and register the sale deed. Thus, the main grievance of the applicant is that neither his claim has been admitted and included as member in COC nor the property was conveyed by RP in pursuance of the sale agreement executed by the Corporate Debtor.

4. The learned counsel appearing for the Resolution Professional fairly conceded that they have no objection to look into the claim of the Petitioner independently, if the Resolution Professional is appointed as Liquidator without accepting the allegations levelled against the Resolution Professional by the Petitioner or agreed for appointment of an independent Liquidator in the event liquidation is ordered against the Corporate Debtor which appears to be fair and reasonable and accordingly this Bench also thought it fit to appoint an independent Liquidator from the panel furnished by the IBBI in the interests of justice.
5. In view of the above facts and circumstances, both the applications need not be adjudicated and can simply be disposed of by granting liberty to the applicant to submit his claim before the liquidator. Accordingly, both the Applications bearing I.A No. 1541/2021 and M.A. 2652/2019 are **disposed of with the above observations and directions.**

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)