

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

IA No. 1189/KB/2020
in
CP (IB) No. 650/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Anand Carbo Private Limited ... Operational Creditor

Versus

Kampilya Builders Pvt. Ltd. ... Corporate Debtor

And

Shashi Agarwal
RP of Kampilya Builders Pvt. Ltd. ... Applicant

Order reserved on: 20.11.2020

Order pronounced on: 11.01.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

For the Applicant : Mr Ayush Lakhotia, Advocate
Mr Shashi Agarwal, RP in
person.

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.
2. This is an application filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation

of the Corporate Debtor, *viz.*, Kampilya Builders Pvt. Ltd. [CIN: U51102WB1995PTC072597], on the ground that no Expression of Interest (EoI) has been received from any prospective resolution application.

3. This Adjudicating Authority *vide* its order dated 26.07.2019 on a Petition filed by Anand Carbo Private Limited (*operational creditor*) under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP).
4. In terms of section 15 of the Code, public announcement in Form 'A' was made on 30.07.2019, in *The Financial Express* (English) and *Aajkal* (Bengali) of Kolkata Edition of the said newspapers and on 01.08.2019 in *Morning India* (English) and *Sanmarg* (Hindi) of Patna Edition of the said newspapers, fixing 09.08.2019 as the last date for submitting the claims.
5. The Committee of Creditors (CoC) was duly constituted on 18.08.2019 with eleven Financial Creditors, and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority on 16.09.2019 with the first progress report.
6. The first meeting of the CoC was held on 26.08.2019, wherein the IRP was appointed as the RP (Resolution No. 10 at page 60 of the first progress report).
7. Invitation for EoI was published in Form 'G' on 28.10.2019 in *Financial Express* (English) and *Aajkal* (Bengali) newspapers, fixing the last date for receipt of EoIs as 13.11.2019, but none was received

till the last date. However, one EoI was received after the last date, on 31.12.2019 from Kalyanpur Building Materials Private Limited. The said EoI was rejected since the last date for receipt of the same had already expired.

8. In its fifth meeting held on 13.01.2020, the CoC decided to publish fresh EoI. Therefore, on 14.01.2020 another Form 'G' was published in *Financial Express* (English) and *Aajkal* (Bengali) newspapers. Pursuant to this publication two EoIs were received. But, after providing terms and condition, no further communication was received from the said resolution applicants.
9. The period of CIRP was to expire on 22.01.2020, therefore, as per the decision of and authorisation from CoC in the fifth meeting, the RP had filed an application under section 12A of the Code for extension of CIRP period. The said period was extended for 90 days starting from 21.01.2020 by this Adjudicating Authority *vide* its order dated 20.02.2020. However, no Resolution Plan was received even thereafter.
10. At its ninth meeting held on 07.10.2020, the CoC resolved that the Corporate Debtor should be liquidated. The proposal was approved with 90.77% voting in favour and 9.23% abstaining. The minutes of the said meeting have been placed on record at **Annexure 'F'** to the IA at pages 48-51, and the e-voting results are at **Annexure 'G'** to the IA at pages 52-60.
11. Name of Mr. Shyamal Kumar Bhattacharjee, Insolvency Professional bearing Reg. No. IBBI/IPA-003/IP-N00092/2017-2018/10892 was proposed by the RP to the CoC for appointing him

as the Liquidator. The CoC with 90.77% votes has approved the appointment of Mr. Shyamal Kumar Bhattacharjee.

12. Mr. Shyamal Kumar Bhattacharjee [Reg. No. IBBI/IPA-003/IP-N00092/2017-2018/10892], has agreed to act as liquidator to carry on the process of liquidation and given his consent dated 18.07.2020 to act as Liquidator, in the prescribed Form AA, in terms of section 34(1) of the Code.
13. We have considered the submission made by the Applicant/RP in person and perused the record.
14. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 90.77% voting share to liquidate the Corporate Debtor.
15. This Bench, therefore, hereby orders as follows: -
 - a. IA No.1189/KB/2020 filed by Mr Shashi Agarwal, RP of Kampilya Builders Pvt. Ltd., the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
 - b. Mr. Shyamal Kumar Bhattacharjee [Reg. No. IBBI/IPA-003/IP-N00092/2017-2018/10892], is hereby appointed as liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a

professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, *The Financial Express* (English) and *Aajkal* (Bengali) of Kolkata Edition of the said newspapers and in *Morning India* (English) and *Sanmarg* (Hindi) of Patna Edition, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during

the liquidation process by the Liquidator.

- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is been registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
16. The application bearing **IA (IB) No. 1189/KB/2020** shall stand disposed of in accordance with the above directions.
17. **CP (IB) No. 650/KB/2019** to come up for filing of periodical report on **19.04.2021**.
18. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
19. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

11.01.2021

SR (LRA)