

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/75/KOB/2021
in
TIBA/19/KOB/2019
(Under Section 33(2) of IBC, 2016)

Order delivered on **4th June 2021**

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

Applicant:

**CA Jasin Jose FCA
IBBI/IPA-001/IP-P000695/2017-2018/11225
(Resolution Professional)
M/s Atlas Gold Townships (India) Pvt Ltd,
XI/305H, Near Federal Bank,
Opp. Cochin International Airport,
Vappalassery, Nedumbassery,
Angamally 683, Kerala, India.**

In the matter of

South Indian Bank Ltd. : Financial Creditor

Versus

Atlas Gold Townships (India) Pvt Ltd. : Corporate Debtor

Parties/Counsel present (through video conference)

Counsel for the applicant / RP : Shri Jasin Jose, FCA appeared in person

1. This is an Interlocutory Application filed by the Resolution Professional under Section 33(2) of IBC, 2016.
2. The application for Corporate Insolvency Resolution Process filed by South Indian Bank Ltd against M/s Atlas Gold Townships (India) Pvt Ltd under Section 7 of the Insolvency and Bankruptcy Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted by this Tribunal on 19th November 2019 and Shri Manivannan J, IBBI/IPA-002/IP-N00534/2017-18/11695 was appointed as the Interim Resolution Professional.
3. The promoters of the CD approached the Hon'ble High Court of Kerala by filing WP(C) No. 32485 of 2019 challenging the CIRP initiated against the CD wherein the Hon'ble High Court ordered vide order dated 29.11.2019 that the promoters have to approach the Hon'ble NCLAT for further proceedings. Pursuant to that, the promoters approached the Hon'ble NCLAT by filing the Company Appeal (AT) Insolvency No.1509 of 2019, which was dismissed by the NCLAT vide order dated 22.1.2020.
4. Thereafter, public announcement in respect of initiation of CIRP in respect of the Corporate Debtor M/s Atlas Gold Township (India) (P) Limited was made calling for submissions of claims under Section 15 of the Code.
5. First meeting of the Committee of Creditors was held on 9.3.2020 wherein it was unanimously resolved to appoint Mr.Jasin Jose, an Insolvency Professional with Reg. No.IBBI/IPA-001/1P- PO0695/2017-2018/11225 as Resolution Professional as per Section 22(3)(b) of the Insolvency and Bankruptcy Code, 2016 and the

CoC has authorised the lead CoC Member ie., South Indian Bank to file an application before the adjudicating authority for replacement of the IRP by appointing Mr. Jasin Jose. The members representing 100% of the voting rights presented and assented to the appointment of Shri Jasin Jose as RP and the decision on the item was unanimously approved by the CoC.

6. It is worthwhile to mention here that this Tribunal, in respect of the Corporate Insolvency Resolution Process of the Corporate Debtor, has passed the following orders:

- (a) Vide Order dated 30.07.2020 in IA/82/KOB/2020 in TIBA/19/KOB/2019 approved the appointment of Shri Jasin Jose as Resolution Professional of the Corporate Debtor.
- (b) Vide order dated 03.02.2021 in IA/143/KOB/2020 in TIBA/19/KOB/2019 appointed Shri K.T.Mathew as Authorised Representative of the Home Buyers.
- (c) Vide order dated 24.09.2020 in IA/144/KOB/2020 in TIBA/19/KOB/2019 excluded the stay period of 73 days and lock down period of 132 days from Corporate Insolvency Resolution Process and directed the RP to complete the CIR Process on or before 11.12.2020.
- (d) Vide order dated 19.01.2021 in IA/225/KOB/2020 in TIBA/19/KOB/2019 90 days more time was allowed for completing the CIR Process prescribing the due date of CIR Process closure as 11.03.2021.

7. The RP submitted that consequent to the Advertisement published on 15.09.2020 in two newspapers, viz: Indian Express (English) and Deshabhimani (Malayalam), he has received an Expression of Interest from a Resolution Applicant M/s "Celestial Garden Owners Association". The said Resolution

Applicant is the Home buyers of the Atlas Gold Township India Pvt Ltd-the Corporate Debtor (under CIRP) and also Financial Creditors having 3.91% voting right in the COC.

8. Even though another Advertisement was published in Business Standard (English) and Malayala Manorama (Malayalam), no fresh EOI has been received.
9. The Resolution of Claims proposed in the Resolution Plan by M/s. Celestial Garden Owners Association in brief as shown in the Minutes of the Tenth CoC meeting held on 09.03.2021 are as follows:

Particulars	Amount claimed and admitted	Amount proposed in the plan
Payment to CIRP cost	Approx Rs.10.00 lakhs	Approx Rs.10.00 lakhs
Operational Creditor – Dues to Electricity and Commercial Department	Rs. 3.84 lakhs and Rs.48.00 Crores (approx..)	NIL
Secured Financial Creditors	Rs.253.26 crores	Rs.14.00 Crores (3 instalments)
Unsecured Financial Creditors – Home Buyers 52 Nos	Rs.10.30 crores	No cash payment. Settlement proposed is completion and handing over of Flats with additional contribution from the home buyers.

10. Consequently in the 10th CoC meeting held on 09.03.2021, the COC has passed a resolution to liquidate the Corporate Debtor, which reads as follows:

The resolution plan submitted by M/s Celestial Garden Owners Association was placed to the COC since 7th COC meeting. Further to that 3 consecutive COC meeting was held for approval of the resolution plan. Each COC meeting deliberated on the resolution plan and the

resolution applicant tried to revise and resubmit the plan. The CIRP period ends on 11/3/2021. The 10th CoC meeting was held on 09/03/2021 to consider the revised resolution plan. In the 10th CoC 100% of Home buyers having voting right of 3.91% agreed for the agenda item resolution plan submitted by M/s Celestial Garden Owners (Home buyers Association) circulated along with the agenda. COC member South Indian Bank having voting share of 96.09% did not favour (Voted against) the revised resolution plan submitted by the resolution applicant and favoured for liquidation of the company as a going concern.

11. The 10th CoC meeting held on 09.03.2021 has also resolved with 96.09% voting to appoint the existing RP as the liquidator.
12. The consent of the Resolution Professional to accept appointment as the Liquidator for Liquidation of the Corporate Debtor, is on record.
13. Accordingly, the Resolution Professional filed this IA seeking the following reliefs:
 - (a) As a special case, allow RP to conduct one more COC to place the revised resolution plan as per the request submitted by the Resolution Applicant M/s. Celestial Garden Owners Association. **Else**
 - (b) Pass an order to liquidate the company under Section 33(2) of the IBC for the liquidation of the Company.
 - (c) Appoint the existing Resolution Professional as Liquidator of the Corporate Debtor under Section 34.
14. During the hearing of this IA on 21.4.2021, the learned RP submitted that he is withdrawing the prayer (a). Subsequently he has filed a memo on 22.04.2021 requesting the Bench to delete his prayer under Section 60(5)(c) of IBC 2016. He has also confirmed through the memo filed in this IA and also during the hearing on 31.05.2021 that he is not authorised by the CoC to file any application under Section 60(5) of IBC 2016.

15. The CoC in its 10th meeting held on 09.03.2021 has resolved with 96.09% voting to liquidate the Company as a going concern.

16. After hearing the learned Resolution Professional and also thoroughly perusing the whole case records including the Resolution passed by the CoC in the 10th meeting held on 09.03.2021, this Bench observed that the period of CIR Process of 270 days in this case has been completed on 11.03.2021 excluding the stay period of 73 days and lock down period of 132 days. In view of the above, the following order is passed:

ORDER

- (i) The Corporate Debtor M/s. Atlas Gold Townships (India) Pvt Ltd is hereby put under liquidation with immediate effect under Section 33(2) of IBC, 2016.
- (ii) The Resolution Professional CA Mr. Jasin Jose FCA, IBBI/IPA-001/IP-P000695/2017-2018/11225 of M/s Atlas Gold Townships (India) Pvt Ltd, XI/305H, Near Federal Bank, Opp. Cochin International Airport, Vappalassery, Nedumbassery, Angamally 683572, Kerala, India is hereby appointed as Liquidator of the Corporate Debtor.
- (iii) The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

17. **IA(IBC)/75//KOB/2021 in TIBA/19/KOB/2019 stands disposed of as above.**

Dated this the 4th day of June 2021.

Sd/-

Ashok Kumar Borah
Member (Judicial)

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