Sl No. 64

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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.130 of 2020 in
C.P.(IB)No.157/BB/2018
U/s. 33(1)(a) & 34(1) of the IBC, 2016

Mr. Basavaraj Salimath,
Interim Resolution Professional of
M/s. Aditazz Design Technologies Pvt. Ltd.
#92, 1st Cross, 'B' Sector, Amruth Nagar,
Sahakar Nagar Post,
Bangalore – 560 092. - Applicant/Resolution Professional

Date of Order: 18th January, ~~2020~~ 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Mr. Shyam V. Prasad, Adv.

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A.No.130 of 2020 in C.P.(IB)No.157/BB/2018 is filed by Mr. Basavaraj Salimath, Resolution Professional of M/s. Aditazz Design Technologies Private Limited ('the Applicant/Resolution Professional') under Section 33(1)(a) & 34(1) of the IBC, 2016, by inter alia seeking to pass an order under Section 33(1)(a) and 34(1) of the Code for Liquidation of the Corporate Debtor and an order under Section 34(1) of the Code of appointment of Mr. Basavaraj Salimath as Liquidator of the Corporate Debtor, etc.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

    (1) The application for Corporate Insolvency Resolution Process filed by Mr. Rang Emei Gonmei, Sole proprietor of Helix Healthcare Architecture, i.e., the Operational Creditor in the above matter under Section 9 of the IBC, 2016, r/w Rule 6 of the I&B(AAA) Rules, 2016, has been admitted by this

Tribunal, vide its order dated 28th August, 2019 wherein Mr. Basavaraj M Salimath, the undersigned Applicant, was appointed as Interim Resolution Professional, who is directed to take necessary actions in accordance with the relevant provisions of the Insolvency and Bankruptcy Board of India.

(2) The IRP made a public announcement as contemplated under the provisions of Section 15 of the Code and called for claims with proof from all the creditors. The said announcement was published in the English Newspaper namely Financial Express and Kannada Newspaper namely Samyukta Karnataka on 15th September, 2019.

(3) The Applicant in due compliance of the Code, issued notice for convening the first meeting of CoC and accordingly was convened on 5th October, 2019 and inter alia, it was resolved to appoint the IRP as the RP. Meanwhile the Applicant has received claims from three Operational Creditors amounting to, as following:

Sl. No.	**Name of Operational Creditor**	**Claim in (Rs.)**
1.	Mr. Rang Emei Gonmei, Sole Proprietor, Helix Healthcare Architecture	4,64,13,153/-
2.	Mr. Shantanu Poredi, Sole, Propreitor, Mobile Office, Mumbai	3,72,92,672/-
3.	M/s. Daedalus Consulting Pvt. Ltd.	27,68,230/-
	TOTAL	**8,63,84,895/-**

(4) The Applicant issued notice for convening the 2nd meeting of CoC and accordingly was convened on 21st November, 2019. During the course of the 2nd CoC meeting, it was inter alia resolved that:

"instead of Section 248(5), Resolution Professional is hereby authorised to file with NCLT for non co-operation from Mr. Deepak Aatresh, Mr. Sunil Ratnakar Rao, Mr. Jagadeesh Krishna Hemmady and Mr. Sankaran Varadarajan under IBC Code, 19(2), 43 and Section 66"

(5) Further, this Tribunal vide its order dated 29th November, 2019, has confirmed the continuation of the undersigned Mr. Basavaraj M. Salimath as Resolution Professional.

(6) However, since the Applicant has not received all the documents from the Corporate Debtor despite multiple requests, the Applicant is unable to determine the total dues owed by the Corporate Debtor and carry out the CIRP effectively.

(7) The Directors of the Corporate Debtor Mr. Jagdish Krishna Hemmady and Mr. Sankaran Varadarajan had resigned simultaneously on 02nd March, 2018 and no new Director(s) have been appointed. As such, as per the Companies Act, 2013, the Corporate Debtor has become 'Defunct'.

(8) It was observed from the financials of the Corporate Debtor for the years ended March, 2016-17 that the Authorised, Issued and Subscribed share capital of the Corporate Debtor is Rs.1,00,000/- for March, 2016 and was increased to 2,50,000/- for March, 2017. That increased share capital of Rs.1,50,000/- comprising of 15,000 shares of Corporate Debtor has been subscribed by Aditazz Inc., of which Mr. Deepak Aatresh is a promoter. By virtue of subscribing to 15,000 shares, Aditazz Inc. has become the major shareholder with 60% voting share, while Mr. Jagdeesh Krishna Hemmady remained at 40% shareholding.

(9) The undersigned Applicant contacted Mr. Deepak Aatresh via email on 16th November, 2019 expressing his concern regarding non-cooperation in furthering CIRP and that the same are in violation of the provisions of the Insolvency and Bankruptcy Code, 2016 and requested him to arrange for the quick books and data backup. The Corporate Debtor has since submitted only the back-up data and no other administrative files/papers/back-up, etc.

(10) The undersigned Applicant was asked by the aforesaid Mr. Deepak Aatresh to contact one Mr. Ankur Kumar who claims to have no role to play in the Corporate Debtor either as an employee or authorized person or in any other capacity. However, the undersigned contacted the said Mr. Ankur Kumar. But however, he has handed over certain documents like FIRC, Minutes of Meeting and few of the Resignation/Termination letters,

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although, the said set of documents are incomplete. The Applicant has sent emails to Mr. Ankur Kumar on 16th September, 2019, 4th October, 2019, 16th October, 2019, 19th October, 2019, 22nd October, 2019 and 16th November, 2019 apart from nay whatsapp messages (based on the information received from Mr. Sunil Ratnakar Rao, that Mr. Ankur Kumar has taken all the records of the Company of Corporate Debtor and the Audited Financials for the years ending March, 2018 and March, 2019 and additionally as on August, 2019, but no documents has been submitted by him.

(11) The Undersigned Applicant sent an email to on 16th November, 2019 expressing his concern regarding non-cooperation in furthering CIRP and that the same are in violation of the provisions of the IBC, 2016 and requested him to arrange for the quick books and data backup. The respondent has since submitted back up data and no other administrative files/papers/back up etc.

(12) From the financials filed by the Corporate Debtor, the undersigned has observed that Mr. Sunil Ratnakar Rao is the Statutory Auditory of the Corporate Debtor for the years ending March, 2016 and March, 2017. He is the Authorized Signatory of the current account of the Corporate Debtor maintained with HDFC Bank, Koramangala Branch, Bengaluru as confirmed by the Bank vide its letter dated 04th November, 2019. The Minutes of Meeting dated 19th January, 2015 at Point No.11 that it was resolved that Mr. Rao is the sole signatory to HDFC Bank Current Account and also to operate through Net Banking and at Point No.12 that Mr. Rao has been appointed as the Statutory Auditor. It is also appears from the Minutes of Meeting dated 4th September, 2017 that Mr. Rao has been resolved to be reappointed as the Statutory Auditor till conclusion of the next Annual General Meeting. Hence the undersigned has also appointed Mr. Rao on various occasions to provide necessary documents pertaining to Corporate Debtor in order to conduct the CIRP, but too of no effect. The undersigned Applicant has also contacted the erstwhile Directors for submission of documents for conducting CIRP, but too of no avail.

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(13) The undersigned has made multiple diligent attempts to gain access to key documents and books of accounts of the Corporate Debtor, but all attempts have gone in vain due to non-cooperation by the key personnel of the Corporate Debtor. The acts of the key personnel of the Corporate Debtor have become a hurdle to the undersigned Applicant in conducting the CIRP and certain illegalities were found with regard to the operation of the Corporate Debtor. Hence, being left with no other option, the undersigned, on 30th December, 2019, filed two interlocutory application under Sec. 19(2) of the Code in IA No.11 of 2020 and Sections 43, 49 and 66 of the Code in I.A No.15 of 2020 respectively. Since, new facts came to light, I.A No.15 of 2020 was withdrawn and another interlocutory application under Sections 43, 49 and 66 of the Code in I.A No.91 of 2020 came to be filed on 5th February, 2020 and notice to the proposed respondents is ordered. The two Applications are pending adjudication. The two applications may be read as part and parcel of this application and the contents thereof are not repeated herein for the sake of brevity.

(14) The undersigned has obtained financials of the Corporate Debtor from the MCA. It is observed from the last available financials that the Corporate Debtor has filed its last Balance Sheet in March, 2017 and no filings have been made since then. The undersigned has made various attempts to contact Mr. Sunil Ratnakar Rao, the Statutory Auditor of the Corporate Debtor to provide/arrange for the books of accounts of the Company at the earliest to enable to finalize the financials for the period ending March, 2018 and March, 2019 and further up to 28th August, 2019 but too of no avail. The last available financials and the Bank Statements that the Corporate Debtor does not have any fixed assets and the movable assets such as computer and furniture, etc., has been sold in August, 2018. It is also observed that the Corporate Debtor does not have any business activities since August, 2018.

(15) Further, the Corporate Debtor has entered into various agreements with Indian Institute for Human Settlement, Tata Education and Research Trust, Sir Dorabji Taata Trust, Sir Ratan Tata Trust, Saket City Hospital and Manipal Health Enterprises Pvt. Ltd for an aggregate value of over

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Rupees Eleven Crores out of which the Corporate Debtor has only received around Rupees Five Crores collectively. Thus, the undersigned issued letters to them dated 16th October, 2019 requesting them to send the details of the Agreement entered into by them with the Corporate Debtor, to which most did not respond. However, Indian Institute for Human Settlement responded on 4th December 2019 that the Consulting Agreement dated 13th September, 2017 has been terminated by Mr. Ankur Kumar on behalf of the Corporate Debtor by issuing a termination letter dated 25th October, 2018 whereby it was stated that the remaining work will be completed by Abhiyukti Design Consulting India Pvt. Ltd, which Company has been incorporated by the erstwhile employees/co-founder of the Corporate Debtor in the same address as the Corporate Debtor. However there are no documents to establish as to why the said work has been handed over to Abhiyukti design Consulting India Pvt. Ltd. and no completed by the Corporate Debtor. The agreements entered into by the Corporate Debtor with Indian Institute for Human Settlement and Saket City Hospital have been foreclosed with mutual consent. Hence, there are no receivables from Indian Institute for Human Settlement and Saket City Hospital.

(16) For the undersigned to prepare Information Memorandum to call for Expression of Interest, it was pertinent for the Balance Sheet for March, 2018, March, 2019 and up to 28th August, 2019 to be perused or prepared. In the above case, Balance sheet for the said period could not be prepared since despite multiple requests, the Corporate Debtor has failed to provide necessary information, inputs and documents such as invoices, payments made, vouchers, Income Tax payments, GST Payment, other Statutory Payments, details of staff employed salaries of employees, details of debtors and creditors, status or progress of the agreements, etc. Since the same was not made available to the undersigned despite multiple requests, the undersigned was unable to prepare Information Memorandum and thus consequently, was unable to call for Expression of Interest.

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(17) The undersigned once again begs to submit at the cost of repetition that there has been no cooperation from the promoter, erstwhile directors, statutory auditor or anybody concerned with the management of the Corporate Debtor in providing any information or documents, despite continuous follow up, making it impossible for the undersigned to carry out CIRP as per the prescribed timelines. The said submissions and findings of the undersigned is based on the account statements alone and the amounts and averments are subject to variation upon scrutiny of all the other documents of the Corporate Debtor.

(18) Since the statutory period of 180 days was going to end on 25th February, 2020 to complete CIRP, the undersigned issued notice dated 13th February, 2020 for convening the 3rd meeting of the CoC and accordingly the same was convened on 17th February, 2020. During the 3rd CoC meeting, the undersigned Applicant discussed the status of the CIRP and proposed the CoC to consider grating an extension of time period for the CIRP for a further period of 90 days. However, the CoC were of the opinion that, in the current situation, and pending adjudication of I.A No.11 of 2020 and I.A No.91 of 2020, the resolution is possible through recovery only. Hence the CoC did not approve the extension as it warrants further cost towards the CIRP process and resolved that:

> *"the committee of creditors did not approve the extension period and advised the Chairman to file an application to the National Company Law Tribunal for orders that the Honourable Bench deems fit".*

(19) For the reasons above no resolution plan could be submitted in compliance with Section 30(6) of the IBC, 2016 and since the CoC has not allowed for extension of time period for the CIRP for a further period of 90 days and since the statutory period of CIRP has expired on 25th February, 2020, and in view of the aforesaid facts and circumstances the Corporate Debtor has to be liquidated due to efflux of time. Thus, the Applicant herein prefers this Application before this Tribunal in terms of Section 33(1) and 34(1) of the IBC, 2016.

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3. Heard Mr. Shyam V. Prasad, learned Counsel for the Resolution Professional. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the Rules made thereunder.

4. The Applicant has filed a copy of Minutes of the 3rd Meeting of the CoC held on 17.02.2020. In the CoC the status of the CIRP was discussed for the consideration of further time period of 90 days. However, the CoC were of the opinion that, the pending I.A Nos. 11 & 91 of 2020, the resolution is possible through recovery only. Hence the CoC did not approve the extension of time for the period of 90 days and left the matter to the Tribunal for orders as deems fit. Accordingly, the CoC passed the resolution as mentioned supra. Since the statutory period of CIRP has expired on 25th February, 2020 and in view of the aforesaid facts and circumstances the Corporate Debtor has to be liquidated due to efflux of time.

5. As stated in the I.A the claims received are verified and admitted as on date based on the available records of the Corporate Debtor and shall be subject to change upon receiving further evidence/and after completion of audit of the accounts of the Corporate Debtor. The Applicant has received claims from three Operational Creditors first amounting to Rs. 4,64,13,153/- from Mr. Rang Emei Gonmei, the Sole Proprietor, Helix HealthCare Architecture second amounting to Rs. 3,72,92,672/- from Mr. Shantanu Poredi, Sole Propreitor, Mobile Office, Mumbai and third amounting to Rs.27,68,230/- from M/s. Daedlus Consulting Pvt. Ltd. The last available financials and the Bank Statements that the Corporate Debtor does not have any fixed assets and the movable assets such as computer and furniture, etc., has been sold in August, 2018. It is also observed that the Corporate Debtor does not have any business activities since August, 2018. Under these circumstances, as mentioned in the Petition, we are of the considered view that this is a fit case for liquidation.

6. The CoC in the 3rd meeting of Corporate Debtor held on 17th February, 2020, the CoC did not approve the extension of Corporate Insolvency Resolution Process by further 90 days and resolved that, the Resolution Professional can file an application to the NCLT for orders as deems fit. He has filed his written consent to act as Liquidator of the Corporate Debtor i.e., M/s. Aditazz Design

Technologies Private Limited vide affidavit dated 18.12.2020, under Regulation 3(1) of the IBBI (Liquidation Process) Regulations, 2016, by inter alia declaring that there are no disciplinary proceedings is pending against him with IBBI or ICSI Institute of Insolvency Professionals; he is eligible to be appointed as resolution professional of the Corporate Debtor under regulation 3 and other applicable provisions of the Code and Regulations etc. Hence, he is provisionally eligible to be appointed as Liquidator.

7. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising its powers conferred under Section 33(1), 33(2) & 34(1) of the IBC, 2016, disposes of I.A.No.130/2020 in C.P.(IB)No.157/BB/2018 with following directions:

   a) It is hereby ordered that M/s. Aditazz Design Technologies Private Limited, Corporate Debtor be liquidated in the manner as laid down in Chapter III of Part II of Code, R/w IBBI (Liquidation process) Regulations, 2016.

   b) Mr. Basavaraj Salimath (Registration number IBBI/IPA-002/IP-N00800/2019-20/12692) is hereby appointed as a Liquidator, subject to the terms and conditions to be agreed upon by the parties in the light of extant provisions of the IBBI. He is directed to follow the due process of law as per above Chapter and related Regulations, and to issue public announcement immediately by stating that the Corporate Debtor is in Liquidation.

   c) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action and also to the Liquidator.

   d) The Liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder by the IBBI from time to time and is also directed to take expeditious steps to complete the liquidation process in the light of various orders.

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e) The Liquidator is further directed to make best efforts to revive the Corporate Debtor during Liquidation process, as a going concern.

f) Post the case for report of Liquidator on **17.02.2021**.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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