

NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH

CORAM: SHRI P. MOHAN RAJ, HON'BLE MEMBER (JUDICIAL)
SHRI SATYA RANJAN PRASAD, HON'BLE MEMBER (TECHNICAL)

PETITION No./IA No.	IA(IBC)/199/KOB/2023 in IBA/11/KOB/2020
SECTION	SEC 60 (5) IBC R/W NCLT RULE 32, 11
NAME OF PARTIES	MIR GREENS OWNERS ASSOCIATION V/S P T JOY (RP) OF MIR REALTORS PVT LTD & ANOTHER.
PETITIONERS ADVOCATE/ PROFESSIONAL	ARTIS LAW HOUSE.
RESPONDENTS ADVOCATE/ PROFESSIONAL	-

Office
Notes

Video Conference

21 June 2023

O R D E R

IA 229/KOB/2023 in IBA/11/KOB/2020:

1. Ld. Counsel Mr. Sankar. P. Panicker appears on behalf of the applicant. Ld. RP Mr. P. T. Joy is also present in person. This is an application filed under Rules 11, 14, 15 and 32 of the NCLT Rules, 2016 by the Resolution Professional of the Corporate Debtor MIR Realtors Pvt. Ltd for direction to the applicant to convene a meeting of the Committee of Creditors to apprise the developments happened after 17.04.2023 and to inform about the application for the liquidation of the company to be filed as per Section 33(1) (a) of the IBC, 2016.
2. The applicant was appointed as Resolution Professional of the Corporate Debtor by this Adjudicating Authority by order dated 11.03.2022. The extended period of CIRP has expired on 24.04.2023. It is referred in the application that on 17th

CoC meeting held on 17.04.2023, a Resolution Plan was approved by the CoC in pursuance of that he has filed an application before this Adjudicating Authority vide filing No. 314117/00312/2023 dated 24.04.2023, for an approval of plan. The said application was returned by the Registry after noting that performance bank guarantee of Successful Resolution Applicant is not filed. The said returned application is not at all taken back by the applicant, the same is still lies with Registry.

3. On the applicant side it is submitted that defects cannot be cured by the applicant because the Successful Resolution Applicant has not submitted performance bank guarantee within the time granted on or before 02. 05.2023. It is further noted that the Successful Resolution Applicant has requested time extension till 12.05.2023, but he has not submitted performance bank guarantee till this day.
4. The grievance of the applicant is that even though resolution plan was approved by the CoC on 17.04.2023 even before the completion of extended CIRP period of 24.04.2023, the applicant could not proceed with the approved plan because of non-submission of performance bank guarantee by the successful Resolution applicant. Hence, he wants to convene meeting to apprise the CoC members and to file necessary application for liquidation.
5. From the records, it is made clear that the CIRP period already expired on 24.04.2023 and till date no application has been filed to extend the CIRP period. Without extending the CIRP period the prayer made in this application to convene the meeting of the CoC cannot be considered. Further, it is obvious from

the submission made by the applicant counsel, the applicant ceased as RP on expiry of extended period of CIRP on 24.04.2023. Further, the CoC approved Resolution Plan could not be re-presented because of non-compliance of one of the major conditions of furnishing performance bank guarantee. It shows that the applicant failed to examine the financial position of the Successful Resolution Applicant as provided under Section 30(2) of IBC and made himself as cause for the failure to proceed with the resolution plan approved by the CoC.

6. This application is filed seeking direction to convene CoC meeting only to apprise the CoC members and to file the application for liquidation under Section 33(1) (a) of IBC, 2016. As already stated, in the absence of any prayer for extension of CIRP period, no direction to conduct the meeting can be granted. In this matter CIRP was ordered on 16.11.2021. Extension of CIRP period was granted on 27.06.2022 and further extension of CIRP period was granted on 13.09.2022 and further extension of CIRP period was granted on 01.02.2023. Further, presently almost 56 days' time expired from the expiry of extended CIRP period from 25.04.2023. Further, as per Section 33(1) (a) no application is necessary to pass an order of liquidation, on expiry of resolution process period or on expiry of the extended maximum period of resolution period. In this case even though the applicant has submitted the resolution plan with defect, the same is not valid presentation. For the reason discussed above this application is Dismissed.

IBA/11/KOB/2020:

In consequence of Dismissal of IA No. 229/KOB/2023, and expiry of extended period of CIRP with 24.04.2023 and non-submission of any valid Resolution Plan in view of Section 33(1) (a) of IBC, 2016, it is ordered as follows.

In the result the, MIR Realtors Private Limited, corporate debtor is ordered to be liquidated.

The Resolution Professional made himself not eligible to appoint as liquidator because he had filed defective Resolution Plan. Hence, in view of Section 34(4) (a), we are inclined to replace the Resolution Professional and appoint Mrs. Annie Abraham, with Registration No. IBBI/IPA-001/IP-P-02405/2021-2022/13758, having her office at- Ann Villa, Fathima Church Lane, Elamkulam, Kadavanthra P. O. ,Ernakulam,Kerala ,682020 (abrahamannies@gmail.com) as Liquidator from the panel of the Liquidator for the period 01.01.2023 to 30.06.2023 circulated by the IBBI Office.

The Liquidator herein appointed Mrs. Annie Abraham is required to file her consent as required under Section 34(1) of IBC 2016, within three days of receipt of this Order. Then, she can carry out the liquidation order forthwith.

1. The Liquidator is directed to forthwith take into his custody all the assets, Properties, and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

2. 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.
3. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.
4. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.
5. 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 a 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.
6. 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 work men of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.

7. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kerala at Ernakulam, within whose jurisdiction the Corporate Debtor is registered.
8. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulation 2016.
9. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel and the proposed Liquidator for information and for taking necessary steps,
11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd /-

**Satya Ranjan Prasad
Member (Technical)**

Sd /-

**P. Mohan Raj
Member (Judicial)**

IA 199/KOB/2023:

Ld. Counsel Mr. Bijoy Pulipra appears on behalf of the applicant. The prayer made in this application to provide an opportunity to hear the applicant before the approval of Resolution Plan become infructuous in view of liquidation order passed against the Corporate Debtor. In the result, this application is Dismissed as infructuous.

Sd /-

**Satya Ranjan Prasad
Member (Technical)**

Sd /-

**P. Mohan Raj
Member (Judicial)**