

IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

IA-960/PB/2022

In

C.P. No. IB-354(PB)/2021

*Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for
liquidation of the corporate debtor*

IN THE MATTER OF

Manish Kumar & Another

.... Petitioner/Financial Creditor

VERSUS

M/s Drishti India Limited

.... Respondent/Corporate Debtor

IN THE MATTER OF

Prinyanka Chouhan, Resolution Professional
M/s Drishti India Limited

.....Applicant / RP

Order Pronounced on: 04.08.2022

**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Ashish Bhagat, Mr. Ritik Malik, Mr. Akhil Suri. Advs. with Mr. Rahul Gupta, Director of SHPL for applicant in IA-1447/2022 and for respondent in IA-802/2022
For the Respondent : Mr. Gautam Barnwal. Adv.
For the RP : Ms. Priyanka Chouhan, Adv.
For the Financial Creditor : Mr. Rakesh Kumar, Adv.

Aks

ORDER

PER- SH. AVINASH KUMAR SRIVASTAVA HON'BLE MEMBER (T)

1. This is an application filed by Ms. Priyanka Chauhan Resolution Professional of M/s Drishti India Limited under Section 33(2) read with Section 33(1)(b)(i),(ii),(iii) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules 2016 for seeking direction for liquidation of the Corporate Debtor, M/s Drishti India Limited.
2. Facts in brief are, the Financial Creditor i.e. Manish Kumar & Another had filed an application under Section 7 of the Code bearing no. IB-354(PB)/2021 for initiation of CIRP against the Corporate Debtor. The said petition was admitted by this Tribunal on 01.11.2021 and Ms. Priyanka Chauhan/Applicant herein was appointed as the IRP and thereafter confirmed as Resolution Professional on 14.02.2022 based on the recommendation of the CoC.
3. The Applicant/ Resolution Professional made a public announcement in Business Standard (Hindi & English) on

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04.11.2021 for invitation of claims with last of receipt of claim as 17.11.2021 and also uploaded the same on the IBBI website on 08.11.2021.

- 4.** The Applicant also dispatched the intimation letters to various regulatory authorities like ROC, GST authority, Income Tax, ESI, PF, Municipal Corporation of Faridabad (MCF), Haryana Shehri Vikas Pradhikaran (HSVP) etc. regarding initiation of CIRP against the Corporate Debtor. Applicant also visited premises of Corporate Debtor for taking over the charge and following up with the Suspended Directors of Corporate Debtor to provide necessary information.
- 5.** One parcel of land situated at Lakkarpur, distt. Faridabad, Haryana, having a total area of 10 acres, bearing Khewat No. 289, Khatoni No. 329, is also registered in the name of Corporate Debtor vide allotment letter dated 28.10.1994 by the Municipal Corporation of Faridabad. The said land is lying under the possession of a developer i.e. Saj Housing Private Limited (SHPL) since 2012 vide a development agreement executed between the Corporate Debtor and the developer on 29.05.2012. However, the sole ownership of the land is still

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lying with the Corporate Debtor. The applicant wrote mail dated 09.11.2021 to SHPL and its two directors to hand over the vacant custody of the possession of the said land to the RP.

6. Till 17.11.2021, the IRP received only one claim from a financial creditor namely Mrs. Renu Meena (Applicant No. 2 in the main CP No. IB-354(PB)/2021). Based upon the claims received by the IRP till 17.11.2021, the CoC was constituted and meanwhile an Interim-stay was imposed on the CIRP of the Corporate Debtor by the Hon'ble NCLAT vide order dated 25.11.2021 and continued till 20.01.2022 and the same is extracted below:

ORDER

“25.11.2021: Learned Counsel for the Appellant submits that he accepts that Respondent Nos 1 and 2 had given the amount of Rs. 1.90 Crore and he is ready to return their amount with reasonable interest. To show his bonafide let the Appellant deposit an amount of Rs. 3 Crores by way of Demand Draft of a Nationalized Bank before the concerned Adjudicating Authority within one month. After deposit of the amount, let an Affidavit along with the photocopy of the demand draft be placed before this Tribunal

2. List the Appeal on 10.01.2022.

In the meantime, no further proceedings shall take place in pursuance of the impugned order’

ORDER

20.01.2022: *Learned Counsel for the Respondent prays for one week time to file Reply-Affidavit.*

Reply-Affidavit may be filed within one week. Rejoinder, if any, may be filed within one week, thereafter.

2. The Appellant having not deposited and complied the Order dated 25th November, 2021, the Interim Order granted on 25th November, 2021 shall not continue. It is also made clear that Appeal shall be heard finally and decided on next date.

List this Appeal 'For Hearing' on 07th February, 2022."

- 7.** Thereafter the IRP called the first meeting of the CoC on 25.01.2022 and the second meeting of CoC on 15.02.2022. The Resolution Professional prepared the Information Memorandum of the Corporate Debtor based upon the information available to her and shared the same with the CoC members.
- 8.** The third meeting of CoC was convened on 19.02.2022. Following were the main agendas discussed during 3rd meeting of CoC. (Para 14 of Page 12) and minutes of the 3rd CoC meeting are placed as Annexure 13 (Pages 115-125) of the application.

"Agenda Item No. 3 To discuss and approve the liquidation of the corporate debtor in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and to approve

filing of liquidation application under section 33 of Insolvency and Bankruptcy Code, 2016

It is submitted that the Corporate Debtor has only one major asset i.e Freehold Land of about 10 acres at Sector 39, Village Lakkarpur, Faridabad. Presently, there are no operations of the company and there have been no operations for at least last 4 years (the RP has the financial statements since FY 2018). Also, from the financial statements it appears that the Corporate Debtor does not have any employee. Further, from the available records, it appears that company entered into a development agreement with SAJ Housing Pvt. Ltd. in 2012 (the Developer) and no development has taken place since then on any application of the Corporate Debtor /Developer to convert the land for group housing. The CoC was of the view that considering these circumstances, it is not feasible to keep the Corporate Debtor as going concern and also there is no possibility for Resolution Plans in the present matter. The CoC suggested to file an application for liquidation of the Corporate Debtor before this Hon'ble Tribunal and approved the said agenda by 100% voting in the meeting itself.”

9. The CoC also resolved to appoint Ms. Priyanka Chauhan to act as the Liquidator in the liquidation process of the Corporate

Debtor at monthly fee of Rs. 2,50,000/- including GST (exclusive of OPEs). The CoC also discussed the estimated liquidation cost of the Corporate Debtor.

10. We have perused the application and submission of the parties in the matter and heard their oral arguments.

11. For the reasons stated in the application IA-960/2022 and based on the CoC recommendation, the application is allowed by ordering liquidation of the Corporate Debtor with the following directions:

- a.** That Ms. Priyanka Chauhan, Applicant/RP shall be the Liquidator.
- b.** Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- c.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d.** This order shall be deemed to be notice of discharge to all the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

- e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The Liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps;

I.A. 960/2022 filed in IB-354(PB)/2021 **is allowed & disposed** of in the aforesaid terms.

Interlocutory Application No. 802/2022

1. This is an application filed by the Resolution Professional for direction to the Respondent SHPL and its two Directors Mr. Rahul Gupta and Mr. Urvi Gupta alongwith Station House

Officer, PS of Suraj Kund with the prayer to direct the respondent to hand over the possession, control and custody of the land of the Corporate Debtor situated at Lakkarpur, distt. Faridabad, Haryana, having a total area of 10 acres, bearing Khewat No. 289, Khatoni No. 329.

- 2.** The Resolution Professional / Applicant has submitted that as per Section 18(f) of the Code, it is her duty to take control and custody of any assets over which the corporate debtor has ownership rights.
- 3.** The Respondent No. 1 Saj Housing Private Limited (SHPL) is the company, who is in the possession of the land/assets of the Corporate Debtor. The representative of IRP visited the registered office of the Corporate Debtor and gave him a letter dated 05.11.2021, regarding intimation of the CIRP against the Corporate Debtor.
- 4.** It was brought to the knowledge of the applicant that the parcel of the Land situated at Lakkarpur, distt. Faridabad, Haryana, having a total area of 10 acres, bearing Khewat No. 289, Khatoni No. 329 is registered in the name of the Corporate Debtor vide letter of Allotment dated 28.10.1994

issued by the Municipal Corporation of Faridabad (MCF). The possession of the said land was handed over to the Corporate Debtor by MCF on 23.04.2009 after making the said land free from encroachment and after execution of the conveyance deed.

5. On 29.05.2012, the Corporate Debtor entered into a development agreement with one Developer i.e. Saj Housing Private Limited (SHPL) wherein the possession of the said land was given to the said developer for development of a housing society. However, the ownership of the said land remained with the Corporate Debtor.
6. The Applicant wrote a mail dated 09.11.2021 to the Respondent No. 1 to 3 to handover the vacant custody / possession of the said land to the Resolution Professional. No response was received from the respondents and when the team of the Resolution Professional went to the site to take the control of the custody of the land, they were denied by the security guards of the respondent to enter the premise.
7. The applicant also filed an online complaint dated 11.11.2021 with SHO, Surajkund apprising him of the matter and

requesting him to provide police assistance, as the official of concerned Police Station denied to accept the copy of the complaint by stating that there is no order/directions to the Police Department to provide assistance in such matter.

- 8.** The respondents have filed reply to the application stating that they paid Rs. 10,00,00,000 (Rupees Ten Crore only) to the Corporate Debtor in 2011 as investment for developing the said land into a group housing society and also entered into development agreement with the Corporate Debtor as per which the SHPL would have 56% share of the built up area of the project.
- 9.** The respondent suffered enormous expenditure since 2012 to apply for all sanctions for change of land use and it was only in June 2019 that NOC was granted by the concerned department.
- 10.** The land situated in Faridabad is rightfully in possession of the Respondent who have 56% ownership rights in terms of the Development Agreement dated 29.05.2012. Left with no alternative, the respondent filed their claim, on behalf of SHPL being the Operational Creditor before the learned Resolution

Professional, for an amount of Rs. 148,33,59,926 (Rupees One Hundred Forty Eight Crore Thirty Three Lakhs Fifty Nine Thousand Nine Hundred Twenty Six only). However, vide email dated 28.02.2022, the learned Resolution Professional has rejected the claim. The respondent have a substantial claim against the Corporate Debtor and if possession of the land is given to the Resolution Professional, grave prejudice would be caused to the Respondent.

11. We have perused the application and submission of the parties in the matter.
12. Section 18(1)(f) of the Insolvency & Bankruptcy Code reads as follows:

“18(1) The interim resolution professional shall perform the following duties, namely:—

*(f) **take control and custody of any asset over which the corporate debtor has ownership rights** as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—“*

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

*(ii) **assets that may or may not be in possession of the corporate debtor;***

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;”

13. Further, Section 35(1)(b) of the Insolvency & Bankruptcy Code reads as follows:

*“35 (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely :—
(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;”*

14. In view of the above, the Respondent SHPL alongwith directors namely Mr. Rahul Gupta and Mr. Urvi Gupta are directed to handover the possession, control and custody of land of the Corporate Debtor situated at Lakkarpur, distt. Faridabad, Haryana, having a total area of 10 acres, bearing Khewat No. 289, Khatoni No. 329, to the applicant.

15. The Commissioner of Police, Faridabad is directed to assist the Resolution Professional/Liquidator in taking the possession, control and custody of land of the Corporate Debtor situated at Lakkarpur, distt. Faridabad, Haryana, having a total area of 10 acres, bearing Khewat No. 289, Khatoni No. 329 and also assist the Resolution Professional/Liquidator in securing the moveable/immovable assets of the Corporate Debtor.

IA-802/2022 **is allowed and disposed** in the above said terms.

Interlocutory Application No. 1447/2022

- 1.** This is an application filed by the Saj Housing Private Limited (SHPL) under Section 60(5) of the IBC, 2016 against rejection of their claim by the Resolution Professional and with the request to direct the RP to entertain the Claim.
- 2.** It is stated by the applicant that they have paid an amount of Rs. 10,00,00,000/- (Rupees Ten Crores only) to the Corporate Debtor as investment for obtaining share in the built up area of the project land at Lakkarpur, distt. Faridabad, Haryana, having a total area of 10 acres, bearing Khewat No. 289, Khatoni No. 329 in the extent of 56%. The applicant has suffered huge losses on account of loss of profit and growth pertaining to the said land and also suffered enormous expenditure to secure Government approvals for change in land use.
- 3.** The Applicant filed their claim being the Operational Creditor before the learned Resolution Professional, for an amount of Rs. 148,33,59,926 (Rupees One Hundred Forty Eight Crore Thirty Three Lakhs Fifty Nine Thousand Nine Hundred Twenty Six only) vide email dated 28.02.2022, however, Ld. Resolution

Professional rejected the claim of the applicant stating that the last date of submission of claim was 17.11.2021. Further as per Regulation 12(2), if a creditor fails to submit its claim in stipulated time, he can do so within 90 days from the insolvency commencement date. However, SHPL has submitted its claim after 90 days from the date of initiation of CIRP of the Corporate Debtor, which is time barred. The applicant has submitted that it was only in Feb 2022 when the concerned persons were sent by the IRP to the land situated at Faridabad, wherein for the 1st time it came to the applicant's knowledge that the Corporate Debtor was under the Insolvency Process. After looking through the emails, the applicant realized that the emails sent by the Resolution Professional were in the spam folder.

4. Once it came to its knowledge that the CIRP against the Corporate Debtor has been initiated, it immediately approached the Resolution Professional vide email dated 25.02.2022.
5. It is further submitted that since the period from 25.11.2021 to 20.01.2022 (57 days) when the matter was pending before Hon'ble NCLAT, has been excluded by the Hon'ble NCLT for the

CIRP, the benefit of the same should be extended to the applicant.

6. The Resolution Professional has filed its reply to the application stated that the applicant is having wrongful possession over the land belonging to the Corporate Debtor and he has not handed over possession of the said land to the Resolution Professional.
7. The Resolution Professional had made public announcement on 04.11.2021 in Business Standard (Hind & English) and had written a mail dated 09.11.2021 to the applicant informing him of the initiation of CIRP and asking him to handover the vacant custody / possession of the said land.
8. Further, the Resolution Professional sent an email dated 17.11.2021 asking the SHPL to file their claim before the IRP, if any, and also informing him about the public announcement in the newspaper. The SHPL has filed a claim though belated.
9. Copies of both the emails are attached as Annexure 7 (pages 75 to 78) of the reply of the Resolution Professional in IA-1447/2022. Copy of the public announcement dated 04.11.2021 are also attached as Annexure 2 (Pages 40-41). The

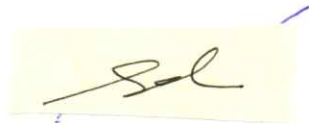
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issue of possession becomes academic as we have allowed IA-802/2022.

10. We have perused the application and submission of the parties in the matter and heard their oral arguments. We have in IA-960/2022 ordered liquidation and the procedure for implementing the liquidation order will follow; As a result this applicant will have the opportunity to make his claim before the liquidator. The relief sought during CIRP period does not survive any longer.

The liquidator will therefore invite claims afresh as per Section 35(1)(j). The applicant will also have an opportunity to file its claim before the Liquidator; he is permitted to do.

Accordingly, **IA-1447/2022 is disposed off.**



**RAMALINGAM SUDHAKAR
(PRESIDENT)**



**AVINASH KUMAR SRIVASTAVA
MEMBER (TECHNICAL)**