

THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KOCHI

IA(IBA)/87/KOB/2021

In

IBA/23/KOB/19

(Under Section 33(1(a)) of IBC, 2016)

Order delivered on 25.11.2021

**Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Anil Kumar B., Member (Technical)**

Applicants/Intervenors

Shri Vinod Padinhare Veetil,
Resolution Professional of
Dewa Projects Pvt Ltd
66-1058, First Floor,
Veekshanam Road,
Ernakulam 682 018.

Vs.

Impleaded Respondent (Vide order dated 27.10.2021)

Union Bank of India,
(Leader of the Consortium of lenders of Dewa Projects Pvt Ltd.),
Union Bank Bhawan,
Opposite Shenoy's Theatre,
MG Road, Ernakulam 682 035
Represented by its Assistant General Manager Mr. Balakrishna A Bhat

In the matter of

Rita Venugopal & another] Financial Creditor
Vs.
Dewa Projects Pvt Ltd] Corporate Debtor

Parties/Counsels Present:

For Applicants : RP Shri Vinod PV appeared in person
For Respondent : Shri Nidhi Sam John, Advocate

Per: Ashok Kumar Borah, Member (J)

1. This order has arisen out of the IA filed under Section 33(1)(a) of IBC, 2016 by the Resolution Professional for liquidation of the Corporate Debtor Dewa Projects Pvt Ltd.
2. This Tribunal vide order dated 13.09.2019 admitted the IBA/23/KOB/2019 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 and appointed the Applicant as the Interim Resolution Professional and later the Committee of Creditors confirmed the IRP as Resolution Professional (RP).
3. The Resolution Professional submitted that he invited expression of interest on 21.12.2019 through advertisement, however there was no response to the said advertisement. Accordingly, further revised Expression of Interest through advertisement was given in newspapers. Further to the publication of revised EOI, the Resolution Professional has contacted various real estate developers, who were holding adjacent lands to the Project of the Corporate Debtor. In response to the advertisement, Lulu Infra Build Pvt Ltd expressed their interest to submit Resolution Plan on 12.2.2020. Accordingly, the Resolution Professional has issued request for resolution plan to Lulu Infra Build Pvt Ltd on 28.2.2020. Thereafter, M/s. Lulu Infrabuild Private Limited submitted a Resolution Plan with a Resolution Amount of Rs.110 Crore which was much below the liquidation value of Rs.140.25 Crore and the Resolution Plan and that it was also complex as it was proposing a merger of the

Corporate Debtor with its subsidiary and extinguishment shares of the subsidiary. The members of Committee of Creditors (CoC) sought time to take their internal approvals as in view of lock down they were not in a position to take immediate decision in the Plan and instructed the RP to seek the indulgence of this Tribunal for extension of time.

4. Based on further negotiation done by the CoC, the Resolution Applicant M/s. Lulu Infrabuild Private Limited enhanced the value by another 2.60 Crore, however reserving their right to use Rs.2 Core to meet any contingency expenses which arises during the implementation of the plan. The members of the CoC discussed the Plan in various meetings, however they could not reach a consensus on the approval of the Plan including distribution of money among Financial Creditors and Home Buyers. On 17.03.2021, the Resolution Applicant M/s. Lulu Infrabuild Private Limited again revised the Resolution Plan and enhanced the Resolution Amount from Rs.112.60 Crore to Rs. 113.35 Crore. This plan proposed 88 Crore to FC and principal dues to the Home Buyers. In order to review of the Plan, the CoC instructed RP to seek the indulgence of this Tribunal for a further extension of time.
5. The COC deliberated the Plan in various meetings regarding the distribution among home buyers and Financial Creditors. However, in the 16th meeting of the CoC held on 16.03.2021, members with 74.46% voting rejected the Resolution Plan. In the meantime, RP convened the 17th meeting of CoC on 05.04.2021 to decide on the agenda on item on Liquidation Cost,

sale of the company as a going concern, appointment of liquidator as required under Regulation 39(B), 39(C) and 39(D) of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. However, out of 11 members of the COC, 9 members did not vote the resolution and informed RP that they have not received their internal approvals and instructed RP to convene another meeting for deciding on the said agenda. Since the Resolution Plan was failed, RP convened the 18th meeting of CoC on 27.04.2021 to decide the liquidation agenda and the CoC with 96.50% voting right approved the appointment of Resolution Professional as the Liquidator, Liquidation Expenses, Liquidator Fee and also decided not to sell the Corporate Debtor as a going concern.

6. According to the Resolution Professional, since no Resolution Plan is received for the Corporate Debtor even though maximum period was granted, the present application has been filed for Liquidation of the Corporate Debtor under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 and appointment of the liquidator under Section 34 of the Code.

7. It is worthwhile to mention that this Tribunal passed the following orders with regard to the extension of time period for completion of the CIR Process:

- (a) Extension of 90 days was granted vide Order dated 12.03.2020 in MA/24/KOB/2020.

- (b) The period of lockdown between 23.03.2020 and 31.10.2020 was excluded from the calculation of the CIRP vide order dated 11.11.2020 in MA/75/KOB/2020.
 - (c) Extension of 60 days was granted vide Order dated 21.01.2021 in IA(IBC)/22/KOB/2021.
 - (d) Extension of 21 days was granted vide Order dated 19.4.2021 in IA(IBC)/66/KOB/2021.
8. Accordingly, the period to complete the CIR Process was over on 09.04.2021. However, the delay of 53 days in filing the IA(IBC)/87/KOB/2021 for liquidation of the Corporate Debtor was condoned vide Order dated 23.09.2021 in IA(IBC)/122/KOB/2021 IN IA(IBA)/87/KOB/2021 IN IBA/23/KOB/2019.
9. It is noticed that the decision taken on 27.04.2021 to liquidate the Corporate Debtor was approved by the CoC with 96.5% voting right including the Authorised Representative of the Home Buyers and the Impleaded Respondent. Consequently, the application under Section 33(1)(a) of the IBC, 2016 for liquidation of the Corporate Debtor has been filed by the RP in accordance with the resolution passed in the aforesaid meeting.
10. After hearing the learned Resolution Professional and also thoroughly perusing the whole case records, we pass the following order:

ORDER

- (i) The Corporate Debtor M/s.Dewa Projects Pvt Ltd is hereby put under liquidation with immediate effect under Section 33(1)(a) of IBC, 2016. The Resolution Professional Shri Vinod Padinhare Veetil, having Regn No.IBBI/IPA-002/IPN00203/2017-18/10657, residing at 66-1058, First Floor, Veekshanam Road, Ernakulam 682 018 is hereby appointed as Liquidator of the Corporate Debtor under Section 34 of IBC, 2016. His written consent is on record.
- (ii) That the Corporate Debtor be liquidated in the manner as laid down in Chapter III by issuing a Public Notice stating that the Corporate Debtor is in liquidation. It is also directed that the Applicant shall send this order to ROC under which this Company has been registered.
- (iii) The Applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation of Corporate Debtor company with all powers of the Board of Directors, key managerial persons, and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The officials/personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (iv) Since the Liquidation Order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority, save and except as mentioned in Sub-Section 6 of Section 33 of the Code.

- (v) The Liquidator shall co-ordinate with all the authorities, and the respective Govt. authorities shall provide complete information required by the Liquidator to facilitate the process of Liquidation.
- (vi) The Liquidator is at liberty to seek any directions, if need be, from this Adjudicating Authority during the Liquidation Process.
- (vii) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- (viii) 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.
- (ix) Moratorium declared vide Order dated 13.09.2019 in IBA/23/KOB/2019, henceforth ceased to exist

Accordingly, IA(IBA)/87/KOB/2021 in IBA/23/KOB/19 stands **disposed of**.

Dated this, the 25th day of November, 2021

Sd/-
Anil Kumar B.
Member (Technical)

Sd/-
Ashok Kumar Borah
Member (Judicial)

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