

In the National Company Law Tribunal
Mumbai Bench.

IA 1624/2018, MA 1554/2019 & MA 801/2019
in CP-1178/I&BP/NCLT/MB/MAH/2017

Under Section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Bell Finvest India Limited : Petitioner/ Financial Creditor

V/s

Luthra Water Systems Pvt. Limited : Respondent/ Corporate Debtor

Order delivered on : 18.12.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Mr. Yakshay M Chedda, a/w.
2. Mr. Ishan J. Ravindranath, i/b. OASIS Counsel & Advisory (For Mr. Naveen S. Luthra).
3. Mr. Vinit J. Mehta, Advocate, i/b. Pravin Wamge, Counsel for Bell Finvest)
4. Mr. G. Aniruth Purushothaman, Advocate.

For the Respondent(s) : 1. Mr. Amey Hadwale, Advocate, }
2. Mr. Amir Arsiwala, Advocate, } for Resolution Professional.

Per M.K. Shrawat, Member (Judicial).

ORDER

A) IA 1624/2018

1. On receiving a Petition u/s.7 an Order was pronounced "Admitting" the same and Interim Resolution Professional was appointed. Thereafter Committee of Creditors was constituted and meetings were held.

2. In a meeting held on 14.03.2018 which was the 3rd Committee of Creditors meeting a discussion was held, summarized by the Applicant (Mr. Devendra Jain), Resolution Professional, as under:-

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- *Since there is no business income in the company and therefore in the absence of the requisite funds it is difficult for RP to comply with Corporate Insolvency Resolution Process (CIRP) mandatory procedure, like obtaining valuation reports, publication of expression of interest, etc.. Which may result into contravention of CIRP and hence the said issue is serious and needs urgent attention.*

- *As such, it was decided in the previous meeting of the Committee of Creditors (COC) that, all the members of COC would require to contribute for CIRP Cost / expenses in their voting share in a designated bank account and therefore RP would meet out the CIRP expenses accordingly.*
- *RP has asked the COC members to sign the Non Disclosure Agreement so that IM can be shared with them. NDA has been provided to COC members electronically."*

3. According to the Applicant it was very difficult for him to continue Corporate Insolvency Resolution Process because the Committee of Creditors members and suspended Board have not cooperated. According to the Applicant, from his own pocket about a sum of Rs.5 Lakhs have been incurred.

4. During this period of Corporate Insolvency Resolution Process 4th meeting held on 19.07.2018 one of the Representatives of the suspended Board was present and made a proposal for "settlement". The members of the Committee of Creditors have agreed in favour of the "withdrawal" u/s.12A subject to the approval of the "Settlement". Unfortunately, as per the Applicant, the "Settlement" talks have failed and in this regard email dated 25.07.2018 and trailing mails have been referred. As a consequence, this Application is moved seeking following relief:-

" a. That taking into consideration overall facts of the case, the Hon'ble Tribunal shall be pleased to admit the current interlocutory application and to pass an order for directing either the extension of the time of effecting the liquidation as the time period has been over under Section 12 and therefore liquidation may be triggered under Section 33 (1)(a) of the Code as may be appropriate under the facts and circumstances of the case. This Hon'ble Tribunal may decide this unique and important question of fact and law in this instance under Section 60 (5)(c)and also the fact that the order of Insolvency initiation is pending with Hon'ble NCLAT which is reserved for orders;"

5. It has also been informed that an Appeal was filed against the "Admission" Order which was decided by Hon'ble NCLAT vide an Order dated 29.11.2018. As per this Order no interference was made in the "Admission" Order. However, as per Applicant, since the Appeal was pending, therefore, the statutory period of 180 days had expired on 10.06.2018.

6. The Applicant has also informed that as against the Financial Debt as claimed through a Loan Recall Notice dated 30.11.2016 was Rs.2,65,84,670/-, the valuation of the assets as per the Valuation Report stated to be submitted before the Committee of Creditors amounted to about Rs.60 Lakhs.

7. Considering the totality of the circumstances and in the absence of any response it is justifiable to allow the prayer of Liquidation. Mr. Devendra Jain (Resolution Professional, Registration No. IBBI/IPA-001/IP-P000255/2017-18/10484) shall complete the process of Liquidation as a Liquidator and inform the progress to this Bench within a month's time. The Liquidator shall act upon as under:-

8. Considering above facts and circumstances, this Bench hereby Orders that :

- a) The Process of Liquidation shall commence as per Chapter III of The Code from date of this Order.
- b) The Learned Resolution Professional is now to be termed as **Liquidator** as per the provisions of S. 34 (1) of the Code.
- c) The Liquidator shall advertise in two Newspapers, one in English language and one in Vernacular Language i.e. Marathi, about the Liquidation of the Corporate Debtor as per the provisions of the Code.
- d) Copy of this Order shall be forwarded to the Concerned Authority with which the Corporate Debtor is Registered.
- e) The Liquidator is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.
- f) The Liquidator shall take necessary Legal Action to recover any dues to the Corporate Debtor from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed U/s. 33 (5) of the Code.
- g) The Liquidator is hereby authorized to represent the Corporate Debtor before the Government Authorities, if need be.

9. Ordered Accordingly. Application for U/s. 33 is "Allowed".

B) MA 1554/2019

8. This Application is submitted by one Mr. Naveen S. Luthra and the prayer at the outset is as under:-

*"1. That this Hon'ble Tribunal be pleased to decide, pursuant to the Order dated 25 January 2019 passed by the Hon'ble Supreme Court of India in the matter of **Naveen Luthra v. Bel Finvest (I) Ltd. & Anr [Civil Appeal No. 654 of 2019]**, whether the provisions of the Usurious Loans Act 1918 are applicable or not to the captioned Petition filed by Bell Finvest (I) Ltd (**"the Financial Creditor"**);"*

9. Due to lapse of so many months and due to the pendency of the decisions of Hon'ble NCLAT and Hon'ble Supreme Court, since the CoC had proposed for Liquidation, therefore, as per the directions (*supra*) the Liquidation process shall commence henceforth. Once the Liquidation is Ordered, therefore, this Application has lost its importance hence to be treated as "redundant". Ordered accordingly.

C) MA 801/2019

This Application was moved by the Resolution Professional seeking exclusion of time consumed in Appeal proceedings before respected NCLAT and Hon'ble Supreme Court. Now Liquidation is ordered, hence this Application has become "Redundant". Ordered accordingly.

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 18.12.2019
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