

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 12-08-2021 AT 2.30 P.M THROUGH VIDEO
CONFERENCING:

PRESENT: SMT. R. SUCHARITHA, MEMBER (JUDICIAL)
SHRI B. ANIL KUMAR, MEMBER (TECHNICAL)

APPLICATION NUMBER : IA/558(CHE)/2021
IN
PETITION NUMBER : IBA/1263/2019
NAME OF THE PETITIONER : L V Shyam Sundar (RP) M/s Ultra Tile Pvt Ltd
NAME OF THE RESPONDENTS :
UNDER SECTION : Sec 33(2) of IBC, 2016



(45)

[IA/558(CHE)/2021 in IBA/1263/2019]

ORDER

Learned Practicing Company Secretary Mr. Jayanth Viswanathan for the Applicant/IRP is present.

2. In the present case, it is seen that the valuation of the assets of the Corporate Debtor was not caused to be done by the Applicant at the first instance. Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 mandates that the IRP shall within 7 days from his appointment, but not later than 47th day from the CIRP initiation date has to appoint two registered valuers to determine the fair value and the liquidation value in respect of the Corporate Debtor, which has not been done by the RP in the present case.

3. Further, it is seen from the records that as early as in the 2ndCoC meeting held on 07.05.2021, the sole Financial Creditor has passed a resolution for liquidation of the Corporate Debtor. It is seen that there is no Agenda in the 2nd CoC meeting to consider an Application for Liquidation of the Corporate Debtor. The following excerpts from the 2nd CoC meeting dated 07.05.2021 would manifest as to what transpired;

The IRP informed that:

- a) The Financial Creditor (M/s. Kotak Mahindra Bank Limited) in the first meeting of the CoC submitted their preference to liquidate the Corporate Debtor. As the said item did not form part of the agenda, the interim resolution professional suggested convening a CoC meeting next week to discuss the same.

The IRP has sent a mail to the sole Financial Creditor seeking justification on how liquidation will maximize the value of the Corporate Debtor;

The Financial Creditor sent a reply vide email dated 4th May 2021 which is submitted as under:



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"The Company is not in active business for past six months and no operation in the Company. The Company has two units viz. at Nagpur, Maharashtra. The business of the Company is totally shut down and a resolution to revive is very remote and it will not be viable with the available circumstances. Any further delay will have carrying cost of capital to the stakeholders as well other incidentals costs of other recovery process. This CoC after considering the economic viability of the Company strongly recommend for liquidation of the company. That will also give better realizable value on the existing unused assets of the Company. Hence the company can be liquidated and the movable and immovable assets can be sold in two parcels under liquidation."

The erstwhile promoter, Mr. Venkatarama Krishnamurthy, stated that there will be willing buyers to buy the business of the company and that the business can be sold as a going concern. The IRP further stated that even after liquidation orders are passed, the liquidator is entitled to sell the immovable property and the business assets separately.

The CoC, resolved to liquidate the company and passed the below resolution unanimously;

"RESOLVED THAT M/s. Ultra Tile Private Limited be and is hereby liquidated and that a liquidation petition under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 be filed with the Hon'ble National Company Law Tribunal, Chennai."

"RESOLVED FURTHER THAT the Interim Resolution Professional, Mr. L.V. Shyam Sundar be appointed as the liquidator at the fee of Rs.75,000/- plus GST per month with effect from the date of liquidation.



of the aforesaid minutes would show that the CoC has disregarded to the provisions of the IBC, 2016 and also IBBI Regulations. Without even appointing two registered

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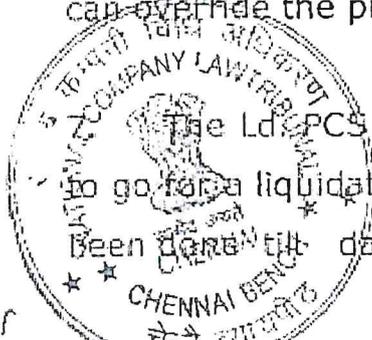
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valuers as per Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and without even ascertaining the Fair Value and the Liquidation value in respect of the Corporate Debtor, the CoC is passing a Resolution for the Liquidation of the Corporate Debtor, which we find that it is in stark contrast to the settled position of law.

5. The said meeting was also attended by the erstwhile Directors wherein the erstwhile Promoter has categorically stated that there will be willing buyers to buy the business as a going concern. However, the CoC member has stated that the company is not functional for the past six months and hence the viability of reviving of the company is too remote and the costs involved in revival of the company is also not economical to continue exploring CIRP process.

6. It is very unfortunate in the present case, to see that the sole member of the CoC, in the first instance without exploring the possibility of the insolvency resolution of the Corporate Debtor has directly pushed the Corporate Debtor into liquidation and the said act is being defended on the ground that the CoC has used their "commercial wisdom" in order to arrive at such a conclusion. Thus, a question arises for consideration before this Tribunal is that whether the Commercial Wisdom of the CoC can override the procedures enumerated under the IBBI Regulations.

The Ld. PCS for the Applicant states that since the CoC has decided to go for a liquidation order in the 2nd CoC meeting itself, no valuation has been done till date. Without the valuation report and other details, we



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cannot take up this application for hearing and disposal. Hence, the IRP is directed to convene a fresh CoC meeting and place this order before the CoC meeting and appoint Registered Valuers for the entire assets of the Corporate Debtor and submit the Valuation Report with fair value and liquidation value in this regard.

8. The Applicant shall call for the meeting with the CoC Members on or before 19.08.2021 and after getting the approval from the CoC shall appoint two Registered Valuers on or before 26.08.2021. Both the Registered Valuers shall submit their report with fair value and liquidation value on or before 26.09.2021.

9. In so far as the professional misconduct and also a procedural violation done by the RP in conducting the process of Insolvency Resolution in respect of the Corporate Debtor, **we direct the IBBI to conduct an enquiry in this regard against the RP Mr. L.V. Shyam Sundar and forward its findings to this Tribunal, on or before the next date of hearing.**

10. **The Registry** is directed to send a copy of this order to the IBBI for its information and necessary actions, if any.

List the matter on **27.09.2021** for hearing and disposal.



Certified to be True Copy

R. Sucharitha
18/9/2021
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R. SUCHARITHA
DEPUTY REGISTRAR MEMBER (JUDICIAL)
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH