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**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A No.133 of 2018 in
C.P. (IB) No.133/BB/2017
U/S 33 of IBC, 2016

In the matter of:

Smt. Ramanathan Bhuvaneshwari
Resolution Professional of
Zed Fabs India Private Limited
31/1, 2nd Main Road Vyalikaval
Bangalore – 560 003

- Applicant/
Resolution Professional

Versus

Mr.Hariharan,
Managing Director of
BCIL Red Earth India Private Limited
No.3 No.37-1/1, R.K. Chambers
Ground Floor, Aga Abbas Ali Road,
Bangalore – 560 042 and 2 others

- Respondents

Date of Order: 20th September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Smt. R.Bhuvaneshwari, IRP

For the Respondent No.2 : Shri Varun.S

ORDER



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Per : Rajeswara Rao Vittalana, Member (J)

1. I.A No.133 of 2018 in C.P.(IB) No.133/BB/2017 is filed by Smt. R.Bhuvaneshwari (Applicant/Resolution Professional) under Section 66 R/w Section 25(1) & (2) of the IBC, 2016, by inter seeking to order that the Assets, of BCIL Red Earth (India) Private Limited Company to the extent of Rs.2,20,02,243/-, of Biodiversity Conservation India Private Limited Company to the extent of Rs.1,49,26,282/- of BCIL Green Energy (India) Private Limited Company to the extent of Rs.1,50,606/- be identified appropriate and transferred to the Corporate Debtor with respect to the dues, which shall be taken possession by the Resolution Professional in order to move ahead with CIRP of Corporate Debtor Zed Fabs India Private Limited etc.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question , are as follows:
 - 1) M/s.Zed Fabs India Private Limited has been incorporated on 11.01.2011 with the Registrar of Companies Bangalore bearing CIN U28113KA2011PTC056591 and the Company was engaged in the business of manufacturing and dealing in the furniture and wood products. The Corporate Debtor was incorporated mainly to cater to the furnishing and furniture requirements of the Group Companies which are into Real Estate business and the Company does not have outside customers. Further to the Hon'ble NCLT

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vide order dated 2nd February, 2018, IRP constituted the CoC with sole Financial Creditor, namely, Bank of Baroda, Indiranagar Branch.

- 2) During the CoC meetings, the Resolution Professional in order to make invitation to Resolution Applicants to sell the business as a going concern, prepared the information memorandum and evaluation matrix and got the same approved by the CoC. While Resolution Professional contacted the potential Resolution Applicants and initiated the conversation, the overall response was that except plant and machinery, there are no other assets in the form of customers, brand name, Employees, etc. and the business has been closed down for considerable time. Hence, the response was that only the Plant and Machinery can be sold and not the entire business. While, the response from potential applicants and was interest to buy plant and machinery only, the liquidation value of which is hardly around Rs.15 lakhs, as against the total Outstanding liability of Rs.183,48,959/-.
- 3) It is stated that the CoC felt that it does not make any sense to arrive at Resolution Plan for realizing Rs.15 lakhs and the option to sell the assets would be anyway available in case CoC takes decision to liquidate the Company. Meanwhile, it was observed that the Respondent No.1 i.e. BCIL Red Earth India Private Limited, the Respondent No.2 i.e. Biodiversity Conservation (India) Private Limited and Respondent

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No.3 i.e BCIL Green Energy India Private Limited are some of the group of Companies, having common Director, namely, Mr.Hariharn, who is also the Promoter cum Director of the Corporate Debtor.

- 4) It was observed that as per the audited financials of the Company as on 31.12.2017, there are dues to the Company from the above Respondents, to the extent of Rs.3,74,47,631/- as below:

Respondents & Related parties	Name of the Company	Amount of due (Rs.)
Respondent No.1	BCIL Red Earth (India) Private Limited	Rs.2,20,02,243/-
Respondent No.2	Biodiversity Conservation India Private Limited	1,49,26,282/-
Respondent No.3	BCIL Green Energy (India) Private Limited	Rs.1,50,606/-

- 5) On the observation and analysis of the financials of the Company, it is observed that there is diversification of funds of the Company to the above Respondents which are group Companies in the form of supply of furniture and also transfer of funds. It was felt that the directors of the Corporate Debtor have not exercised due care and diligence in minimizing the loss of the Creditors of Corporate Debtor, knowing and being fully aware of the financial strain on the Corporate Debtor and this diversification has resulted in default in payment of dues to the Bank and also resulted in dues payable to the

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Operational Creditors and also the statutory dues to Government departments.

- 6) Considering the total liability of the Corporate Debtor to the extent of Rs.1.83 Crores due to Banks, Operational Creditors and Government dues, Committee of the Creditors at the meeting held on 24.04.2018 decided to file the application under appropriate Sections of the IBC, 2016 and authorized Smt.Bhuvaneshwari Ramanathan, Resolution Professional for taking required action. CoC also decided to "Put on Hold" the action on arriving that the Resolution Plan in the form of sale of Assets.

3. The Respondent No.1 & 3 have filed an Objection dated 08.10.2018, by inter alia contending as follows:

- 1) It is stated that the Respondent No. 1 is a Company incorporated in 2007 engaged in the construction and development of a residential project called Zed Earth Phase I. The Respondent No.2 is a Company was incorporated in 1995 engaged in the business of developing eco-friendly living spaces in urban cities. Respondent No. 3 Company is incorporated in 2013 and is engaged in business of research and procurement of energy efficient and water efficient fixtures from suitable vendors.
- 2) It is stated that the Respondent used to have regular business transactions with the Corporate Debtor wherein the Corporate Debtor would supply the



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Respondents with solid wood joinery, furniture and other fixtures that were intended to optimize consumption of energy, fresh water and raise bills on the Respondent for the same.

- 3) During the extended period of these transactions, several bills were raised on the Respondents and the same were duly paid. However, all dues claimed by the Corporate Debtor have been explicitly disputed by the Respondents and the same has been intimated to the Committee of Creditors of the Corporate Debtor in the 2nd CoC meeting. There were serious defects in the quality of wood, warping, gaps, lack of alignments and defects in quality of polish and these defects necessitated replacements, re-work in several villas and detailed communication in this regard have been shared with the Corporate debtor.
- 4) It is clear from the above narration and the information on record that the Respondents had raised a dispute with respect to the claimed amounts much before the initiation of any insolvency proceedings against the Corporate Debtor. Therefore, the actions of the Resolution Professional to now attempt to realize these disputed amounts without any adjudication on the same is incorrect, perverse and against the established principles of law.
- 5) On the initiation of the Corporate Insolvency Resolution Proceeding against the Corporate Debtor, the Applicant/ Resolution Professional was appointed. However, the



Resolution Professional neglected the duties assigned to her. Instead of drafting a resolution plan to revive the Corporate Debtor, the Resolution Professional has arbitrarily decided to realize non-existence claims from the Respondents. It is alleged that the Resolution Professional has overstepped her authority and has erroneously filed the present application. The power to recover and realize dues owed to the Corporate Debtor lies statutorily with the Liquidator only. The Resolution Professional does not have the power to ask the Hon'ble Tribunal to appropriate assets of the Respondents.

4. The Respondent No.2 has also filed an Objection dated 18th June, 2019, by inter alia contending as follows:

- 1) The alleged acts takes place prior to a period before the commencement of the Corporate Insolvency Resolution Process of Respondent No.2, and the appointment of Resolution Professional.
- 2) It is stated that the Company Petition for initiating corporate insolvency resolution process ("CIRP") of BCIL filed by M/s. Reliance Nippon Life Asset Management Limited and others was admitted by this Hon'ble Tribunal vide order dated August 9; 2018 (received by the Respondent on August 11, 2018) ("Admission Order") and Ms. Seksaria ("erstwhile RP") was appointed as the Interim Resolution Professional ("IRP"). The Committee of Creditors ("CoC") of BCIL subsequently confirmed the appointment of the IRP as the Resolution Professional.

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- 3) It is stated that the Hon'ble Tribunal vide its order dated January 31, 2019 extended CIRP of BCIL by further 90 days beyond 180 days starting from February 5, 2019 till May 6, 2019 upon an application filed the Resolution Professional under Section 12 of the Code read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). It is stated that this Hon'ble Tribunal vide its order dated April 1, 2019 ("said order") allowed the application filed by the Committee of Creditors of BCIL to change the Resolution Professional of the BCIL and appointed Mr. Amit Chandrakant Shah (IP Registration No. IBB/IPA – 001/IP – P00821/2017-2018/11397) as the Resolution Professional ("RP") in place of the erstwhile RP.
- 4) Further, it is stated that as no resolution plan was received till the expiry of the corporate insolvency resolution process period for Respondent no.2, the CoC members decided to liquidate Respondent No.2 and subsequently the Resolution Professional of Respondent no.2 filed an application for liquidation (IA No.239 of 2019 filed on May 6, 2019) before this Hon'ble Tribunal and the same is sub-judice.
- 5) It is stated that due to the financial distress of BCIL and the ongoing proceedings under the Code, the Respondent No.2 is not in a position to pay the outstanding amounts to the Applicant. Further it is stated that no claim was lodged by the Applicant during



the CIRP of Respondent No.2 pursuant to the public announcement under the Code and rules. However, the Applicant is at liberty to file its claims with the liquidator of Respondent no.2 as and when appointed, in accordance with the Code and regulations thereunder. It is further stated that the verification of the said claims by the liquidator will be as prescribed under the Code and regulations thereunder.

6) It is stated that the prayer/relief sought by the Applicant in sub paragraph (a) of paragraph IX (1) of the said Application, insofar as the same pertains to Respondent no.2, may not be granted in view of the ongoing proceedings under the Code in relation to the Respondent no.2.

5. Heard Smt.R.Bhuvaneshwari learned Resolution Professional and Shri Varun.S, learned Counsel for Respondent No.2. We have carefully perused the pleadings of the parties and extant provisions of the Code.

6. As stated supra, the 4th Meeting of CoC of Zed Fabs India Private Limited dated 17th July, 2018 has decided to file an application for liquidating the Corporate Debtor Company (i.e Zed Fabs India Private Limited). Accordingly, they have filed another I.A No. 221 of 2018, seeking for liquidation of the Corporate Debtor Company and the Adjudicating Authority passed an order to liquidate the Corporate Debtor Company vide separate order today. The Adjudicating Authority has



already referred the matter to the SFIO by order dated 30th August, 2019 in I.A No.456 of 2018 and I.A No.258 of 2019 in C.P(IB) No.14/BB/2018 in Group Company consisting of BCIL Red Earth India Private Limited, Biodiversity Conservation India Private Limited & BCIL Green Energy India Private Limited, wherein the Managing Director, Promoter & Guarantors are more or less the same for Group Companies. Therefore, it would be just and proper for the Applicant to approach the SFIO, for the relief sought in the instant Application, by submitting all material evidence available with her. It is also to be stated here that there is no bar for the Liquidator to continue proceedings U/s 66 of the IBC, 2016. Since, the Applicant is chosen as Liquidator for the Corporate Debtor, she can prosecute the issue with SFIO for further investigation so as to decide the culpability of the Respondents.

7. In the result, IA No. 133 of 2018 in C.P(IB) No.133/BB/2017 is disposed of by permitting the Applicant/Resolution Professional/Liquidator to approach the SFIO with supporting evidence requesting for investigation into the issue in question and it is for the SFIO to take appropriate action basing on the evidence produced by the Resolution Professional/Liquidator.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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Deputy Registrar
National Company Law Tribunal
Bengaluru Bench

