IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A. No.408 of 2019 in
C.P. (IB) No.72/BB/2019
U/s 60(5)(C) R/w Section 33(2)
and Section 34(1) of IBC, 2016

Shri Gorur Narasimhamurthy Venkataraman
Resolution Professional of
M/s. Bunt Solar India Private Limited
No.8, 1st Floor, 4th Main Road,
Behind Rameshwara Temple,
Chamarajpet,
Bangalore – 560 018. - Applicant/Resolution Professional

In the matter of:

M/s. Rashmika Info Technologies Pvt. Ltd.
No.4/2, 2nd Floor, 9th 'A' Cross,
12th Block, Kumarapark West,
Bengaluru – 560 020. - Petitioner/Operational Creditor

Versus

M/s. Bunt Solar India Pvt. Ltd.
Regd. Off. No.23, 24,
MM Complex,
Papareddy Palya, 2nd Stage,
Nagarabhavi,
Bengaluru – 560 072. - Respondent/Corporate Debtor

Date of Order: 05th 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/RP	:	Shri Gorur Narasimhamurthy Venkataraman
For the Petitioner	:	Shri G. Sathyanarayana, PCA
For Karnataka Bank Ltd	:	Ms. Gayathri S., Sr. Branch Manager

National Company Law Tribunal, Bengaluru Bench

ORDER

Per: Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

1. I.A. No.408 of 2019 in C.P. (IB) No.72/BB/2019 is filed by Shri Gorur Narasimhamurthy Venkataraman, Resolution Professional (hereinafter referred to as 'Applicant/RP') of M/s. Bunt Solar India Private Limited under Section 60(5)(C) read with Section 33(2) and Section 34(1) of IBC, 2016 by inter alia seeking to appoint Resolution Professional to act as Liquidator to liquidate the Corporate Debtor as recommended by the Committee of Creditors.

2. Shri Gorur N. Venkataraman, Resolution Professional has filed an Affidavit along with IA dated 20.08.2019 by inter alia stating as follows:

(1) Initially, the Adjudicating Authority has admitted the C.P. (IB) No.72/BB/2019 vide order dated 14.06.2019 by initiating CIRP in respect of the Corporate Debtor herein and appointed Shri Gorur Narasimhamurthy Venkataraman (Applicant herein), bearing Regn.No.IBBI/IPA-003/IP-N00075/2017-18/10585 as the IRP, imposed moratorium etc. Subsequently during the First meeting of the CoC, the IRP Shri Gorur N. Venkataraman was appointed as Resolution Professional with 100% voting share to continue the CIRP.

(2) It is stated that after assuming the responsibility of RP, the accounts for the year 2016-17, 2017-18 and 2018-19 are finalized with the available records of the Corporate Debtor. The RP also appointed Auditors to audit the accounts and finalized the audit report for 3 years ending 31.03.2017, 31.03.2018, 31.03.2019.

(3) As required by I&B Code, RP also got the latest financials as on the date of Insolvency Commencement date i.e. 14.06.2019, and

also submitted the report with a Review Report by the auditor, which reads as under:

(a) Considering the books of accounts and audited report, RP has finalized the Information Memorandum and sent the copy of the Information Memorandum by electronic means to the Financial Creditor or member of CoC Karnataka Bank, Basaveshwaranagar Branch.

(b) RP also called the First meeting of CoC on 13.08.2019, wherein it may be observed that the CoC considered all the aspects of Information Memorandum and resolved to liquidate the Corporate Debtor as there is no point in issuing any Expression of Interest, since the Corporate Debtor does not own any business or assets as on 14.06.2019, whereas the Corporate Debtor has some receivables and heavy dues to the creditors as mentioned in the Information Memorandum.

(4) It is stated that since the Corporate Debtor is not having any Plant and Machinery or any other assets but had only negative financials, RP appointed a Financial Valuer who is registered under IBC and obtained a valuation report from the registered valuer.

(5) It is stated that the RP determined the Liquidation value based on the Financial Valuers report which is negative of Rs.18,88,57,293/-.

(6) It is further stated that the Minutes of Meeting of CoC recommending Liquidation of Corporate Debtor based on the above facts has also been submitted on 14.08.2019 to this Adjudicating Authority, wherein the CoC have resolved in Agenda item No.1 with 100% voting share to liquidate the Corporate Debtor and recommended to request the Adjudicating Authority through RP, the to liquidate the Corporate Debtor.

3. Heard Shri G. Sathyanarayana, learned PCA for the Petitioner and Shri Gorur Narasimhamurthy Venkataraman, learned Resolution Professional. We have carefully perused the pleadings of the parties and extant provisions of the Code.

4. Shri Gorur Narasimhamurthy Venkataraman, learned Resolution Professional submitted that in pursuant to the admission of the case, appointed him as IRP, and took over the administration and available records from suspended Corporate Debtor. On a personal inspection made by the team of IRP along with the Operational Creditors and Corporate Debtors, and Practicing Chartered Accountant of Operational Debtors. Accordingly, it is found that the Corporate Debtor has nothing in his possession as on that date and Para 10 and Para 11 of the report of 04.07.2019, and also highlighted that the Corporate Debtor position as of 14.06.2019 by inter alia stating that the position of Corporate Debtor such as not having any office; not having any manufacturing unit; no activity at present and also for past one and half years; and no books of Accounts for almost 3 years since 01.04.2016.

5. As per the information furnished by the audited accounts of last 2 Financial Years i.e. 2016-17 and 2017-18 as per which during 2016-17 Profit and Loss Account indicated loss of Rs.1,78,09,007/- and as of 31.03.2018, this loss has increased to Rs.4,21,75,877/- and as of 31.03.2019, the loss has increased to Rs.16,26,29,429/-. Further, as desired by IBC the latest financial figures as on the date of submission of financial report/as on the date of insolvency i.e. 14.06.2019 the loss is Rs.20,41,32,055/-. In view of continuous 3 years' losses and the Corporate Debtor not having any infrastructure like any office, factory premises, or any other facilities at his command, RP has come to a conclusion and placed it before the Committee of Creditors, this Information Memorandum informing that there is no possibility of considering this as an on-

going concern and hand it over to any other Resolution Applicant to continue by issuing this Information Memorandum.

6. Accordingly, the First meeting of the CoC was held on 13.08.2019 at 4 P.M. at No.8, 1st Floor, 4th Main Road, Behind Rameshwara Temple, Chamarajpet, Bangalore-560018. The meeting was attended by Ms. Gayathri.S, Sr. Branch Manager, Karnataka Bank, Basaveshwaranagar Branch, and Corporate Debtors representative (Suspended Board of Directors) Shri Chandrashekar Shetty/Nischith Shetty and Shri Venkata Vasudeva Reddy, Operating Creditor along with Shri S.Sathyanarayana, PCA. Accordingly, COC resolved to liquidate the Corporate Debtor by passing the following resolutions unanimously:

"Resolved that, we have agreed and approved the Agenda item 1 with 100% vote and Agenda item 2 with 100% voting share".

Sl. No.	***Name of the Financial Creditor***	***Person representing***	***Signature***
1.	*Karnataka Bank Basaveshwaranagar Branch*	*Gayathri S.*	*Approved the Item No.1 only, and Agenda Item No.2 & 3 not agreed.*

The CoC discussed in detail considering all the details given in the Information Memorandum U/s 29 of IBC 2016 and in particular the Review Report of the Auditors indicates that the CD does not possess any infrastructure/premises/assets to continue the business of M/s. Bunt Solar India Private Limited as on-going concern.

In view of the detailed information given in Information Memorandum, the Financial Creditor came to the conclusion to Liquidate the Corporate Debtor and recommend it to the Adjudicating Authority for Liquidating the Corporate Debtor of M/s. Bunt Solar India Private Limited with an immediate effect.

The resolution was put to vote by RP and then conducted the voting for Resolution. The Resolution was passed with 100% Voting share by Committee of Creditors to Liquidate the Corporate Debtor.

Agenda 2: To consider the CIRP expenses:

To consider the CIRP Expenses as per Regulation 5(13) of REG004 and approve the CIRP expenses incurred by IRP and RP and agreed to meet all the further expenses as discussed with Applicant between IRP/RP and Applicant the CoC approved all the expenses falling in line with Section 5(13) read with Regulation 31 to 34 of REG004.

The above was put to vote and with 100% voting share CoC approved the Agenda, and the same was not agreed by the Karnataka Bank Ltd.

AGENDA 3: The CoC approved to operate the transactions of bank account on behalf of Corporate Debtor to be authorized by Resolution Professional, *and the same was not agreed by the Karnataka Bank Ltd."*

7. In light of the decision taken at the 1st meeting of the CoC dated 13.08.2019, I.A No.408 of 2019 is filed by Resolution Professional for intimation of the decision taken by the CoC for liquidation of Corporate Debtor as per Section 33(2) of the Code.

8. As detailed supra, the Resolution Professional and the CoC of the Corporate Debtor have made best efforts to find a suitable Resolution Plan of the Corporate Debtor. However, no suitable Resolution Plan is submitted, so as to consider the same by the CoC. Therefore, there is no alternative for the CoC except to seek to order to liquidate the Corporate Debtor as per the provisions of the Code. The Resolution to initiate liquidation was also approved by the CoC with a majority of 100% votes and the instant Application is filed strictly in accordance with law. The CoC has also decided to continue the existing RP appointed in the First CoC meeting dated 13.08.2019, to act as a Liquidator for liquidating the Corporate

Debtor, who is eligible to be appointed as such. He has also filed his willingness to act as Liquidator of the Corporate Debtor i.e. M/s.Bunt Solar India Pvt. Ltd. Therefore, it is a fit case to initiate Liquidation in respect of the Corporate Debtor.

9. According to Section 33(1) and 33(2) of the Code, relevant provisions in the instant case, which reads as under:

> "**33. (1)** *Where the Adjudicating Authority-*
>
> *a) before the expiry of the Insolvency Resolution Process period or the maximum period permitted for completion of the corporate insolvency resolution process under Section 12 or the fast track Corporate Insolvency Resolution Process under Section 56, as the case may be, does not receive a resolution plan under sub-Section (6) of Section 30; or*
>
> *b) rejects the resolution plan under Section 31 for the non-compliance of the requirements specified therein,*
>
> ***it shall***
>
> *i. pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in this Chapter;*
>
> *ii. issue a public announcement stating that the Corporate Debtor is in liquidation; and*
>
> *iii. require such order to be sent to the authority with which the Corporate Debtor is registered."*
>
> "**33. (2)** *Where the Resolution Professional, at any time during the Corporate Insolvency Resolution Process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors (approved by not less than sixty-six per cent. of the voting share) to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)".*

10. Section 33 of I&B Code provides if no resolution plan is received then order of liquidation has to be passed against the Corporate Debtor Company. Committee of Creditors also approved the resolution for liquidation. In the result, the instant Application needs to be allowed to liquidate the Corporate Debtor Company.

11. In view of the above facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred under Section 33 of the I&B Code, 2016, I.A. No.408 of 2019 in C.P. (IB) No.72/BB/2019 is hereby allowed with following directions:

(1) We have reached the conclusion that there is a need for an order requiring the Corporate Debtor namely M/s. Bunt Solar India Private Limited to be liquidated in the manner as laid down in the I&B Code, 2016 and related Regulations;

(2) That Shri Gorur Narasimhamurthy Venkataraman holding Registration No.IBBI/IPA-003/IP-N00075/2017-18/10585, the Resolution Professional appointed for CIRP is appointed as Liquidator for the purpose of liquidation pursuant to Section 34(1) of Insolvency & Bankruptcy Code, 2016.

(3) The provisions of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 shall apply.

(4) The Liquidator is directed to issue a Public announcement stating that the Corporate Debtor is in liquidation one in English language and one in Vernacular language in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

(5) The order of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency Bankruptcy Code shall commence;

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(6) That all the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator;

(7) That the Personnel of Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor;

(8) Liquidator is also directed to send a copy of this order to the concerned authority whoever is the regulator of the Corporate Debtor by RPAD;

(9) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor;

Provided that a suit or other legal proceeding may be instituted by the liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority in accordance with Section 33(5) of the Insolvency and Bankruptcy Code, 2016;

(10) The provisions of sub-section (5) of Section 33 shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator in accordance with Section 33(6) of the Insolvency and Bankruptcy Code, 2016;

(11) The Liquidator appointed shall discharge his functions pursuant to powers and duties conferred under Section 35 and other relevant provisions of the IBC, 2016;

(12) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the IBC, 2016 and in accordance with relevant Regulations;

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(13) The fee of the Liquidator shall be proportionate to the liquidation estate assets as specified by the Board, and it shall be paid from the proceeds of the liquidation estate u/s 53 of the Code;

(14) Liquidator is directed to follow all extant provisions of IBC, 2016 and Rules framed by the IBBI from time to time;

(15) The order for liquidation under this Section shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator in accordance with Section 33(7) of the IBC, 2016;

(16) Committee of Creditors is directed to review the expenditure incurred by the Resolution Professional until the date of this order and verify the same through perusal of relevant documents;

(17) The Liquidator shall submit a 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;

(18) Copy of this order be sent to the financial creditors, corporate debtor and the liquidator for taking necessary steps;

(19) The Liquidator is directed to send copy of this order to the Registrar of Companies, State of Karnataka and other authorities connected with Corporate Debtor;

(20) The Registry is directed to communicate this Order to the Registrar of Companies, Karnataka and to the Insolvency and Bankruptcy Board of India;

(21) The Liquidator is directed to conclude the Liquidation process, as expeditiously as possible, by initiating expedite steps, and

National Company Law Tribunal, Bengaluru Bench promptly report progress of liquidation process to the Adjudicating Authority from time to time;

(22) Post the case on **25.10.2019** for report of the Liquidator.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Krishna

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