IN THE NATIONAL COMPANY LAW TRIBUNAL

BENGALURU BENCH, BENGALURU

(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)

IA No.526/2022
IN
C.P. (IB) No.246/BB/2019
(Admitted Matter)
Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

India Asset Growth Fund and Anr ...Petitioner /Financial Creditor

VERSUS

Vikram Structures Pvt Ltd ...Respondent/Corporate Debtor

And in the matter of IA No.526/2022:-

Mr.Surender Devasani
Resolution Professional,
Vikram Structures Private Limited ...Applicant

Order delivered on: 13.04.2023

Coram: Hon'ble Justice (Retd) T.Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant/
Resolution Professional : Shri.Arjun Rao,Adv

O R D E R

I.A No.526/2022

Per: T.Krishnavalli, Member (Judicial)

1. This Application has been filed by Mr Surender Devasani, Resolution Professional of M/s. Vikram Structures Private Limited (Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code,

2016 for passing an order of Liquidation in the matter of M/s Vikram Structures Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.

2. CP (IB) No.246 /BB/2019 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by “India Asset Growth Fund and Anr” to initiate Corporate Insolvency Resolution Process **(in short ‘CIRP’)** against M/s.Vikram Structures Private Limited was admitted on 17.02.2022 and Mr. Surender Devasani was appointed as Interim Resolution Professional (IRP).

3. The facts of the case, briefly stated are that after receiving the Order, the IRP made a Public Announcement on 25.02.2022 in the prescribed form i.e, Form A. On the basis of claims received and admitted as of 10.03.2022 the applicant constituted the CoC. The First CoC meeting was held on 25.03.2022, the interim resolution professional had given consent to act as Resolution Professional. In the meeting there was no proposal from any CoC members for appointment of another eligible Insolvency Professional as Resolution Professional. In the e-voting it was seen that the proposal for continuation of IRP as RP did not receive requisite voting share of 66% of total voting share. In the minutes of the first CoC meeting, the Resolution No.B2 for confirmation of the applicant as the RP of the CD did not get the requisite majority of 66% of total voting share. Members having 44.60% of the voting share approved the said resolution and members having 55.37% of the voting share rejected the said resolution. Hence, the said resolution was rejected for not having been approved with the requisite majority of 66% as is required in terms of Section 22 of the Code. In the meantime, the Applicant continued to discharge his duties as required under Regulation 17(3) of IBBI (Insolvency Resolution Process for Corporate

Persons) Regulations, 2016. A Copy of minutes of the 1st Meeting of the CoC has already been placed on record before this Hon'ble Tribunal vide progress report submitted by the Applicant-RP. In the second CoC Meeting on 08.04.2022, there were two options for appointing RP. The Voting of COC for the Option A (Mr. Surender Devasani) obtained 63.96% and Option B (Shivadutta Bannanje) obtained 35.73%. In the meantime, the IRP was continuing to discharge his duties as is required under Regulation 17(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

4. It is submitted that in the third meeting of CoC held on 28.04.2022, the IRP informed the functions of Resolution Professional to the CoC which IRP has carried out between 09.04.2022 to 28.04.2022. Further, in the fourth CoC meeting held on 06.05.2022, the approval for seeking expression of interest in the prescribed 'Form G' in the Financial Express (English) and Vartha Bharathi (Kannada) newspapers on 09.05.2022 as required under Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and for approval of process flow document in accordance with the provisions under section 25(2)(h) of the code to invite expression of interest from prospective Resolution Applicants. The IRP placed a draft process flow document before the CoC and undertook to submit draft Request for Resolution Plan (RFRP) and evaluation matrix at next meeting.
5. In the meanwhile, the IRP received majority of votes in the fourth CoC meeting held on 06.05.2022 to appoint IRP as RP. The CoC authorised IRP to file the Application before Hon'ble NCLT. Accordingly, IRP filed I.A 195 of 2022, seeking appointment as RP and it was allowed by this Tribunal vide order dated 30.05.2022.
6. The IRP continued to fulfil his duties as RP. On 08.05.2022, Invitation for Expression of Interest in Form G was published in the above said

Newspapers and updated in the company website with latest information including Form – G. Three responses were received by the RP. The RP sent letter to all Financial Creditors seeking contribution towards CIRP expenses decided by the CoC. Hence, RP on 31.05.2022, issued notice for fifth CoC meeting.

7. It is stated that the fifth CoC meeting was held on 03.06.2022, wherein with the 95.45% majority voting it is approved for reissuance of fresh Form-G and extension of 90 days. Accordingly, RP published a fresh invitation for expression of interest on 07.06.2022, the last date of receipt was 22.06.2022. Further, it was stated that the requirement of section 12(2) of the code has been met with. The CIRP period of 180 days was expiring on 16.08.2022. The RP filed I.A No. 288 of 2022, seeking extension of CIRP period of 90 days from 16.08.2022 to 13.11.2022. The said I.A was allowed by this Tribunal vide order dated 30.08.2022.
8. It is submitted that the Sixth and Seventh Meeting of CoC was placed before this Tribunal as Progress Report.
9. It is submitted that the eighth CoC meeting was held on 17.09.2022, the CoC with majority voting approved the RP to file application under section 43,45, 50 and 66 of the IBC, 2016. It is submitted that due to status quo order between 28.09.2022 to 20.10.2022, there was no progress in the CIRP of the corporate debtor. Thereafter, till 20.10.2022 (i.e. the date on which the status quo order was uploaded on NCLT website), there was no progress in the CIRP of the corporate debtor. The extension was granted by this Tribunal on 30.08.2022, and time was granted till 13.11.2022 for completion of CIRP. However, due to the status quo order, the RP was unable to carry out or discharge any of the duties as RP of the corporate debtor. Also, on receipt of the Transaction Audit Report of the Corporate Debtor, the RP was unable to file the

appropriate application. Further, the CIRP of the corporate debtor came to a complete standstill and there was no progress made even with regard to discussions on Resolution Plans that were presented before the CoC by various stakeholders.

10. In the 9th meeting of CoC held on 28.10.2022, it was stated that there were no other options of Resolution Plans before the CoC, it was unlikely the corporate debtor stands a chance of being revived and liquidation may be the only option to proceed with. The RP placed the approval of liquidation before the CoC. The CoC approved the liquidation with 75.14% of total voting share having voted in favour, 24.61% of CoC abstained from voting and 0.25% of total voting share not participated in the voting. Hence, the CoC has voted unanimously for liquidating the Corporate Debtor. It is stated that more than 66% of the CoC passed the resolution for liquidating the Corporate Debtor and the same is as under:

"RESOLVED THAT committee of creditors do hereby recommend for initiation of liquidation process M/s Vikram Structures Private Limited (the company or the corporate debtor) in accordance with the provisions of Section 33 of the IBC, 2016 and Regulations made thereunder, in view of the fact that the CoC rejected the Resolution Plan submitted by the Resolution Applicant as the Resolution Plan amount being far less than the liquidation value of the company and the plan so submitted is not viable and feasible.

RESOLVED FURTHER THAT committee of creditors recommends and directs the liquidator to be appointed to explore selling the corporate debtor as a going concern in pursuance of Regulation 39BA r/w. 39 C of IBBI (CIRP) Regulations 2016, and other applicable provisions."

10. The Hon'ble NCLAT, in *Praveen Kumar Nand Kumar v.VSL Securities Pvt Ltd.* in CA No.1/2020 in CA No.308/2000, dated 09.06.2020, observed as under:-

> "*Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evalution of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review*".

11. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records.

12. The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

> "*33. Initiation of liquidation.-*
>
> *(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.

(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 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).”

13. Prescribed period for filing application- In the present case, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 17.02.2022. The present Application is filed on 21.11.2022 i.e., after the CIRP period. Hence, this application shall be considered under section 33(1), but not under 33(2).

14. **Appointment of Liquidator** - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP submitted the written consent in Form-AA, to act as the Liquidator for the purpose of Liquidation. **Shri Surender Devasani, Resolution Professional with Registration No. IBBI/IPA-001/IP-P00775/2017-18/11348** has been proposed by the COC to act as the Liquidator**.** The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, **Shri Surender Devasani** is appointed as the Liquidator.

15. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

a. **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016] -**The liquidation cost is as per the resolution passed at agenda Item No.B.3 of Annexure F.

b. **Assessment of Sale as a going concern [Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016]** – The CoC approved the sale of asset of Corporate Debtor as a going concern as per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 in their 9th meeting held on 28.10.2022. Therefore, the Liquidator shall follow the Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016.

c. **Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] -** The fee payable to the Liquidator is as per the resolution passed at option B.

16.Pending applications, if any, and its effects – On 30.01.2023, the Learned Counsel for the RP/Applicant was directed to file an affidavit regarding pending legal proceedings, if any, of the corporate debtor, within a week. In compliance to the Order dated 30.01.2023, an affidavit is filed vide Diary No. 918 dated 16.02.2023, disclosing the pending cases of Corporate Debtor. The learned counsel for the applicant has stated that there pending cases against the corporate debtor, but the same have no effect on the instant application.

17. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Vikram Structures Pvt Ltd is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

i. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the corporate Debtor;

   Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

ii. That the provisions of sub-section (5) of Section 33 of the Code 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; and

iii. That this order of liquidation under Section 33 of the Code 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; and

iv. 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; and

v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and

Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.

viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

18. Thus **I.A No. 526 of 2022** stands disposed of.

19. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

-Sd/-	**-Sd/-**
(MANOJ KUMAR DUBEY) **MEMBER (TECHNICAL)**	**(T.KRISHNAVALLI)** **MEMBER (JUDICIAL)**