IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 12
(IB)-354(PB)/2022

IN THE MATTER OF:

Bank of Baroda	...	Applicant/Petitioner
Vs		
Shri Nath Residenci Pvt Ltd Corporate Guarantor of M/s. NIIL Infrastructure Private Limited Principal Borrower	...	Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016 (CIRP).

Order delivered on 16.02.2024

CORAM:
JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE & VC)

PRESENT:

For the Applicant	:	Ms. Iswar Mohapatra, RP/Applicant in IA-5154/23 Ms. Honey Satpal, Sejal Gupta, Advs. in IA-5874/2023
For Respondent	:	

ORDER

IA-5874/2023

Ld. Counsel Ms. Honey Satpal states that notice of the application has been served to 7 out of 8 respondents and undertakes to serve the notice afresh to the 8th respondent.

At her request, list the matter **on 11.03.2024.**

Meantime, pleadings to be completed.

IA-5154/2023

1. This is an application filed by the RP Mr. Sajjan Kumar Dokania on behalf of the Corporate Guarantor i.e. Shri Nath Residenci Private Limited under Section 33 of the Insolvency and

Bankruptcy Code, 2016 for seeking permission of this Adjudicating Authority to commence liquidation of Corporate Debtor.

2. It is submitted that CIRP in respect of the Corporate Debtor commenced on 05.01.2023 pursuant to the order of this Adjudicating Authority.

3. Thereafter, the CoC meetings were held in which Transaction Auditor was also appointed and Form G for inviting Expression of Interest was published on 08.04.2023 and for a second time on 29.06.2023.

4. However, subsequent to the publishing of Form G and approval of the RFRP document and the Information Memorandum, there was no Prospective Resolution Applicant (PRA) coming forward to submit his plan with respect to the Corporate Debtor despite the publication of Form G two times.

5. The CoC also did newspaper publication and was given the extension of CIRP period by 90 days for getting the resolution plan. However, despite that, no PRA came forward.

6. Thereafter in the 6th CoC meeting held on 06.09.2023, the CoC discussed and resolved that after publication of 2nd time EOI on 29.06.2023 only 4 prospective resolution applicant shown interest but nobody submitted the resolution plan. The COC is of the view that since no PRA come forward even after 2nd time publication of EOI, no Resolution plan has been received. If decided to go for 3rd time publication, the chances of receiving of resolution plan is slim & remaining time is also too less. As such COC resolved to proceed for liquidation of the CD with 100% voting right. The RP presented his consent to continue as liquidator for the corporate debtor. It was also decided to discuss and resolve other items as per Regulation (Liquidation Process) 39B, 39C & 39 D in the next COC meeting.

7. After that in the 7th CoC meeting held on 15.09.2023, the sole CoC member, Bank of Baroda resolved with 100% voting right to liquidate the corporate debtor and proposed the name of Mr. Sajjan Kumar Dokania as Liquidator of the Corporate Debtor.

8. The Hon'ble Supreme Court also, in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors**. in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor. 3

9. Further, in view that there are no chance of resolution for the Corporate Debtor, we are of the opinion that the Corporate Debtor shall be Liquidated.

10. In light of the above facts and circumstances, it is hereby ordered as follows:

i. The **IA-5154/2023** filed by Mr. Sajjan Kumar Dokania, the Resolution Professional of the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;

ii. The Insolvency and Bankruptcy Board of India ("IBBI") vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code had recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.

iii. Therefore, this Adjudicating Authority appoints **Mr. Anshul Sharma** as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is **IBBI/IPA-003/00386/2021-2022/13930**, the address of the Liquidator is A-6, Ashok Nagar, Mandoli Road, Shahdara, Near Tyagi Diary, East, National Capital Territory of Delhi-110093 and the e-mail id of the Liquidator is **cma.anshulsharma2020@gmail.com** and the contact no. of the Liquidator is **9899320257**.

The Liquidator shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

iv. Mr. Sajjan Kumar Dokania, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.

v. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.

vi. The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

vii. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in Liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.

The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees can also be informed of this Liquidation order through their association.

viii. All the powers of the Board of Directors, and of key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

ix. The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.

x. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

xi. In accordance with Section 33(7) of the Code, this Liquidation order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the Liquidation process by the Liquidator.

xii. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.

xiii. The Liquidator shall also follow up the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

xiv. 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;

xv. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

xvi. The Application bearing I.A. No. 5154 of 2023 stands disposed of in accordance with the above directions

xvii. The Registry is directed to send a copy of this order to the IBBI for their record.

xviii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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(RAMALINGAM SUDHAKAR)
PRESIDENT
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(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

Dipak – 16.02.2024