

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 04.03.2020

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 191/BB/2019	For hearing- IA 112/2020, IA 108/2020 - CIRP	Sec 9 of I&B code 2016	M/s Dnova Infracon Pvt Ltd	Pragati Law Chambers	M/s Time & Space Lifestyle LLP	Ms. Sumana Rao, RP & ors

ADVOCATE FOR PETITIONER/s:

S.K. SRINIVAS AM.
for 14.11.2020.

[Signature]
TANUJA SETHI
Operational
Director

ADVOCATE FOR RESPONDENT/s:

A. MURALI & JYOTHI ANUMOU
For Resolution Professional
7019246197

[Signature]
CV. JAYAGAN
RP
04/03/2020

[Signature] Jyoti

PTO

ORDER

Heard Shri A. Murali along with Ms. Jyothi Anumolu, learned Counsels for the Applicant in I.A.No.108 of 2020/Resolution Professional and Shri S.K. Srinivasan, learned Counsel for the Applicant in I.A.No.112 of 2020.

I.A.No.108 of 2020 in C.P.(IB)No.191/BB/2019 is disposed of by separate order.

I.A.No.112 of 2020 in C.P.(IB)No.191/BB/2019 is rejected by separate order.

Post the case for report of Liquidator on **07.04.2020.**



MEMBER(T)



MEMBER(J)

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

I.A.No.112 of 2020 in
C.P.(IB)No.191/BB/2019
U/s60(5) of the IBC, 2016
R/w CIRP Regulations
& Rule 11 of the NCLT Rules, 2016

Between:**Mr. G. Vinod**

Partner of M/s. Time & Space Lifestyle LLP
No.22, Ashtagrama Layout,
Basveshwarnagar,
Bangalore -560 079.

- Applicant

And**Mr. Venkataraman Jayagopal**

Resolution Professional of
M/s. Time & Space Lifestyle LLP
No.275, 2nd Floor, JMJ Apartments,
100 Feet Road, Indiranagar,
Hal 2nd Stage,
Bangalore -560 038.

- Respondent

Date of Order: 04th March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant	:	Shri S.K.Srinivasan
Resolution Professional/Respondent	:	Shri V. Jayagopal
For the RP/Respondent	:	Shri A. Murali with Ms. Jyothi Anumolu

ORDER**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A.No.112 of 2020 in C.P.(IB)No.191/BB/2019 is filed by Mr. G. Vinod Partner of M/s. Time & Space Lifestyle LLP (hereinafter referred to



as 'Applicant') U/s 60(5) of the IBC, 2016, R/w CIRP Regulations & Rule 11 of the NCLT Rules, 2016, by inter seeking to allow the Applicant to be impleaded in this petition; to call for records from the Resolution Professional; to direct the Resolution Professional to reconstitute the CoC in terms of Section 21 and 24 of the IBC, 2016 and Reg. 17 of CIRP Regulations and place all the resolutions before the newly constituted CoC for review and for ratification, if any, such that CIRP for the Corporate Debtor can continue for successful resolution etc.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

(1) The main Company Petition bearing C.P. (IB)No.191/BB/2019 is filed by M/s. DnovaInfracon Pvt. Ltd. U/s 9 of the IBC, 2016 R/w Rule 6 of the I&B(AAA) Rules, 2016, was admitted by the Adjudicating Authority vide order dated 09th September, 2019, by initiating CIRP in respect of Corporate Debtor, appointing Ms. Sumana Rao bearing Registration No. IBBI/IPA-002/IP-N00059/2017-2018/10111 as IRP, imposing moratorium etc. Subsequently, the Adjudicating Authority vide its order dated January 13th, 2020 allowed the application filed by Ms. Sumana Rao, existing IRP of the Corporate Debtor to change the Resolution Professional of the Corporate Debtor and thus appointed Mr. Venkataraman Jayagopal as the RP in place of Ms. Sumana Rao.

(2) In Pursuant to admission of Case, the IRP made public announcement in form A as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the 'Business Standard' English newspaper and in 'Kannada Prabha' Kannada newspaper on 04.10.2019 by calling claims from all creditors. First CoC meeting was held on 02.11.2019; the second CoC meeting was on 07.12.2019; third

CoC meeting was on 23.12.2019; fourth CoC meeting was on 06.02.2020 and Fifth CoC meeting was on 13.02.2020. In the 5th meeting of the Committee of Creditors held on 13th February 2020, the CoC decided to liquidate the Corporate Debtor namely M/s. Time & Space Lifestyle LLP.

(3) It is stated that the Applicant is Partner of the Corporate Debtor and is aggrieved by the actions of the Resolution Professional, who has completely violated Regulation 13 (Verification of Claim) and consequently violated Regulation 17 of the CIRP in constituting the CoC. The currently constituted CoC is having Members, whose claim do not qualify to be considered as operational debt viz. Castle Homes & Holdings Pvt. Ltd. Castle Homes & Holdings Pvt. Ltd. is landlord of the Corporate Debtor, who is erroneously categorised as an Operational Creditor by the Resolution Professional against the legal principles laid down by the judicial pronouncements. While constituting the CoC, the Resolution Professional has completely disregarded the provisions of law and their interpretations laid down in catena of case laws wherein it is categorically held the landlord cannot be regarded as an Operational Creditor under Section 5(20) of the IBC, 2016.

3. The Applicant relied upon the following judgments in support of the case:

- a. *Ravindranath Reddy Vs. G. Kishan, NCLAT Delhi*¹
- b. *Parmod Yadav & Anr. Vs. Divine Infracon (P) Ltd., NCLT Delhi*²
- c. *Citicare Super Speciality Hospital Vs. Vignaharta Health Visionaries Pvt. Ltd. NCLT Mumbai*³

¹Company Appeal (AT) (Insolvency) No.331/2019 dated 17.01.2020.

²IB No.209/ND/2017 dated 28.09.2017

³CPNo.567/IB/2018 dated 11.03.2019



d. *Col Vinod Awasthy Vs. AMR Infrastructure Ltd. NCLT Delhi*⁴

4. Heard Shri S.K. Srinivasan, learned Counsel for the Applicant, and Shri A. Mural learned Counsels for the Resolution Professional/Respondent. We have carefully perused the pleadings of the Parties, and the extant provisions of the Code and the Rules made thereunder.
5. As per extant Provisions of Code, once CIRP is initiated against Corporate Debtor, the existing management of Corporate Debtor get suspended and it would be under management of IRP/RP with COC at the helm of affairs of such Corporate Debtor, however, subject to overall authority of Adjudicating Authority. Therefore, the Applicant herein is only Partner of the Corporate Debtor i.e. M/s. Time& Space Lifestyle LLP, has no locus standi to be impleaded in the instant Petition. The Applicant has not enclosed any document(s) in support of his allegations made in the Application. He has also not impleaded the concerned Party against whom he is making allegations. Principles of natural justice ordained that without impleading and hearing concerned party against whom relief is sought, cannot be decided. The order of the Admission of the Case has become final, and IRP/RP placing all proceedings before the Adjudicating Authority for its final approval. It is relevant to point out here that after considering the merits of the case, this Adjudicating Authority has ordered to liquidate the Corporate Debtor in vide order dated 4th March, 2020 passed in I.A.No.108 of 2020 in C.P.(IB)No.191/BB/2019.
6. We have perused the judgments cited by the Applicant in support of his case, as stated supra. However, we find that facts and circumstances of those cases are not applicable to the instant case. Therefore, the instant Application is liable to be rejected as not maintainable and lacks merits.

⁴CP No.(IB)10(PB)/2017 dated 20.02.2017

7. In the result, I.A.112 of 2020 in C.P.(IB)No.191/BB/2019 is hereby rejected. No order as to costs.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja

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

I.A.No.108 of 2020 in
C.P.(IB)No.191/BB/2019
U/s33(2), R/w Section 60(5) of the IBC, 2016

Between:

Mr. Venkataraman Jayagopal

Resolution Professional of
M/s. Time & Space Lifestyle LLP
No.275, 2nd Floor, JMJ Apartments,
100 Feet Road, Indiranagar,
Hal 2nd Stage,
Bangalore -560 038.

- Applicant/Resolution Professional

Date of Order: 04th March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/RP : Shri A. Murali with
Ms. Jyothi Anumolu
Resolution Professional : Shri V. Jayagopal

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.108 of 2020 in C.P.(IB)No.191/BB/2019 is filed by Shri Venkataraman Jayagopal, Resolution Professional of M/s. Time & Space Lifestyle LLP (hereinafter referred to as 'Applicant/Resolution Professional') under Section 33(2), R/w Section 60(5) of the IBC, 2016, by inter seeking to order requiring the Corporate Debtor i.e., M/s. Time & Space Lifestyle LLP to be liquidated, as per the provisions of the Code, in terms of decision taken by the CoC at their meeting held on 13th February 2020.



2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

- (1) The main Company Petition bearing C.P.(IB)No.191/BB/2019 filed by M/s. DnovaInfracon Pvt. Ltd. U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B(AAA) Rules, 2016, was admitted by the Adjudicating Authority, vide order dated 09th September, 2019, by initiating CIRP in respect of Corporate Debtor, appointing Ms. Sumana Rao bearing Registration No.IBBI/IPA-002/IP-N00059/2017-2018/10111 as IRP, imposing moratorium etc. Subsequently, the Adjudicating Authority, vide its order dated January 13th, 2020 passed in IA No. 10 of 20, approved the change the existing IRP thus appointed Mr. Venkataraman Jayagopal as the RP in place of Ms. Sumana Rao.
- (2) In Pursuant to admission of Case, the IRP made public announcement in Form A as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in the 'Business Standard' English newspaper and in 'Kannada Prabha' Kannada newspaper on 04.10.2019 by calling claims from all creditors. Five COC meetings were convened viz first CoC was on 02.11.2019; the second CoC on 07.12.2019; third CoC was on 23.12.2019; fourth CoC was on 06.02.2020 and Fifth CoC was meeting on 13.02.2020.
- (3) In the 5th meeting of the Committee of Creditors held on 13th February 2020, the CoC decided to go for liquidation by passing following Resolution:

"RESOLVED THAT the committee of Creditors considered and approved to file IA before the Hon'ble National Company Law Tribunal (NCLT), Bangalore Bench by the Resolution Professional for liquidation of the Corporate



Debtor, Time & Space Lifestyle LLP (UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.”

RESOLVED FURTHER THAT Mr.
Venkataraman Jayagopal, Resolution Professional be and is hereby appointed as liquidator for a monthly fee of Rs.1,75,000 plus GST (which will be part of liquidation cost) to perform all the functions and use the powers as per the provisions of Chapter III (Liquidation Process) of Part II of IB Code and Insolvency and Bankruptcy Board of India (Liquidation Process) of Part II of IB Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 other applicable Rules and Regulations of IB Code and to appear, sign, verify, declare, affirm, make, present, submit and file IA and all necessary applications, affidavits, undertakings, declarations, statements, papers and documents before the Hon'ble National Company Law Tribunal to intimate the decision of CoC about matter and to do all such acts, things, deeds as needed.”

3. Heard Shri A. Murali learned Counsel for the Resolution Professional. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the Rules made thereunder.
4. As detailed supra, the Resolution Professional and the CoC of the Corporate Debtor, havemade their best efforts to find a suitable Resolution Plan to revive the business of the Corporate Debtor. However, in the absence of any Resolution Plan received, there is no other 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 requisite majority and the instant Application is filed strictly in accordance with law. The CoC has also proposed Shri Venkataraman Jayagopal with IBBI/IPA-002/IP-N00574/2017-2018/11741 as a Liquidator, for liquidating the Corporate Debtor, who has filed a written consent dated 13th February, 2020 to act as Liquidator of the Corporate Debtor i.e., M/s. Time & Space Lifestyle LLP .by inter alia declaring that there are no disciplinary proceedings against him with the Board or ICSI Insolvency Professionals Agency etc. Hence, he is provisionally eligible to be appointed as Liquidator. Therefore, it is a fit case to initiate Liquidation in respect of Corporate Debtor.

5. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred under Section 33(2) of the IBC, 2016, disposed of I.A.No.108 of 2020 in C.P.(IB)No.191/BB/2019 with following directions:
- a) It is hereby ordered that M/s. Time& Space Lifestyle LLP, Corporate Debtor to be liquidated in the manner as laid down in Chapter III of Part II of Code, R/w IBBI(Liquidation process) Regulations, 2016.
 - b) Shri Venkataraman Jayagopal is hereby appointed as a Liquidator, subject to the terms and conditions to be agreed upon by the parties in the light of extant provisions of the IBBI.He is directed to follow due process of law as per above Chapter and Regulations and to issue public announcement immediately by stating that the Corporate Debtor is in liquidation.
 - c) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action and also to the Liquidator.



- d) The Liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder framed by the IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- e) Post the case for report of Liquidator on **07.04.2020.**



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja