

C.A. (IB) No. 1390/KB/2019
In
C.P. (IB) No. 505/KB/2017
SREI Infrastructure- vs- Right Towers

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

**CA(IB) No. 1390/KB/2019
In
C.P. (IB) No. 505/KB/2017**

In the matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

AND

In the matter of:

M/S. SREI INFRASTRUCTURE FINANCE LIMITED, having its registered office at 'Vishwakarma', 86C, Topsia Road (South), Kolkata 700046.

...Applicant/Financial Creditor

VERSUS

In the matter of:

M/S. RIGHT TOWERS PRIVATE LIMITED, having its registered office at 207, M.D. Road, 3rd Floor, Room No. 64, Kolkata 700007.

.... Respondent/Corporate Debtor

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2. By way of orders passed by this Tribunal in CP(IB) No. 505/KB/2017 dated 24th July, 2019, Corporate Insolvency Resolution Process was directed to be initiated and Sri Rakesh Kumar Agarwal, Chartered Accountant was appointed as Insolvency Resolution Professional for evolving a Resolution Plan. The IRP has submitted his Progress Report on 14th August, 2019.

3. It is submitted in the First Progress Report that public announcement as per Section 13 of the Code and Regulation 6 of the Insolvency & Bankruptcy Board of India (Fast Track IRP for Corporate Person) Regulations, 2017 in Two Newspapers was made on 27th July, 2019 pursuant to which he has received claims from Two Financial Creditors, One M/s. SREI Infrastructure Pvt. Ltd. for a sum of Rs. 140,98,23,113/- (Rupees One hundred Forty Crores Ninety Eight Lacs Twenty Three Thousand One Hundred Thirteen Only) and the other M/s. Environ Energy Corporate India Pvt. Ltd. for a sum of Rs. 3,46,00,000/- (Rupees Three Crores Forty Six Lacs Only). A Committee of Creditors (CoC) was formed on 13th August, 2019 and the list of Creditors and Certificate of Constitution of CoC has been filed before this Tribunal.

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4. In its First Meeting held on 20th August, 2019 the CoC discussed the ratification of remuneration and expenses made by the IRP, confirmation of Interim Resolution Professional as Resolution Professional and fixing his remuneration and to ratify and reimburse expenses incurred by the Applicant towards cost for public announcement.
5. The IRP/RP in his Second Progress Report submitted on 21st October, 2019 submitted that the IRP was confirmed as RP by the CoC under Section 22 (2) of the Code and his monthly remuneration of Rs. 1.25 lacs plus Taxes plus out of pocket expenses were considered and approved with 100% voting. It is further submitted in the Progress Report that in terms of Regulation 26 of the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 the RP has appointed Mr. Kanchan Dutta for valuation of financial asset of the Corporate Debtor at a fee of Rs. 20,000/- plus taxes, to determine the fair value and Liquidation value of the Corporate Debtor in accordance with Regulation 34 of the IBBI Regulations, 2017.
6. Similarly, to determine whether there was any preferential transaction under Section 43, undervalued transactions under Section 45, extortionate transactions under Section 50 and business with intent to defraud creditors or for any fraudulent purpose under section 66,

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the RP appointed M/s. H Modi & Associates at a fees of Rs. 35,000/- plus taxes to do the transaction audit as required by regulations.

7. It is further submitted that notice along with agenda of the Second Meeting of the CoC was circulated on 28th August, 2019 to Creditors and to the Director of the Corporate Debtor. Mr. Kanchan Dutta and M/s. H Modi & Associates as transaction Auditors were approved by the CoC in its meeting held on 28th August, 2019 with 100% votings. The CoC also approved the Evaluation Matrix sent along with particulars of the Invitation in Form 'G' of the Schedule to the prospective Resolution Applicants.
8. It is further submitted in the Report that M/s. H Modi & Associates, Chartered Accountants sent a report to the RP which was placed before the CoC. It was stated that they have found no adverse transaction as per Sections 43, 45, 50 & 88 of the Code, and therefore, there was nothing to be reported to this Tribunal regarding the same.
9. In its Third meeting held on 24th September, 2019, the CoC discussed the CIRP cost incurred by the R.P. which was duly approved by the CoC. It is submitted in the Court that the Expression of Interest was published in Two Newspapers on 3rd September, 2019 but the R.P.

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has not received any EOI and sought instructions from CoC regarding future course of action because the CoC can issue 2nd EOI and in case the CoC opts for 2nd EOI then the CoC should also approve extension of CIRP period which is expiring on 22nd October, 2019. The CoC however, considered and concluded that since the Corporate Debtor did not have any asset and its operation is closed, so there is very little chance of any resolution plan and therefore the CoC decided to liquidate the Company and asked the R.P. to file its Report to the Tribunal for Liquidation of the Company. This decision of the CoC was also approved unanimously. The R.P. being eligible, offered his services and consented to act as Liquidator before the CoC and therefore the CoC recommended the name of R.P. to act as Liquidator subject to approval of this Tribunal. The CoC has also decided to pay the fees of Rs. 3,00,000/- (Rupees Three Lacs Only) to the Liquidator.

10. The R.P. has further submitted that since the Corporate Debtor does not have any liquid asset, the CoC Member M/s. Srei Infrastructure Finance Limited agreed to fund the Liquidation cost and it will be treated as Interim funding for the purpose of Liquidation. Pursuant to the discussions of the CoC on the above said points, the CoC has decided to liquidate the Company and requested the R.P. to file its report to the Tribunal for liquidation of the Company, by 100%

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voting in favour of the resolution. The minutes of the CoC requesting appointment of the RP as Liquidator is approved.

11. It is submitted that in the 3rd meeting held on 1st October, 2019, the CoC approved the CIRP cost incurred by the R.P. and the best estimated liquidation cost required to meet the liquidation process which included Liquidator's fees of Rs. 3,00,000/-, Newspaper Publication cost of Rs. 30,000/-, Audit expenses of Rs. 50,000/-, Advocate Fee of Rs. 25,000/- and Miscellaneous expenses of Rs. 20,000/-. The CoC members and other participants in the meeting are stated to have agreed that if fast resolution is the key to survival of any ailing business, this Code provides the right impetus to do it.
12. The Ld. Liquidator submits that there are no assets available for distribution among the Stakeholders and since there is nothing available has filed the Misc. Application No. 1390/KB/2019 under section 54(2) of the I & B Code for passing an order of dissolution of the Corporate Debtor Company.
13. Having gone through the application filed by the R.P. and the annexures annexed thereto this Tribunal is satisfied and approved the minutes of the meeting of CoC dated 28th August, 2019 and 2nd

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September, 2019. Let the fees of the Liquidator and the Liquidation cost be borne by M/s. Srei Infrastructure Private Limited, one of the members of the CoC. With this directions the Corporate Debtor stand dissolved.

14. Having heard the Ld. Counsel for the RP and perused the records and the documents annexed with the application especially minutes of the meeting of CoC dated 28th August, 2019 and 2nd September, 2019. We are satisfied that the Corporate Debtor Company (In Liquidation) had no assets as on the date of passing an order for liquidation, therefore, this is a fit case wherein an order of dissolution is to be passed under Section 54(2) of the I&B Code.

ORDERS

- i) The Corporate Debtor M/s. Right Towers Private Limited stands dissolved from the date of the order.
- ii) Registry is directed to communicate the order Under Section 54(2) of the 'I & B Code' to the Registrar of Companies, West Bengal , Insolvency and Bankruptcy Board of India the Regional Director (Eastern Region), Ministry of Corporate Affairs within

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7 days from the date of this order by way of e-mail as well as by way of Speed Post for appropriate action in this regard.

- iii) Free copy of the order is to be served upon the Liquidator Financial Creditor and the Corporate Debtor by e-mail.
- iv) **C.A. (IB) No. 1390/KB/2019** in CP(IB) No. 505/KB/2017 stands disposed of accordingly.
- v) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 8th day of November, 2019

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