

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

IA No. 1577 of 2021
in
C.P. (IB) No. 69/MB/2017

Application under Regulation 33(2) of the Insolvency and Bankruptcy Board of
India (Liquidation Process) Regulations, 2016

Mr. Uday Vinodchandra Shah,
Liquidator for Neelkanth Township & Construction Private
Limited,
B-10, Jaybandhu Aparments, Opp. Guthu Restaurant, 90
Feet Road, Ghatkopar (E), Mumbai-400077

...Applicant

In the matter of

Neelkanth Township & Construction Private Limited

...Corporate Debtor

Date of Order: 24.12.2021

CORAM:

Shri. Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

Shri. Narender Kumar Bhola, Hon'ble Member (Technical)

Sd/-

Appearance:

For the Applicant: Mr. Vikram Nankani, Ld Sr. Advocate

Per: Shri. Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

ORDER

Sd/-

1. This is an application filed by the Liquidator Mr. Uday Vinodchandra Shah (Applicant) under Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the Regulations) seeking a permission for conducting the Private Sale of the Assets of the Corporate Debtor with the following prayers:
 - A. *Allow the present application*
 - B. *Permit the applicant, being Liquidator of the Corporate Debtor, to sell the immoveable property at Alibaug alongwith the equity shares held by the Corporate Debtor in its subsidiary, Urban Rupi Infrastructure Pvt Ltd to Leisure Enterprises LLP.*
 - C. *Pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.*
2. The facts leading to the Application are as under.
 - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated 21.04.2017 upon admission of a Petition under Section 7 of the Code and Applicant was appointed as the Interim Resolution Professional (IRP) and further Applicant was confirmed as Resolution Professional of the Corporate Debtor.
 - b. Since there was no Resolution Plan was approved by the CoC within statutory period provided for completion of the CIRP. Therefore, Applicant filed an Application bearing MA No.445 of 2018 for liquidation of the Corporate Debtor under Section 33 of the Code. And the same was allowed by this Tribunal vide its order dated 03.09.2020, wherein the Applicant was appointed as the Liquidator of the Corporate Debtor.

- c. Thereafter the status of the Corporate Debtor was changed as 'under Liquidation' applicant took charge of the Corporate Debtor as Liquidator.
- d. The Applicant, as in capacity of the Liquidator, the applicant sought to sell the property of the Corporate Debtor by way of a public auction in compliance of Regulation 33(1) of the Regulations. The property of the Corporate Debtor included a piece and parcel of the land situated at Alibaug, Maharashtra and shares held by the Corporate Debtor in one Urban Rupi Infrastructure Private Limited, being a wholly Owned Subsidiary of the Corporate Debtor. The details of the property is as :

'Sale of the immovable property in Village Boris, having Survey No. and Hissa No.47/1B, 47/2C, 54/3, 68/2A, 69/1, 69/8, 103, 59/1A, 60/2, 67, 69/9, in village Kihim, having Survey No.767 and in Village Gunjis having Survey no. and Hissa no.7/1 and 9/1/4 in Alibaug, Maharashtra (Lot1) alongwith the equity shares of a subsidiary company of a Corporate Debtor being Urban Rupi Infrastructure Pvt Ltd. ("UR IPL") having face value of Rs.10/- bearing distinctive nos.0001 to 10000 comprising of the immovable property in Village Boris, having Survey No. and Hissa No.33/2, 34/1(pt), 41/3(pt), 42/3(pt), 43, 44/2, 45/1, 46, 47/1A, 47/1E, 47/2A, 47/2D, 49/2, 50/1 and in Village Kihim having Survey No. and Hissa No.754/1, 761 and 764 (Lot 2)' [said Property].

- e. Thereafter Applicant as in capacity of liquidator he published 1st auction notice no 18.07.2019, however he did not receive any bid pursuant to the same auction notice. Therefore he published 2nd auction notice on 10.12.2019. the applicant submitted that thereafter, a nationwide lockdown was imposed in the country on account of Covid -19 pandemic and no auctions could be undertaken during the

said period. Thereafter Applicant published 3rd auction notice on 01.03.2021 and 4th auction notice on 25.03.2021.

- f. The applicant submitted that pursuant to 4th auction notice he received letter from Leisure Enterprisers LLP (proposed buyer) dated 10.06.2021 expressing their interest in purchases of the said property for an amount of Rs.58.51 crores. Thereafter applicant issued a letter dated 02.07.2021 to proposed Buyer thereby confirming the sale of the said property.
- g. The applicant submitted that Mr. Anand Jain is a partner in Leisure Enterprisers LLP is also a chairman of Urban Infrastructure Venture Capital Limited (Financial Creditor). Since proposed buyer is related party of the Corporate Debtor as per section 5(76) of the Companies Act, 2013, the applicant has preferred present application as the proposed buyer falls under the proviso to Regulation 33(2) of the Regulations.
3. At the time hearing this bench proposes to get first-hand information on the market value of the property from the local Revenue Authority. In view of the same District Collector/ District Commissioner is directed to provide necessary details with regard to the market value of the property as followed in the land acquisition matters vide its order dated 27.07.2021. Pursuant to the direction, this bench received a collector report dated 20.10.2021 providing the details of the property with market value. The total market value of the said property is 57.68 crores (Rs.20.88 crores of lot 1 and Rs. 36.80 crores of Lot 2)
4. It is noted that as per last auction notice dated 25.03.2021 the reserve price of lot 1 is 21.39 crores and market value as per valuation report received from collector is Rs. 20.88 crores. There is no big difference in the valuation done by valuer appointed by liquidator and collector report. Also it is noted that the total market value of the said property is Rs. 57.68 crores and total

reserve price of the said property is Rs. 58.19 crores, since there is no difference as such it is considerable.

5. It is pertinent to note that liquidator received one offer from proposed buyer and there are no more funds available in the Bank Account of the Corporate Debtor. In view of the above, the sale proposal of the proposed buyer, being only bonafide proposal received by the Applicant is only one option left in the interest of liquidation process.
6. It is in the view that the said property to be sold by means of Private Sale as per the Regulation 33(2) of the Regulations. The proposed owner is comes under the proviso to Regulation 33(2) of the Regulations. The Regulation 33 of the Regulations is as:

"33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

PROVIDED that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a

report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties."

7. Since, the Applicant is in the process of selling the said property under private sale to a related party of the Corporate Debtor, not barred under Section 29A of the IBC, 2016.'
8. In view of the above-mentioned facts and circumstances, wherein there is no objection and multiple attempts of public auction by the Liquidator, this bench is of the view that this is a fit case for granting the permission for private sale of said property as the proposed buyer is related party as under Regulation 33(2) of the Regulations.
9. Hence, we allow the present Application by permitting private sale of said property as under Regulation 33(2) of the Regulations.
10. Accordingly, the IA No. 1577 of 2021 is allowed and disposed off.

Sd/-

Narender Kumar Bhola
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)