

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

I.A. No.451/2019 in
C.P. No.242/2013 (T.P No.9/2017)
U/R 11 of NCLT Rules, 2016
R/w Section 33 of the IBC, 2016

Shri Anand Ramachandra Bhat
Resolution Professional
M/s. Narayanaa Electrical Solutions
Private Limited

No.81, 8th Main,
8th Cross, Serpentine Road,
Kumarapark West,
Bengaluru – 560 020 - Applicant/RP

In the matter of:

M/s. HDFC Bank Ltd.
Department for Special Operations
No.7 & 7/1, 2nd Floor,
Essel Chambers,
Lalbagh Road,
Richmond Circle,
Bengaluru – 560 027 - Petitioner/Financial Creditor

Versus

M/s. Narayanaa Electrical Solutions Private Limited
No.69, 1st Floor,
4th Main, 4th Block,
3rd Stage,
Shakthi Ganapathi Nagar,
Basaveshwara Nagar,
Bengaluru – 560 079 - Respondent/Corporate Debtor

Date of Order: 20th September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)



Parties/Counsels Present:

For the Applicant/RP : Shri Anand Ramachandra Bhat
For the Respondent : Shri Narayana Murthy V, Promoter
Party-in-Person

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.451/2019 in C.P.No.242/2013 (T.P.No.9/2017) is filed by Shri Anand Ramachandra Bhat, Resolution Professional of M/s.Narayanaa Electrical Solutions Private Limited ('Applicant /Resolution Professional') Under Rule 11 of NCLT Rules, 2016 R/w Section 33 of the IBC, 2016, by inter alia seeking to appoint Resolution Professional to act as Liquidator to liquidate the Corporate Debtor Company as recommended by the CoC.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) Initially, the Adjudicating Authority has admitted the Petition vide order dated 17.10.2018, by initiating CIRP, appointing, imposing moratorium etc. Based on the offer for settlement by the Promoter of the Company, during the course of CIRP Proceedings, the CoC/HDFC Bank expressed its preference for settlement of its outstanding dues rather than following Expression of Interest Route and instructed RP specifically not to go-ahead with the EOI process envisaged under IBC.
 - (2) During the course of CIRP proceedings, suspended Board of Directors/Promoters of the Company offered One Time Settlement (OTS) to the HDFC Bank (also member of CoC with 100% voting) and the HDFC Bank has provided in-principle approval and sought to withdraw the admitted

application U/s. 12A of the Code. For OTS as well as withdrawal of case U/s. 12A, Bank had obtained approval from approving Authority of the Bank. Accordingly, HDFC Bank has submitted to RP vide email dated 21.05.2019 in Form FA under the Regulations.

- (3) As per the Provisions, CoC is required to approve for the withdrawal of the admitted Petition. However, the CoC did not approve for withdrawal of the case U/s. 12A, since the terms of payments as per the OTS arrangements was not fully honoured by the Promoters of the Company. Therefore, in CoC meeting held on 8th July, 2019 has rejected the Resolution for withdrawal of the case.
- (4) Accordingly, 180 days of CIRP period ended on 15th April 2019. In order to have more time for negotiations and settlement, by seeking extension of 90 days, this Adjudicating Authority has vide order dated 10th April 2019 had extended the CIRP period by 90 days. Accordingly, based on the report and representations, made by the Promoter of the Company and HDFC Bank, the Adjudicating Authority, vide order dated 25.07.2019 had directed the Resolution Professional to hold another CoC meeting and place a revised resolution plan, if any, submitted by the Promoter, before the CoC for its consideration and to submit the decision taken by the CoC on the next date of hearing.
- (5) Therefore, a 7th CoC meeting was held on 26th July, 2019 and revised Resolution plan submitted by the Promoter of the Company was submitted to the CoC for its consideration and the CoC has approved the Resolution Plan with a condition that Rs.50 Lakh should be paid before 29th July 2019 and Rs.7 Cr. Shall be paid by the promoters by 30th July, 2019. Finally, the Promoter has paid Rs.50 Lakhs before 30th July 2019 but



defaulted in payment of Rs.7 Cr., before 30th July, 2019. Hence, against OTS arrangement of Rs.8 Cr, the HDFC Bank has received only Rs.1 Cr so far and there is a default of Rs.7 Cr.

- (6) During the course of hearing on 28.08.2019, the Adjudicating Authority directed the Resolution to hold another CoC meeting on 30.08.2019 and directed the CoC to take a clear decision on the liquidation of the Company. Accordingly, 8th CoC meeting was held on 30.08.2019 as per the direction of the Adjudicating Authority and the CoC has passed a resolution for liquidation of the Company taking into account commercial aspects and in the interest of all the stakeholders.
3. Heard Shri Anand Ramachandra Bhat, learned Resolution Professional and Shri Narayana Murthy.V, Promoter of Corporate Debtor, Party-in-person. We have carefully perused the pleadings of both the parties and extant provisions of the Code and the Rules made there under.
4. As narrated supra, the Resolution Professional has made best efforts to revive the Company by exploring the possibility to find a suitable Resolution Plan of the Corporate Debtor. However, the Resolution Applicant could not avail the opportunities given by the COC as explained supra. Therefore, there is no other alternative for the COC except to invoke liquidation as per Law. At the request of Promoter, who appeared party in person, we have granted sufficient time to him to resolve the issue with COC with a direction to RP and COC to find some solution to the issue. The Resolution to initiate liquidation was approved by the CoC with a majority of 100% votes and the instant Application is filed strictly in accordance with law.

The CoC has also decided to continue the existing RP as a Liquidator for liquidating the Corporate Debtor, who is eligible to be



appointed as Liquidator. He has also filed a written consent dated 4th September 2019 to act as Liquidator of the Corporate Debtor i.e. M/s.Narayanaa Electrical Solutions Private Limited, U/s 34 (1) of the IBC, 2016, by inter alia declaring that he is registered with the Board as an Insolvency Professional; he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency; he do not suffer from any disability to act as Liquidator etc. Therefore, it is a fit case to initiate Liquidation in respect of the Corporate Debtor.

5. Shri Narayana Murty V., Promoter of the Corporate Debtor, Resolution Applicant, submits that he has paid an amount of Rs.1 Cr. (50 Lakhs each) before 30.07.2019, out of the total OTS of Rs.8 Cr. Therefore, defaulted is only Rs.7 Cr., and he is still trying to pay the remaining outstanding amount. Therefore, he requests the Adjudicating Authority to grant some more time to explore the resources to comply with the OTS proposal.
6. Since the case is pending for a long time and we have granted sufficient time to the party to pay OTS proposals given by the HDFC Bank, we cannot grant further time. However, since the Promoter of Corporate Debtor has already paid Rs.one Crore out of OTS proposal for Rs.8 Crore, the Liquidator and COC should be directed to extend full assistance to the Promoter to resolve the issue during Liquidation so as to revive the Company rather than to liquidate it.
7. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred on it, u/s 33 of the IBC, 2016, I.A. No.451/2019 in C.P.No.242/2013 (T.P.No.9/2017) is hereby allowed with following directions:

(1) We hereby order that M/s. Narayanaa Electrical Solutions Private Limited, Respondent/Corporate Debtor is to be



liquidated in the manner as laid down in Chapter III (Liquidation process) of the Code.

- (2) We hereby appointed Shri Anand Ramachandra Bhat, Regn. No.IBBI/IPA-001/IP-P00467/2017-18/10810 as Liquidator subject to the terms and conditions to be agreed upon by the parties in the light of the extant provisions of the IBBI.
- (3) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation.
- (4) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.
- (5) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made there under 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.
- (6) The Liquidator and the COC is directed to extend full assistance and co-operation to the Promoter of Corporate Debtor so as to revive the Company rather than to send the Company for liquidation, since the promoter has already paid Rs. One Crore out of agreement OTS proposal of Rs. Eight Crore.
- (7) Post case on **21.10.2019** for report of the Liquidator.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL