IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **24-02-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA (IBC) 112/2022 in CP (IB) No. 325/7/HDB/2020
U/s 7 of IBC, 2016

IN THE MATTER OF:

LIC Housing Finance Ltd **...Financial Creditor**

Vs

M/s. Butta Infrastructure Pvt Ltd **...Corporate Debtor**

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Orders pronounced IA (IBC)112/2022 pronounced vide separate sheets.

In the result, IA (IBC) 112/2022 is allowed and Mr. Gonugunta Murali, IP has been appointed as Liquidator to carry out the Liquidation process. With these directions, this IA(IBC)/112/2022 is disposed of.

MEMBER (T) **MEMBER (J)**

Srinivas

NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD

IA No. 112 of 2022
In
CP(IB) No. 325/7/HDB/2020

In the matter of
M/s BUTTA INFRASTRUCTURE PRIVATE LIMITED

Filed by

Krishna Komaravolu
Resolution Professional
Butta Infrastructure Private Limited
7-1-214, Flat No. 409, Vamsikrishna Apartments
Dharam Karan Road, Ameerpet
Hyderabad – 500016

...Applicant
Resolution Professional

Date of order: 24.02.2022

Coram

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Resolution Professional in person

PER: BENCH

ORDER

1. The Resolution Professional (for short RP) appointed by this Tribunal pursuant to our order dated 01.03.2021 directing initiation of Corporate Insolvency Resolution Process (For short "CIRP") against the Corporate Debtor (Butta Infrastructure Private Limited) vide CP No. 325/7/HDB/2020, has filed this application under Section 33(1)(a) of Insolvency & Bankruptcy Code, 2016 praying this Tribunal to pass order of liquidation of the Corporate Debtor.

2. To put concisely, the Company Petition filed by the Corporate Person u/s 7 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 01.03.2021 and ordered commencement of initiation of CIRP against it. The Applicant herein was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional.

3. The first extension of the term of CIRP by 90 days beyond 180 days was granted on 22.10.2021, apart from exclusion of 45 days covid lockdown period.

4. On his taking over charge as IRP/RP, the Applicant herein caused public announcement for Expression of Interest (EOI) pursuant to which two resolution plans were received. However both the plans were rejected by the CoC in the 7th CoC meeting.

5. The following agenda points were discussed in the 8th CoC meeting held on 07.01.2022.

(a) To file application seeking extension of CIRP period by 60 days beyond 270 days.

(b) Resolution for liquidation of the Corporate Debtor under Section 33 (1) (a) of IBC, 2016

(c) Resolution for appointment of Liquidator under Section 34 of IBC.

(d) Resolution for liquidation of the Corporate Debtor as a going concern under Regulation 39B of CIRP Regulations, 2016.

(e) Resolution for meeting the liquidation costs under Regulation 39C of CIRP Regulations, 2016.

(f) Resolution for fixing the fees of the Liquidator under Regulation 39D of CIRP Regulations, 2016.

Except Sl.No. (a) remaining agenda points stated supra were deferred to a later date.

6. Accordingly, IA No. 54/2022 was filed on the instructions of CoC on 07.01.2022 seeking further extension of 60 days' time beyond 180 days. The same was dismissed by this Tribunal on 27.01.2022 and the operative part of the said order is as under:-

> "in the light of our discussion as above, taking into consideration the fact that the IBC timelines are to be strictly followed, especially during the Corporate Insolvency Resolution Process (CIRP), we are of the firm view that this a not a fit case to grant time. With these directions, this application stands dismissed and the Resolution Professional is directed to take next course of action of moving a liquidation application forthwith"

7. Pursuant to above order of this Tribunal, another IA bearing No. 100/2022 was filed on 29.01.2022 seeking approval of the AA for

holding CoC meeting for a limited purpose of passing the CoC resolutions relating to liquidation cost, assessment of sale of CD as a going concern and Liquidator's fees as required under CIRP Regulations. The said IA was dismissed by this Tribunal directing the RP to comply with the earlier order dated 27.01.2022 cited supra.

8. Thus submitting, this IA is filed by the Resolution Professional praying the Tribunal for passing a liquidation order.

9. We have heard the Ld. Resolution Professional Shri Krishna Komravolu.

10. In the instant case, already 90 days extension beyond 180 days has been granted, besides 45 days exclusion of covid induced lockdown. Despite granting above extension and exclusion, the Resolution Professional failed to complete the CIRP of the Corporate Debtor on time. When another extension of 60 days was sought the same was turned down by this Tribunal vide order dated 07.01.2022 , with a direction to the RP to file liquidation application.

11. In the light of above facts in the instant application, we would like to refer to Section 12 of the I & B Code

12. (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting

Abrand

of the committee of creditors by a vote of seventy-five percent of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

12. Further Regulation 40A Insolvency & Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, provides model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:

13. Moreover, the proviso inserted under Section 12 of the Code effective from 16.08.219 provides that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. Thus, the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

14. Even according to the Applicant, no resolution plan has received the approval by the COC within the timeline prescribed under the Code and despite completion of 270 days of CIRP and exclusion

of 45 days granted. Further, it is evident from the CoC minutes that no concrete proposal was before the CoC to even to have hope of resolution even by the time of seeking extension of another 60 days by the petitioner.

15. We are fully conscious of the fact that the primary object of IBC is resolution and liquidation is the last resort. At the same time keeping the timelines prescribed under the IBC is paramount, lest asset value gets deteriorated. Therefore, taking into consideration the provisions of law as well as the documents on record, this Adjudicating Authority is of the view that since the efforts to obtain resolution of the Corporate Debtor have failed and the only option left, under the circumstances being early liquidation process, we allow this petition, directing the liquidation of the Corporate Debtor. Hence, the following order is passed.

16. Before we part with, we would like to refer to the ruling of Hon'ble Supreme Court in Innoventive Industries Limited Vs ICICI Bank & Anr in Civil Appeal No. 8337-8338 of 2017, wherein it has been held as follows :-

"From the viewpoint of creditors, good realization can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realization is lower when there are delays. Hence, delays cause value destructions. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay"

17. We therefore hope that the Liquidator whom we have appointed would sincerely endeavour to sell the Corporate Debtor as a going concern without delay however, by observing the relevant provisions contained in IBC as well as in IBBI (Liquidation

Process) Regulations and thus ensure that one of the objects of the IBC viz. maximization of the assets of the Corporate Debtor is not diluted.

ORDER

(a) The Corporate Debtor, M/s. Butta Infrastructure Private Limited, is put under liquidation process in the manner laid down in Chapter-III of the Code with effect from the date of order.

(b) Mr. Gonugunta Murali, Insolvency Professional, having IBBI Registration No. IBBI/IPA-001/IP-P00654/2017-2018/11139 16-11-19/4, Saleem Nagar, Near Farahat Hospital, Malakpet, Hyderabad, Andhra Pradesh, 500036 gmurali34@gmail.com is appointed as Liquidator. He shall file his consent in Form AA within two days of receipt of the copy of this order.

(c) The erstwhile RP is directed to handover the records to the Liquidator appointed by this Tribunal forthwith.

(d) He shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.

(e) The Moratorium declared under Section 14 of the code shall cease to have its effect.

(f) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Person. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(g) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

(h) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(i) Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.

(j) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

(k) This order shall be deemed to be a notice of discharge to the Officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

(l) The Applicant herein is directed to serve a copy on the Liquidator appointed herein above.

(m) The Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.

24/02/2022

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(DR N.V. RAMAKRISHNA BADARINATH)
MEMBER (JUDICIAL)

Binnu