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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.678 of 2019 in
C.P.(IB) No.181/BB/2018
U/s 33(2) of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016

Mr.Balady Shekar Shetty
E 98, 7A Cross,
Manyata Residency, Nagavara,
Bangalore – 560 045.

- Applicant/Resolution Professional

IN THE MATTER OF:

M/s. Karnataka State Finance Corporation
Rep. by Assistant General Manager,
Ramanagar Branch,
Ramanagar – 562 159.

- Petitioner/Financial Creditor

Versus

M/s. Innovative Studios Pvt. Ltd.
Rep. by Managing Director
No. 135, Outer Ring Road,
Varthur Hobli, Marathahalli,
Bengaluru – 560 037.

- Respondent/Corporate Debtor

Date of Order: 6th January, 2020

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

Parties/Counsels Present:

For Applicant/RP : Mr. Balady Shekar Shetty

For Income Tax : Ganesh R. Ghale



ORDER

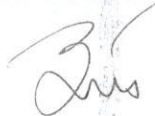
Per: Ashutosh Chandra, Member (Technical)

1. I.A. No.678 of 2019 in C.P. (IB) No.181/BB/2019 is filed by Mr. Balady Shekar Shetty (hereinafter referred to as 'Applicant/Resolution Professional') under Sections 33(2) of IBC, 2016 Read with Rule 11 of NCLT Rule, 2016, by inter alia seeking to pass an Order for Liquidating the Corporate Debtor and appointing a Liquidator to the Corporate Debtor under Section 33(2) of IBC 2016 and appoint Mr. Balady Shekar Shetty, Insolvency Professional having IBBI Registration No. IBBI/IPA-002/IP-N00213/2017-18/10665 as the Liquidator and the Corporate Debtor be Liquidated as a Going Concern as per Regulation 39(c) of IBBI (CIRP) Regulations, 2016 etc.

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

(1) This Adjudicating Authority, Bengaluru Bench, admitted the Petition of the Financial Creditor Karnataka State Financial Corporation under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, Innovative Studios Private Limited, through its Order dated 11th April 2019, and appointed the Applicant as the Interim Resolution Professional (IRP). The IRP caused a public announcement in Financial Express (English Paper) and Kannada Prabha (Kannada paper) on 13th April 2019.

(2) The First meeting of Committee of Creditors ('CoC') was held on 09.05.2019 and it is stated that the details of the claims received from Financial Creditors and Operational Creditors were placed before the meeting. CIRP time line and process was explained.



- (3) The Second meeting of CoC was held on 16.05.2019 and it is stated that (1) the appointment of valuers (2) Process the appointment of Forensic Auditor were approved.
- (4) The Third meeting of CoC was held on 10.06.2019 and it is stated that (1) Form G (2) Expression of Interest and Process flow document and (3) Evaluation Matrix were approved.
- (5) The Fourth meeting of CoC was held on 12.07.2019 and it stated that the RP informed the Committee about the efforts put in by him for sourcing the Resolution Applicants by visiting Karnataka Film Chamber of Commerce, Bangalore and South India film Producers' Associations of Tamil, Telugu and Malayalam at Chennai. Further RP contacted various real estate companies, amusement parks like Wonderla, GRS etc. However, as no Resolution Plan was received, it was decided to extend the date of submission of EOI by Prospective Resolution Applicants by publishing revised Form G. During the meeting, the Committee Members suggested to give wider publicity to attract more Resolution Applicants. As such it was decided to publish the revised Form G in Economic Times – Bangalore, Mumbai, Chennai and Hyderabad editions and also in Vijaya Karnataka – a leading Kannada newspaper. In order to ascertain the permissible land use purposes, KIADB was approached to get the clarification on the same to get proper valuation of the landed property of the Company.
- (6) The Fifth meeting of the CoC held on 23.08.2019 stated that the CoC approved the action of the RP rejecting the EOI submitted by M/s Ambit Flowers Asset Reconstructions Pvt. Ltd. (since 22nd July, 2019 known as J C Flowers Asset Reconstruction Pvt. Ltd.) Decision was taken to appoint Legal Counsel M/s. Singhania & Co. LLP at a consolidated fee of Rs. 65,000/- per month on L1 basis.



- (7) The Sixth meeting of the CoC held on 11.09.2019 stated that the Audit Report dated 4th September, 2019 submitted by the Forensic Auditor was placed. Members noted the same. RP also informed the CoC about the completion of the audit of the Company accounts for the FY 2018-19. The development regarding the admission of 5 IAs by the Bench was mentioned. Under voting items approval of the CoC was granted to M/s. Suresh Productions Entertainment LLP, Resolution Applicant to grant extension of time up to 7th October, 2019 for submitting the fresh Resolution Plan. Besides, the CoC passed a resolution under Section 12 of IBC to seek extension of CIRP period by 90 days i.e. up to 6th January, 2020 as no viable Resolution Plan was received.
- (8) The Seventh meeting of the CoC held on 03.10.2019 stated that M/s. Suresh Productions Entertainment LLP, the Resolution Applicant had submitted a Resolution Plan, without a supporting Bank Guarantee. The salient features of the Resolution Plan was explained to the committee by the RP and Mr. Ravi Sankar Devarakonda, the Authorised Representative o the Resolution Applicant. Since the Financial proposals of the plan were not acceptable to the Committee, and plan was not supported by a Bank Guarantee, they requested the RA to present a revised plan.
- (9) The Eighth meeting of the CoC held on 12.11.2019 stated that the RP mentioned that the Tribunal had granted the extension of time up to 6th January, 2020. The CoC was informed about the revised report received from the Forensic Auditor. RP further informed the members that the Resolution Applicant submitted a revised Resolution Plan, with a Bank Guarantee of Rs. 50 Lac, instead of a Bank Guarantee of Rs. 500 Lac as provided in the Process Document. He also informed that the RA requested that the balance Bank Guarantee would be submitted after approval of the Plan by CoC, but before the matter is placed before the



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Adjudicating Authority. The CoC observed that the Plan was less than the Liquidation Value as assessed by the Registered Valuers, and advised the RP to negotiate for higher Plan amount.

(10) The Ninth meeting of the CoC was held on 28.11.2019 stated that the Resolution Professional informed the members that the Resolution Applicant sought extension of time for submission of Revised Plan initially up to 5th December, 2019 and for another couple of weeks thereafter. The RA also informed about the withdrawal of earlier Resolution Plans. From the mail dated 23.11.2019 from the RA it was not clear whether the RA was really serious in submitting the revised Resolution Plan acceptable to CoC. Besides the extended CIRP period of 90 days would expire on 6th Jan, 2020. Hence, it was felt that waiting indefinitely for receiving the Resolution Plan from lone RA was felt not desirable. Therefore CoC has decided to recommend for liquidation of Corporate Debtor of Adjudicating Authority. In this meeting, the Members of the CoC further decided to consider Liquidation of Corporate Debtor as a Going Concern. They also decided to recommend the appointment of the Resolution Professional as Liquidator and approved the estimated Liquidation costs.

(11) Accordingly, the following resolutions were put to vote of the members of the CoC by e-voting:

"RESOLVED THAT the Committee of Creditors do hereby recommend for initiation of Liquidation Process of Innovative Studios Private Limited (the Company or the Corporate Debtor) in accordance with the provisions of Section 33 of the Insolvency and Bankruptcy Code, 2016 and Regulations thereunder, in view of the fact that the CoC had earlier rejected the Resolution Plan submitted by the Resolution Applicant wherein the Resolution Plan amount being far less



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than the Liquidation Value of the Company and also since the Resolution Applicant vide their communication dated 20.11.2019 had withdrawn earlier plans submitted by them."

"RESOLVED THAT the Committee of Creditors recommend appointment of Mr. Balady Shekar Shetty, Insolvency Professional having IBBI Registration No. IBBI/IPA-002/IP-N00213/2017-18/1.0665 as the Liquidator, who has given his consent to carry out the Liquidation Process of the Company."

- (12) The e-voting commenced on Saturday, 30.11.2019, at 10.00 AM and continued up to 10 AM on Sunday, 1st December, 2019. The Resolution number 1, 2,4 & 5 were passed with 91% of the voting share and Resolution No. 3 was passed with 100% voting power.
- (13) The Resolution Professional informed the members of CoC of the outcome of the e-vote by his email dated 1st December, 2019. The Resolution Professional informed Resolution Applicant, by way of email dated 03.12.2019 that their request for extension of time could not be considered.
- (14) In the light of the above, since the maximum period permitted for the completion of the CIRP under Section 12 of Code would expire on 6th January, 2020, and the Final Resolution Plan dated 20th September, 2019 as amended on 28th October, 2019, submitted by M/s Suresh Productions Entertainment LLP was withdrawn, and no further extension was considered by the CoC, the Resolution Professional could not submit any approved resolution plan before this Tribunal for its consideration under section 30(6) of the Code.
- (15) The Resolution Plan was submitted by the Resolution Applicant was discussed from the 7th CoC meeting onwards where majority of the members of CoC were present. The RA was also present in the 7th



meeting of CoC, through his Authorised Representative. The RA revised the Resolution Plan submitted by him and also submitted Rs. 50 Lakh Bank Guarantee, even though the Bank Guarantee required was Rs. 500 Lakh. Still the plan could not meet the expectations of the Committee of Creditors, and was far less than the Liquidation Value as assessed by the Registered Valuers. Hence the CoC, at their meeting held on 28.11.2019 recommended for Liquidation of the Corporate Debtor.

3. Heard Mr. Balady Shekar Shetty, learned Resolution Professional and Mr. Ganesh R. Ghale for Income Tax. We have carefully perused the pleadings of the party and extant provisions of the Code and the Rules made thereunder and the Law on the issue.
4. As detailed supra, the Resolution Professional and the CoC of the Corporate Debtor have made best efforts to find a suitable Resolution Plan to revive the business of the Corporate Debtor. However, no suitable Resolution Plan is submitted so as to consider the same by the CoC. Therefore, there is no other alternative for the CoC except to seek an 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 in accordance with law. The CoC has also decided to continue the RP as a Liquidator for liquidating the Corporate Applicant, who is eligible to be appointed as such. He has also filed a written consent to act as Liquidator of the Corporate Debtor i.e. M/s.Innovative Studios Private Limited, U/s 33(2) 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 etc. 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 allows I.A.No.678 of 2019 in C.P.(IB)No.181/BB/2018 with following directions:



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- a) It is hereby ordered that M/s.Innovative Studios Private Limited, Corporate Debtor be liquidated in the manner as laid down in Chapter III of Part II of Code R/w IBBI (Liquidation process) Regulations, 2016.
- b) Mr. Balady Shekar Shetty, is hereby appointed as 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 Applicant is in liquidation.
- c) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.
- 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 10.02.2020

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**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

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**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

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Deputy Registrar
National Company Law Tribunal
Bengaluru Bench

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