

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH
*** **

IA No. 24 of 2018
in
CP (IB) No. 1061/MB/2017

In the matter of an Application under Sec. 30 (6) and 33 of IBC, 2016

Rajendra K. Bhuta,
Resolution Professional for
Guruashish Constructions Private Limited
1207, 207, Yogi Paradise, Yogi Nagar,
Borivali (W), Mumbai 400092 ... Applicant

In the matter of

Union Bank of India. ... Financial Creditor
V/s

Guruashish Constructions Private Limited ...Corporate Debtor

Date of Order: 04.09.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Hon'ble Shri V. Nallasenapathy, Member Technical

Appearance (via video conferencing):

For the Applicant: Adv. Darryl Pereira (Advocate for Applicant)

For MHADA(Intervenor): Sr. Adv. Janak Dwarkadas i/b Adv. Sharmila
Deshmukh

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is an application by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking orders for approval of Resolution Plan submitted by M/s Ravi Developments.
2. This Adjudicating Authority vide order dated 24.07.2017 admitted the Petition (CP (IB) No. 1061/MB/2017) under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. The Applicant who was appointed as IRP was confirmed as resolution professional by the CoC.
3. It is submitted that this Tribunal by an order dated 24.01.2018 extended the CIRP period by 90 days. Further this Bench by an order dated 18.04.2018 given exclusion of a period of 38 days where as the RP claimed 55 days extension. On an appeal against this order Hon'ble NCLAT by an order dated 09.05.2018 granted 55 days exclusion. In view of this exclusion and extension the CIRP period ended on 03.07.2018.
4. It is submitted that two valuers and transaction auditor were appointed by the Applicant with the approval of CoC in its 1st (First) Meeting dated 01.09.2017. Further the Applicant placed Fair Value and Liquidation Value in 8th (Eighth) CoC Meeting. The following is the details of liquidation value as per the Report of the valuers appointed by the Applicant.

	Fixed Assets	Current Assets	Total of Assets
Rakesh Narula & Co	52,43,60,477/-	72,51,88,447/-	1,24,95,48,924/-
Kanti Karmsey & Co.	38,69,23,279/-	89,63,73,228/-	1,28,32,96,507/-
Average Liquidation Value			1,26,64,22,716/-

As per Regulation 35 (1) (c) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the average of the closest estimates provided by the two valuers shall be considered as the liquidation value of the assets of the Corporate Debtor which in this case is Rs. 1,26,64,22,716/- (Rupees One Hundred Twenty Six Crore Sixty Four Lakh Twenty Two Thousand Seven Hundred and Sixteen Only).

5. The Applicant submits that the CoC in the meeting held on 27.06.2018 approved the resolution plan submitted by M/s Ravi Developers with 86.16% voting share vide e-voting on 29.06.2018 and 30.06.2018.
6. The Applicant submits that previously he filed MA No. 96/2018 under Section 14 (1) (d) of the Code for restraining MHADA from taking over the possession of the land till the completion of CIRP, contending that recovery of possession of land by MHADA was in derogation of moratorium under Section 14 of the Code. This application was dismissed by this Tribunal on 02/04/2018 and the appeal preferred by the Applicant before the Hon'ble NCLAT was also dismissed. Against the dismissal of appeal by Hon'ble NCLAT, Civil

Appeal No. 12248/2018 was preferred before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court on 19.02.2020 passed the following order.

"We allow the appeal and set aside the impugned order of NCLAT. Considering that this matter has been pending for some time, we direct the NCLT to dispose of the Resolution Professional's Application."

7. It is submitted that the Applicant received letter dated 06.03.2020 bearing Ref. No./PM/CO/REC-III/59/2020-21 from the Punjab And Maharashtra Co-Operative Bank Limited informing the Applicant that the Credit Facility availed by M/s Ravi Developers (the Resolution Applicant) from their Bhandup Branch has turned into Non-Performing Assets (NPA) in their books and later the Bank have sold the said assets to Assets Reconstruction Company (ARC).
8. It is submitted that on 09.03.2020 the Applicant received letter dated 24.02.2020 from M/s. Ravi Developers, informing the Applicant that during period July, 2018 to February, 2020 there have been various changes at their end, the financial position has changed, the market of real estate has changed and in the present circumstances it is not possible for them to abide by the commitments and obligations undertaken by them in the Resolution Plan and hence they are withdrawing the Resolution Plan.
9. In view of the facts stated in the Application filed by the Applicant nullifies the said Application filed under section 30(6), by virtue of Section 29A read with Regulation 36A.
10. Section 29A of the Code reads as below:

"29A. Persons not eligible to be resolution applicant

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person

a) is an undischarged insolvent;

b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) 3jor the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:"

11. The above Section provides that when the account of the Resolution Applicant is declared as NPA, such person cannot be a Resolution

Applicant of any Corporate Debtor. The Applicant herein is not eligible to be a Resolution Applicant.

12. Hence this application for approval of resolution plan is dismissed as hit by Section 29A of the Code.
13. The counsel for the Resolution Professional and the RP who is present submits that there is no other option except to liquidate the Corporate Debtor. It is submitted that the CIRP period also ended and there is no CoC as on date.
14. Section 33 of the Code reads as below:

"33. Initiation of Liquidation

(1) Where the Adjudicating Authority,

- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
- (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall*
 - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and*

- (iii) require such order to be sent to the authority with which the corporate debtor is registered.*
- (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
- (3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) .*
- (4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
- (5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

Provided that a suit or other legal proceeding may be instituted by the Liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

- (6) *The provisions of sub-section (5) shall 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.*
- (7) *The order for liquidation under this section 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."*

15. In view of the above and there being no other resolution Applicant and also considering the fact that the CIRP has already ended, this Bench, left with Hobson's choice, orders liquidation of the Corporate Debtor as provided under Section 33 (1) (b) (i) of the Code.
16. The Applicant Resolution Professional has given his consent to act as Liquidator.
17. Mr. Janak Dwarkadas, Ld. Senior Counsel appearing on behalf of MHADA submitted that, in case liquidation order is passed against the Corporate debtor, the Liquidator appointed may be directed to inform MHADA whether the Liquidator is going to include the land provided by MHADA for development of Real Estate project as a liquidation asset of the Corporate debtor as provided under Section 36 of the Code.

ORDER

In view of the rejection of the resolution plan, the Corporate Debtor i.e. Guruashish Constructions Private Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following consequential directions:

- a) The Applicant herein, Mr Rajendra K. Bhuta, is appointed as the Liquidator.
- b) He shall issue public announcement stating that Corporate Debtor is in liquidation.
- c) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- d) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. 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.
- e) 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.
- f) 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 and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

- g) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- h) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- i) 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.
- j) The Liquidator is directed to comply with request of the MHADA.
- k) The Liquidator is directed to send a copy of this order to the concerned Registrar of Companies and Insolvency and Bankruptcy Board of India, New Delhi.

-Sd-
V. Nallasenapathy
Member Technical

-Sd-
Janab Mohammed Ajmal
Member Judicial