

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
ALLAHABAD BENCH**

**CA No.310 of 2020**  
**IN**  
**CP(IB) No.353/ALD/2018**

**IN THE MATTER OF:**

**Mr. Ashish Singh,**  
Resolution Professional of  
V.A.M Resorts And Hotels Private Limited

**..... APPLICANT  
(RESOLUTION PROFESSIONAL)**

**IN THE MATTER OF :**

**INDIABULLS HOUSING FINANCE LTD.**

**.....FINANCIAL CREDITOR**

**Vs.**

**V.A.M RESORTS AND HOTELS PRIVATE LIMITED**

**..... CORPORATE DEBTOR**

**ORDER DELIVERED ON : 05.07.2021**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the Resolution Professional: Mr. Tanmay Sadh, Advocate**

**Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)**

**Order**

1. The present application is filed under Section 33(1)(a) read with 33(2) of the Insolvency and Bankruptcy Code by the Resolution Professional, through his Counsel seeking order of the liquidation and appointment of liquidator under Section 33 and 34 of the Insolvency & Bankruptcy Code with such prayer, to pass an order for the liquidation of the Corporate Debtor Company i.e. V.A.M Resorts and Hotels Pvt. Ltd.
2. The Adjudicating Authority vide its order dated 24.10.2019 based on a petition filed by the Financial creditor under Section 7 of the Code

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in CP (IB) No. 353/ALD/2018, initiated the CIRP in respect of Corporate Debtor Company and appointed Mr. Ashish Singh as IRP and subsequently was confirmed as RP in the First CoC meeting held on 12.12.2019..

3. It is contended on behalf of the applicant that on 12.12.2019, the first meeting of COC was held, whereby the progress of the CIRP proceedings was discussed and it was resolved in the said meeting that since despite of various reminders and e-mails sent by the applicant, no information was furnished by them to the applicant, the respondents were not cooperating with the CIRP and is not providing any information regarding the properties of the Corporate Debtor therefore, an application under Section 19(2) of IBC shall be filed before the Adjudicating Authority. Thus, application under Section 19(2) IBC was filed against the Ex-Directors to duly cooperate with the applicant which was allowed by the Adjudicating Authority vide order dated 29.09.2020.
4. On 03.01.2020, the second CoC meeting was conducted, whereby it was resolved to appoint Mr. Vipin Kumar and Mr. Susheel Kumar as the registered valuers for land and building, Mr. Dinesh Sugmanomal Kanjani and Mr. Himanshu Shekhar Mishra for plant and machinery and Mr. Rajeev Bhargva and Mr. Naveen Singhal for securities and financial assets. Then on 23.01.2020, the third meeting of COC was convened and a proposal for publishing Form-G for inviting EOI from prospective resolution applicants was made and the said resolution was duly passed by 100% of voting share of CoC. The applicant in compliance of the provisions of the Code has published the particulars of invitation of EOI in prescribed Form-G

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on 26.01.2020, whereby the prospective resolution applicants were invited to submit their EOI for submission of resolution plan for the Corporate Debtor by 10.02.2020 but the applicant had not received any EOI till the last date of EOI. However, the applicant has received one request from Mr. Abhijit Khonde to extend the last date of receiving the EOI.

5. Further, in the 4<sup>th</sup> meeting of the CoC dated 27.02.2020, one of the agenda, which was discussed was about the process for the withdrawal of application pursuant to the settlement request received from suspended directors by the CoC. On inquiry by the CoC, one of the ex director, Mr. Vijay pal Yadav gave the assurance to pay the settled amount by 5<sup>th</sup> of March, 2020 and it was resolved that if the settled amount is not paid by the Suspended Management of the Corporate Debtor and withdrawal process is not initiated within 15 days from the date of meeting, then the CIRP would continue. Further, it is submitted that the settlement between the Respondent and the COC has failed.

6. The fifth meeting of the CoC dated 23.03.2020 convened by the applicant, it was resolved through 100% of the voting share of the members of the CoC through video conferencing that since no settlement was arrived between the CoC members and Corporate Debtor therefore, the repetition EOI be initiated under Section 25(2)(h) of the Code and also resolved to appoint a professional firm for conducting forensic audit of the preferential, undervalued, fraudulent trading or extortionate transactions of the Corporate Debtor.

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7. Thereafter, the application bearing CA No. 127/ALD/2020 was filed under Section 12(2) of the Code seeking extension of CIRP and exemption of lockdown period, which was allowed by the Tribunal vide order dated 04.06.2020 and the applicant again invited he Expression of interest and published form G dated 10.08./2020 whereby the last date for submission of the Resolution plan was 03.10.2020.
8. Further, the appointed firm after conducting the forensic transaction audit of the Corporate Debtor filed its report dated 25.08.2020 on Specified Transaction of the Corporate Debtor.
9. In the sixth meeting of the CoC which was convened on 03.09.2020, the applicant apprised by the CoC that he had received two expression of interest from two prospective resolution applicants namely Aarti Agarwal and Shivani Vidit, pursuant to the publication of Form G dated 10.08.2020. Further the Applicant also apprised the CoC that he has received all the relevant documents/information/undertaking from the prospective resolution applicants along with an amount of Rs. 5 lakh as EMD from both the prospective resolution applicants as per Regulation 36A of the Code.
10. Thereafter, one of the prospective resolution applicants requested for extension of time period for submitting the resolution plan on account of lockdown imposed by the Government. The said request was accepted by the CoC vide its email dated 10.08.2020 granting extension of time to the prospective resolution applicants for submitting the resolution plan and on 17.10.2020 again the said

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prospective resolution applicant requested for extension of 10 more days for submitting their resolution plan but despite granting extension to the prospective resolution applicant for submitting their resolution plan, the prospective resolution applicants have failed to submit the resolution plans till date.

11. Thereafter, the applicant convened the Eight Meeting of the CoC dated 04.11.2020 whereby the CoC resolved with 100% voting share that the Corporate Debtor shall be liquidated in terms of the provisions of Regulation 39 of the Insolvency Resolution Regulation, 2016 and an application under section 33 be filed before this Hon'ble Tribunal under Section 33 of the Code for liquidating the Corporate Debtor. Further the applicant was appointed as the liquidator by the CoC to conduct the liquidation process of the Corporate Debtor and file an application under Section 33 before this Hon'ble Tribunal. Accordingly, as instructed by CoC, the applicants filed the present petition seeking liquidation of the Corporate Debtor under Section 33 of the Code and to appoint the RP as the liquidator in terms of the provisions contained in the Code.

12. At this juncture, it is pertinent to refer Section 33(1)(a) of the IBC, which mandates that *"where the Adjudicating Authority before the expiry of 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, it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the manner."*

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13. Therefore, the Tribunal observes that upon failure of the resolution process and no approved resolution plan and further on completion of statutory CIRP process, there is no alternative left but to order in conformity with the decision of the CoC liquidation has to follow under Section 33 of the Code. Adherence of the statutory requirement has to be done as the language of the Code is clear that the adjudicating authority must give effect to it whatever may be consequences.
14. Further, even COC in its 8<sup>th</sup> meeting on 04.11.2020 has with 100% majority has passed the resolution to liquidate the Corporate Debtor as no resolution plan was received for revival of the company and further RP has complied with the provisions laid down under Insolvency and Bankruptcy Code.
15. Therefore, after considering facts and circumstances, and by exercising the power under Section 33(1), this Adjudicating Authority hereby directs that the Corporate Debtor i.e V.A.M Resorts and Hotels Pvt. Ltd. shall go into Liquidation and the moratorium declared for the Corporate Debtor under Liquidation shall cease to have effect from pronouncement of this Order.
16. This Adjudicating Authority hereby appoint the Resolution Professional Mr. Ashish Singh, having Registration Number as IBBI/IPA-002/ IP-N00416/2017-18/11230, as 'Liquidator' under Section 34(1) of the Code as he is not disqualified as per Section 34(4) of the IBC: The Liquidator shall send an intimation to the ROC, Uttarakhand with which the Corporate Debtor Company is registered. The liquidator shall cause public announcement in newspaper by declaring that the Corporate Debtor has gone under liquidation.

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17.The Liquidator shall act as per section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinabove referred as "IBC") subject to direction time to time as may be issued by this Adjudicating Authority.

18.The liquidator shall file progress report of every three months.

19.With the aforesaid observations, the IA No. 310/2020 is allowed and accordingly stands **disposed of**.

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**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 05.07.2021**

Swati Gupta  
(LRA)