

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 01
(IB)-(PP)-03(PB)-2021

IN THE MATTER OF:

Loon Land Developers Ltd.

.... Applicant/petitioner

Order under Section 54C of Insolvency & Bankruptcy Code, 2016 (Pre-Packaged)

Order delivered on 29.11.2021

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

Mr. P. Nagesh, Sr. Adv. with Mr. Saurabh Kalia, Mr. Gajanand Kirodiwal, Advs. for the corporate applicant

For the respondent

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ORDER

PER ORAL: JUSTICE RAMALINGAM SUDHAKAR, PRESIDENT

Mr. P. Nagesh, learned senior counsel with Mr. Saurabh Kalia, learned counsel for the petitioner is present.

This application has been filed invoking Chapter III A of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code, 2016') and under Section 54C read with Rule 4 of the Insolvency and Bankruptcy of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 [for brevity 'the IBBI (PPIRP) Regulations, 2016].

2. This petition has been filed by the Corporate Applicant/Corporate Debtor, namely M/s. Loon Land Development Limited, situated at A-8B, Second Floor, Friends

Colony East, New Delhi-110065 and E-mail Id:- rajatarora04@gmail.com. There are four directors/promoters of the Corporate Debtor namely 1) Mr. Mohit Arora, 2) Mr. Nellickal John Thomas, 3) Mr. Sanjay Saroha and 4) Mr. Rajat Arora.

3. The Corporate Debtor in this case is a registered MSME with Ministry of Micro, Small and Medium Enterprises of Government of India with registration No. UDYAM-DL-08-0019123 dated 07.09.2021. The Company was registered as a corporate entity on 02.04.2014.

4. In the course of business, default occurred in respect of Operational Creditors and consequently the Corporate Debtors have chosen to file this application invoking Chapter III A and its various provisions of the Code, 2016 in relation to initiation of Pre-Packaged Insolvency Resolution Process (PPIRP). The Code in so far as PPIRP, is concerned provides that the Corporate Debtor which is eligible for PPIRP should satisfy the requirements specified thereunder and follow certain procedures prescribed under Section 54A. The extract of which is as under:-

(4) "54A. 1). An application for initiating pre-packaged insolvency resolution process may be made in respect of a Corporate Debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

(5) Without prejudice to sub-section (1), an application for initiating pre- packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that—



(a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

(b) it is not undergoing a corporate insolvency resolution process;

(c) no order requiring it to be liquidated is passed under section 33;

(d) it is eligible to submit a resolution plan under section 29A;

(e) the Financial Creditors of the Corporate Debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the Corporate Debtor, and the Financial Creditors of the Corporate Debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a Corporate Debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the Corporate Debtor, as the case may be, have made a declaration, in such form as may be specified, stating, inter alia, —

(i) that the Corporate Debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;

(ii) that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and

(iii) the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

(g) the members of the Corporate Debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the Corporate Debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

(3) The Corporate Debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

Provided that where a Corporate Debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

(4) Prior to seeking approval from Financial Creditors under sub-section (3), the Corporate Debtor shall provide such Financial Creditors with —

(a) the declaration referred to in clause (f) of subsection (2);

(b) the special resolution or resolution referred to in clause (g) of sub section (2);

(c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as may be specified; and (d) such other information and documents as may be specified.

5. To prove eligibility of the applicant/Corporate Debtor, a proof is submitted by the Corporate Debtor (hereinafter called the CD) i.e. UDYAM Registration certificate bearing no. UDYAM-DL-08-0019123 dated 07.09.2021, which states the type of enterprise as MSME.

6. It is averred that to satisfy the requirement as provided under Section 4 read with 54A (2) of the Code, 2016, there is a case of operational debt and default over and above 10 lacs which has been indicated at the pages 30-32 of the application, supported by a copy of the invoice dated 16.07.2021. (Annexure A-16, Pg. 122)

7. Two reminders for payment of invoice dated 16.07.2021 were issued dated 28.07.2021 and 05.08.2021, all of which has been enclosed at Pages 123 to 124 of the application. A notice dated 09.08.2021 proving the default is also annexed at Page 125.

8. In terms of Section 54A(2)(d) and Section 29A of the Code, an affidavit, stating that the Corporate Debtor is eligible to submit resolution plan under the PPIRP as a Corporate Debtor, is filed as Annexure A-5 and that averments to that effect are at Pages 16 & 17 of the application.

9. In terms of Section 54A(2)(e), read with Regulation 14(5) Chapter IV of IBBI (PPIRP), Regulations, 2021, which talks about

initiation of the process, a meeting of Financial Creditors took place on 05.10.2021 and it proposed the appointment of the Resolution Professional (RP), which is in Form P3 [Annexure A-13 at Pages 112 to 114 of this application].

10. Further, in accordance with the requirement of Section 54A(2)(f) of the Code, 2016, read with Regulation 16(1) of IBBI (PPIRP) Regulations, 2021 which deals with declarations, the Form-6 Declaration by a majority of the directors of the Corporate Debtor is filed as Annexure A-10 (at pages 105-107).

11. A Special Resolution as required by Section 54A (2) (g) of the Code, 2016, is filed in Form P3 [Annexure A-7 at pages 100-101]. The approval of the creditors for filing an application for initiating the PPIRP in terms of Section 54A(3) of the Code, read with Regulation 14(7) of the IBBI(PPIRP) Regulations, 2021, is filed in Form P4 [Annexure A-9 at pages 103-104].

12. The Financial Creditors, proposed the appointment of a Resolution Professional (RP), in terms of the Financial Creditors' Proposal dated 05.10.2021, Form P3 for appointment of the RP. The Written consent of the RP is taken on 13.10.2021 complying with Section 54C (3) (b) read with Regulation 7(1) of the IBBI (PPIRP), Regulations, 2021 [Annexure A-12 at pages 110-111], supported by the Board resolution dated 01.10.2021 (Pages 98-99). Thereupon the report is filed by the proposed resolution



professional on 14.10.2021 in Form P-8 [Annexure A-11 at pages 108-109].

13. A declaration, regarding the existence of any transaction of the CD in the nature of avoidance, is filed in Form P7 complying with Section 54C (3) of the Code, read with Regulation 16(2) of the IBBI (PPIRP), Regulations, 2021 [Annexure A-8 at page 102]. A copy of the Books of Account of the CD, evidencing default to creditors are at pages 132-221 and the relevant pages are at 216 & 221.

14. In the present case, Section 29 read with Regulation 14(2) (c) of the IBBI (PPIRP), Regulations, 2016, requires that the audited financial statements of the Corporate Debtor, for the last two financial years and the provisional financial statement for the current financial year, made up to the date, not less than 14 days from the date of this application, should be filed and is accordingly filed with this application (Annexure A-19 (colly) at page 132-221).

15. In addition to complying with the requirement of Section 54C the Code, 2016 read with IBBI (PPIRP), Regulations, 2021, in exercise of power under Section 1 & 2 of Section 239, read with sub-Section 2 of Section 54C of the Code, 2016, the Central Government made certain Rules on 09.04.2021. In that rule, the form of applications to be filed in relation to initiating PPIRP has been specified and the relevant one in this case is Annexure A-3,



which states that the statement of affairs should be filed by the corporate applicant for initiating PPIRP, along with the affidavit, documents and records. To comply with the same [Annexure A3 at page 88-89] has been filed giving the complete details of statement of affairs of the CD.

16. A declaration by the directors of the Corporate Debtor in Form P-6 has been filed as (Annexure A-10 at page 105), wherein they have declared that the PPIRP is not initiated to defraud any person. Further it is stated that the contents of this declaration are true and correct and that they have not concealed anything and no part of this declaration is false. The said affidavit and declaration is taken on record.

17. In this case, the creditors of the CD have approved the name of one Mr. Nitesh Kumar Sinha, having Registration No. IBBI/IPA-002/IP-N00280/2017-18/10838 as the Resolution Professional for PPIRP.

18. Section 54F of the Code, 2016 defines the duties and powers of the Resolution Professional during the PPIRP, while directing the Resolution Professional to strictly comply with the requirements of the Code, 2016 and regulations as well as rules specified thereunder, we would like to point out, that in exercise of power under Section 54 F (i), the Resolution Professional shall endeavour to verify that there is no false statement, collusion,



misstatement or fraud in any manner in filing this application for initiation of PPIRP in terms under Chapter III-A.


19. The applicant/Corporate Debtor, who is in the present case filing this application under Chapter III-A in respect of debt due to operational creditors, has followed the procedure prescribed under Section 54A and other provisions of the Code, 2016 which to the best of our assessment, appears to have complied with the basic requirements needed to initiate the PPIRP, subject however to verification of the details given by the Resolution Professional at the appropriate stage and report filed with this Adjudicating Authority.

20. In the result, we are inclined to admit this application for PPIRP of M/s. Loon Land Development Ltd. This application stands admitted under Section 54 E of the Code, 2016. We issue notice to Insolvency and Bankruptcy Board of India on the appointment of the Resolution Professional as above and pass the following directions:-

ORDER

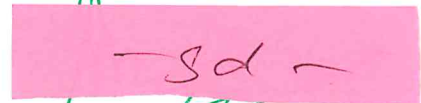
1. In view of the commencement of the PPIRP, the moratorium, under Section 14 (1) & (3) of the IB Code, 2016, is declared for prohibiting all of the following in terms of Section 14(1) of the Code, 2016.



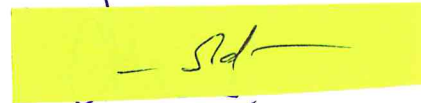
- (a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
2. The RP, as proposed by the Corporate Applicant, namely Mr. Nitesh Kumar Sinha, having Registration No. IBBI/IPA-002/IP-N00280/2017-18/10838, is appointed as a Resolution Professional to conduct Pre-Packaged Insolvency Resolution Process (PPIRP) as per the Provisions of Chapter III A of the IBC, 2016 and the relevant Regulations. Further, the Resolution Professional shall also perform his duties and functions as per the provisions given under Section 54F of the IB Code.
3. This Adjudicating Authority directs the RP to make a public announcement of Pre-Packaged Insolvency Resolution Process (PPIRP) of the Corporate Debtor as per Section 54E of the Code.
4. As mentioned under Section 54F (5), the personnel of the Corporate Debtor shall extend all assistance and cooperation to RP. In case of non-cooperation, the RP can approach this Adjudicating Authority under Section 19(2) of
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the Code, 2016. The management of the Corporate Debtor shall remain vested with the Board of Directors of the Corporate Debtor as per the provisions of Section 54H, subject to action under Section 54J of the Code, if any. The Board of Directors shall discharge their duties, as specified under Section 54H (b) and Section 54H(c) of the Code.

5. We direct Resolution Professional to file an interim report within thirty days of receipt of this order to this Authority.
6. Accordingly, CP (IB) No. (PP)-03(PB)/2021 is ordered in terms as indicated above.
7. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the NCLT website immediately.



(RAMALINGAM SUDHAKAR)
PRESIDENT



(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)