IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

30. **IA-503/2021 in CP(IB)-3026(MB)/2019**

CORAM:

SHRI RAJESH SHARMA
MEMBER (Technical)

SMT. SUCHITRA KANUPARTHI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **22.09.2021**

NAME OF THE PARTIES: Janta Sahakari Bank Ltd.
v/s.
Beton Concrete Products Pvt. Ltd.

SECTION: 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

The Court is convened through Video Conference.

1. Mr. Avinash R. Khanolkar a/w Ms. Savita P. Patil, Ld. Counsel for the Applicant/Resolution Professional (RP) present. CS Anagha Anasingaraju, RP present in person.

2. **IA-503/2021:** This is an Application filed by the RP under Section 33(2) of the IBC, 2016 seeking liquidation of the Corporate Debtor.

3. CIRP against the Corporate Debtor was commenced vide an admission order dated 28.04.2020 of this Court. Ms. Anagha Anasingaraju was appointed as IRP in the matter.

4. The Applicant has caused the public announcement for calling the claims from the stakeholders of the Corporate Debtor on 11 May 2020 in two local newspapers namely; Indian Express, Pune and Mumbai Edition, and in Loksatta, Pune, Mumbai, Aurangabad, Ahmednagar and Nagpur editions.

राष्ट्रीय कम्पनी विधि अधिकरण
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The copies of the said notices are annexed with the Petition as Annexure 2 (Colly).

6. In response to the Public Announcement, only one claim from the secured Financial Creditor viz. Janata Sahakari Bank Limited, Pune was received by the Applicant before the due date for filing of claims. The Applicant submits that apart from Janata Sahakari Bank, no other Financial Creditor filed its claim with the Applicant till date.

7. To conduct the CIRP of the Corporate Debtor, a total of 10 meetings of the CoC were held. Following businesses have been transacted throughout all these meetings of the CoC:

Sr. No.	**Number and date of meeting**	**Matters transacted**
1.	First CoC meeting held on 03 June 2020	1. List of creditors was noted. 2. Ratification of IRP fees payable and CIRP cost incurred. 3. Appointment of IRP as Resolution Professional and fixing the remuneration and expenses. 4. Request to the director with suspended powers to provide the audited accounts for the financial year 2018-19 to the IRP and update the books of accounts by passing necessary entries till the CIRP commencement date i.e. 28 April 2020.

2.	Second CoC meeting held on 02 July 2020	1. Status of Information Memorandum and valuation. 2. Discussion on restart of manufacturing activities of the corporate debtor. Director with suspended powers to prepare detailed report and present before the CoC in the next meeting.
3.	Third CoC meeting held on 08 July 2020	1. Status of Information Memorandum. 2. Finalising the draft of Expression of Interest for publication. 3. the CoC member informed that it is not viable for the bank to provide interim finance to restart the manufacturing activities of the Corporate Debtor based on enquiries received by the suspended director.
4.	Fourth CoC meeting held on 24 August 2020	1. Finalisation of the Evaluation Matrix. 2. Approval of the Request for Resolution Plan (RFRP).
5.	Fifth CoC meeting held on 28 September 2020	1. Status of audit of Preferential Undervalued Fraudulent Extortio-nate (PUFE) transactions was reviewed. 2. Date of submitting the Resolution Plans was extended by the CoC member for a period of 15 days on request of the two prospective applicants.

6.	Sixth CoC meeting held on October 2020	1. Communication from Mr. Jaykumar Munot, one of the Prospective Resolution Applicant (PRA) stating inability to submit the resolution plan. 2. Issue of fresh Form-G inviting Expression of Interest.
7.	Seventy CoC meeting held on 21 November 2020	1. Inquiries received for submission of Expression of Interest. 2. Extension of the date of submitting the Resolution Plan till 03 January 2021, for the only Resolution Applicant, the suspended director.
8.	Eighth CoC meeting held on 03 December 2020	1. Extension of the CIRP period by up to 3 months and to seek exclusion of time of lockdown.
9.	Ninth CoC meeting held on 01 February 2021	1. Take note of the order passed by the Hon'ble NCLT, Mumbai Bench for exclusion of lockdown period and extension of CIRP period. 2. On the request of the director with suspended powers, extension of time for submission of Resolution Plan till 08 February 2021.
10.	Tenth CoC meeting held on 09 February 2021	1. Non-receipt of Resolution Plan till 08 February 2021. 2. Placing before the CoC the Report on Audit of Avoidance Transactions. 3. Since no resolution plan was received from the suspended director, the CoC member passed the resolution to liquidate the Corporate Debtor and appointing the RP as the Liquidator of the Corporate Debtor.

8. The Applicant has submitted the progress of the CIRP before this Hon'ble Bench by filing the minutes of the CoC meetings from time to time. The Copies of the emails sent to the Registry of this Bench during the lockdown period along with copy of the minutes of each of the ten CoC meetings are annexed with the Petition as Annexure 4 (colly).

9. The Applicant has filed the Income Tax return for the Corporate Debtor for F.Y. 2019-2020. The copy of acknowledgement receipt is annexed to the Petition as Annexure 5. An intimation u/s 245 of the Income Tax Act 1961 for adjustment of dues was received from the IT department which is also annexed as Annexure 6.

10. Further, amid the Lockdown restrictions, the Applicant personally could not visit the premises of the Corporate Debtor, hence, vide letter dated 25 June 2020, the Applicant appointed ARNK and Associates LLP, Chartered Accountants, Aurangabad as authorized representatives to conduct the physical inspection, take custody of assets and collect the necessary documents and records.

11. Further, after taking charge of the record of the Corporate Debtor the Applicant came to know that the Books of Accounts of the Corporate Debtor was not complete and therefore, the Applicant appointed Chartered Accountant namely CA Anand Nahar to complete books of accounts of the Corporate Debtor to complete the books of Accounts till the CIRP commencement date. The Applicant got the completed books of accounts by the said Chartered Accountant in September / October 2020.

12. Based thereupon the Applicant formulated the Information Memorandum of the Corporate Debtor and the same was shared with the CoC after obtaining necessary undertaking from the CoC.

13. After getting an approval from the CoC member in the Third CoC meeting held on 03 July 2020, the public notice inviting Expression of Interest for Resolution Plan of the Corporate Debtor (hereinafter referred as the EoI) was published in Form G on 23 July 2020 in all the editions of Business Standard (English) and Loksatta and Divya Marathi newspaper in the State of Maharashtra.

14. The last date for receipt of EoI as per the Form was 10 August 2020 and that of submission of resolution plans was 24 September 2020. The copy of Publication of Form-G is annexed to the Petition as Annexure 7.

15. Pursuant to the said notice, the EoI was received from 2 interested persons namely, Mr. Jaykumar Munot and Mr. Ashish Pokerna. However, till the scheduled last date of submission of the Resolution Plan. i.e. 24 September 2020, the Applicant did not receive any plan from either of the interested applicants. However, the Applicant received communication from both the applicants requesting extension of date for submitting the resolution plan.

16. Hence, the applicant placed the said requests before the CoC member in the Fifth CoC meeting held on 28 September 2020 and the same was approved with an extension for submitting the resolution for a period of 15 days i.e. up to 13 October 2020.

17. However, on 12 October 2020, the applicant received a letter from Shri Jaykumar Munot, one of the PRA, expressing his unwillingness to submit the resolution plan. In the said communication Shri Munot had raised certain queries and the Applicant clarified the same. However, despite that, Shri Munot withdrew the EoI and requested that his name be removed from the list of PRA. Copy of correspondence with Mr. Jaykumar Munot is annexed to the Petition as Annexure 8.

18. The Applicant states and submits that no resolution plan was received till the extended last date of submission of Resolution Plan, i.e. till 13 October 2020.

19. Hence, in the Sixth CoC meeting, the CoC member decided to publish a Fresh Expression of Interest in Form-G so as to achieve maximum outreach. The fresh EoI was published on 21 October 2020 with 06 November 2020 being the last day for submission of EoI in Aurangabad edition of Lokmat Times (English) and Hello Lokmat (Marathi) newspaper. The copy of fresh Expression of Interest in Form-G published on 21 October 2020 is annexed to the Petition as Annexure 9.

20. However, in response to publication, although there were few enquiries, no new EoI was received by the Applicant till 06 November 2020 and date of submission of EoI was extended till 18 November 2020.

21. Even by this date, the Applicant merely received enquiries, however, no EoI was received.

22. The Applicant received one enquiry from potential applicant after the last date i.e. 18 November 2020. Consequently, in the Seventh CoC meeting held on 21 November 2020 the CoC member decided to extend the date of submission of EoI to 24 November 2020.

23. However, this exercise was also in vain and no EoI was received till 24 November 2020.

24. This development left the CIRP in a situation where the only Resolution Applicant remaining was Shri Ashish Pokerna (PRA) who is the director with suspended powers.

25. As per the extended timelines, the PRA was to submit the Resolution Plan on or before 03 January 2021.

26. Since the last date of completion of CIRP after taking into consideration various lockdown days was 13 December 2020, the CoC member, in the Eighth CoC meeting held on 03 December 2020, decided to pass a resolution instructing the Applicant to file an application for extension of period of CIRP and exclusion of lapsed time amid the nationwide lockdown in the wake of the COVID-19 pandemic with this Bench.

27. Accordingly, the Applicant filed an application with this Bench bearing I A No. 2355 of 2020. An order granting exclusion of lapsed time along with an extension of 90 days as per the provisions of sec12(2) of the code was passed on 11 January 2021 and the order was made available on the NCLT website on 25 January 2021. The copy of the order dated 11 January 2021 is annexed to the Petition as Annexure 10.

28. After receipt of the Order, the Applicant convened the ninth CoC meeting on 01 February 2021.

29. In the said meeting the Applicant apprised the CoC that the PRA, vide his email dated 02 January 2021, has requested for further time to submit the resolution plan and therefore the CoC shall have to take decision on further course of action of the CIRP.

30. In the meeting held on 01 February 2021, the PRA sought further extension for submission of Plan and on the request, the CoC decided to extend the date for submission of Resolution Plan for the last time till 08 February 2021. The copy of minutes of ninth CoC meeting held on 01 February 2021 is already annexed with the Petition as Annexure 4 (colly).

31. However, till the extended date also no Resolution Plan was received by the Applicant.

32. Further, the CoC, after obtaining written consent from the Applicant to act as the Liquidator, has also resolved to appoint the Applicant as Liquidator of the Corporate Debtor. The copy of the written consent furnished by the Applicant is annexed to the Petition as Annexure 11.

33. CoC in its meeting held on 09.02.21 has approved the liquidation of the Corporate Debtor with 100% voting and has passed resolution as follows:

"RESOLVED THAT pursuant to the provisions of Section 33(2) of the Insolvency and Bankruptcy Code 2016, the Corporate Debtor, Beton Concrete Products Private Limited, be liquidated AND THAT the Resolution Professional be and is hereby authorised to inform this decision of the Committee of Creditors to the Hon'ble NCLT Mumbai Bench by filing appropriate application for necessary orders".

34. RP has confirmed as Liquidator with 100% voting and the resolution was passed as follows:

"RESOLVED THAT Mrs. Anagha Anasingaraju, Resolution Professional, be and is hereby appointed as Liquidator to complete the liquidation process of Beton Concrete Products Private Limited, Corporate Debtor AND THAT the decision of the Committee of Creditors be communicated to the Hon'ble NCLT Mumbai Bench, IBBI and other persons as may be required under the provisions of the Code".

35. Further the fee of the Liquidator was fixed with 100% voting and a resolution was passed by the CoC as follows:

"RESOLVED THAT the Liquidator Mrs. Anagha Anasingaraju shall be paid fees for the liquidation process along with the reimbursement of the expenses that may be incurred by her in connection with carrying out duties and responsibilities during the liquidation process of the Company, as may be mutually decided by the CoC Member and the Liquidator".

36. Counsel for the RP has shown all the relevant information about the five years Balance Sheet and explained to the Bench the position of the CIRP and how the resolution could not be achieved. In view of the application and resolution passed by the CoC, this Bench allows the Liquidation of the Corporate Debtor.

37. IA-503/2021 is allowed and we hereby pass the order of liquidation under Section 33 of IBC as follows:

a. That the Corporate Debtor is to be liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.

b. As to the appointment of Liquidator, Mrs. Anagha Anasingaraju is hereby appointed as Liquidator for the liquidation of Corporate Debtor company with all powers as envisaged in the Code.

c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to effect and shall be vested in the Liquidator.

d. That the personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

e. That the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate/assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on the corporate debtor behalf, it may initiate such proceedings with prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.

g. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continuing during the liquidation process by the Liquidator.

38. Moratorium declared vide Order dated 28.04.2020 in CP No.: 3026/2019 ceased to exist.

39. The registry is directed to communicate this order to the Liquidator immediately even by way of e-mail.

40. IA-503/2021 is **disposed** of accordingly.

41. List this matter on **10.01.2022** to report the progress.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 21/10/2021

R.S. Somwone
Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India

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