

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

02

ORDER SHEET OF THE HEARING ON 19th DECEMBER, 2023, 10:30 A.M.

IA (IBC)/67/GB/2023
CP (IB)/5/GB/2018

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Sanjit Kumar Nayak, RP –Vs- Tshering Pintso Bhutia
Under Section	U/s 60(5) of IBC, 2016

For Petitioner (s) :

For Respondent (s) :

ORDER

Order Pronounced through VC vide separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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In the matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

Bank of Baroda;

... Financial Creditor

-Versus-

Mr. Tshering Pintso Bhutia;

... Guarantor of Corporate Debtor

-And-

In the matter of:

Sanjit Kumar Nayak, R.P. and Chairman of Monitoring Committee of Blue Fern Ventures Pvt. Ltd., residing at 30E, Haramohan Ghosh Lane, Suryadeep, Flat no. 2B, Beliaghata, Kolkata – 700085;

... Applicant

-Versus-

Mr. Tshering Pintso Bhutia.

... Successful Resolution Applicant

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For the Petitioners : Sanjit Kumar Nayak, RP and Chairman of Monitoring Committee;
Shaunak Mitra, Adv. for the RP
Ms. Manju Bhutera, Adv. for the FC

For the Respondent :

**Order reserved on: 14.12.2023
Order pronounced on: 19.12.2023**

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ORDER

1. The instant Interlocutory Application (IA) has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Mr. Sanjit Kumar Nayak, R.P. and Chairman of Monitoring Committee of Blue Fern Ventures Pvt. Ltd, praying for the following reliefs:
 - (a) *To allow the Financial Creditor to rerun the process EOI/Form G and remove Mr. Tshering Pintso Bhutia from being a successful resolution applicant.*
 - (b) *To pass any further or necessary order as the Resolution Applicant has failed to comply with the order dated 30 September 2022 along with Order dated March 23, 2023 passed by this learned Tribunal.*
2. The brief facts are that Insolvency Resolution process of Personal Guarantors of the CD-Blue Fern Ventures Private Limited were initiated *vide* order dated 08.09.2021 in CP (IB)/15/GB/2021 and CP (IB)/16/GB/2021 filed by the Financial Creditor under Sec 95 of the Insolvency and Bankruptcy Code, 2016 (IBC for brevity) and Mr. Sanjit Kumar Nayak, was appointed as Resolution Professional (IBBI Registration No. IBBI/IPA-003/IP- N00079/2017-18/10702).
3. *Vide* order dated September 30, 2022, in IA (IBC)/59/GB/2022 in CP (IB)/05/GB/2018, a resolution plan submitted by Mr. Tshering Pintso Bhutia-Successful Resolution Applicant (SRA) for the assets of the Corporate Debtor- Bluefern Venture Private Limited and the assets of the Personal Guarantors of the Corporate Debtor was approved by this Tribunal. As per the Resolution Plan approved, after the payment of Rs. 80.00 Lakhs towards the payment of CIRP cost, the SRA was required to deposit the full Resolution Amount within 30.12.2022. However, till 30th December 2022, the amount of Rs. 12.00 Crores had not been received from the Resolution Applicant.
4. Thereafter, the Resolution Professional and Chairman of the Monitoring Committee received a letter on 31st December 2022 along with a Cheque bearing no. 045521 dated

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- 7th January 2023, amounting to Rs.11.48 Crores favoring Bluefern Ventures Pvt. Ltd. (in Liquidation).
5. It is stated that the members of the Monitoring Committee held a meeting on 6th January 2023 and decided to present Cheque No. 045521 dated 7th January 2023 in the Bank. The Cheque was deposited and the same was returned with remarks “*Dishonored due to insufficient funds*”.
 6. Upon the dishonor of the Cheque No. 045521 dated January 7, 2023, the Monitoring Committee decided the following:
 - a. Immediate forfeiture of the EMD provided by the RA
 - b. Immediate encashment of the BG provided by the RA
 - c. Appointment of Security Guards at the assets of the CD
 7. It is stated that the SRA filed an application for extension of the time-period for payment of balance amount by the period of 83 days from 7th January 2023 to 31 March 2023 before this tribunal. *Vide* order dated 23.03.2023 in IA(IBC)/12/GB/2023, this tribunal considering the interest of all stakeholders permitted the Successful Resolution Applicant to pay the amount of the Resolution Plan before 30.04.2023.
 8. However, the SRA again failed to pay the Resolution amount before 30.04.2023 i.e., within the date allowed by NCLT, Guwahati Bench. IA(IBC)/12/GB/2023 again came up for hearing on 11.05.2023, and after hearing the Counsels from both sides and considering the facts and circumstances of the case, NCLT directed SRA to file an affidavit formulating the modalities of payment within seven days. On 20.5.2023, RP received a copy of the Affidavit from the SRA wherein it was mentioned that Rs. 6.00 Crores will be paid by 15.07.2023 and balance Rs.6.00 Crores will be paid by 15.08.2023.
 9. On 26.05.2023, the 7th meeting of the Monitoring Committee of CD- Bluefern Ventures Private Limited was held, wherein it was informed by the representative of the SRA that

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even though they had sought time till August 23 to honor the commitment made by way of filing an affidavit before NCLT, Guwahati Bench, they were trying their best to close the deal by 30.06.2023 and assured the Financial Creditor that they intended to repay the dues in totality within 30.06.2023.

10. In the same meeting, the Financial Creditor informed the members that time sought by the SRA vide affidavit produced before this Tribunal is till 15th August, 2023, which is not acceptable as the original Plan envisaged the payment up to 31.12.2022 and the present circumstances clearly shows that SRA does not have any financial arrangements as of now, therefore, the Financial Creditor wants to rerun the process EOI/Form G after taking necessary permission from NCLT, Guwahati Bench. Copy of the said meeting held on 26.05.2023 has been annexed.
11. The above matter was first listed on board on 17.08.2023 wherein this bench directed the Registry to issue notice to the Respondent and ordered the matter to be listed on board on 25.08.2023.
12. On, 25.08.2023, Ld. Counsel Mr. Saunak Mitra appeared on behalf of Applicant /Erstwhile RP/chairman for the monitoring Committee along with Ms. M.Bhuteriya, Ld. Counsel for the Sole Financial Creditor. No one appeared for the Respondent/SRA nor there was any Reply filed by the Respondent. Therefore, this bench directed the Respondent to file reply within two weeks, failing which the respondent's right to file reply shall stand forfeited. The Respondent was also directed to appear and argue the matter on the next date of hearing, failing which, appropriate order would be passed in his absence.
13. On the next date of the hearing, i.e. 20.09.2023, no one appeared for the Respondent/SRA nor there was any reply filed. The matter was again listed on 12.10.2023, 10.11.2023 but there was no representation from the Respondent side. On 14.12.2023, after hearing the submissions of the Ld. Counsels for the Applicant and Financial Creditor, the matter was reserved for orders.

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14. The present application has been filed by the erstwhile RP in the capacity as Chairman of the Monitoring Committee for reordering CIRP against the Corporate Debtor after expiry of more than 5 years after the date of ordering CIRP. It is the submission of the Id. Counsel appearing for the Applicant that the Successful Resolution Applicant has miserably failed to honor the payments as provided in the resolution plan despite getting extensions from the tribunal. He further submits that this bench dismissed IA (IBC)/12/GB/2023 filed by the SRA for further extension of time for making payments on 20.09.2023.

It is his further submission that the project of the Corporate Debtor in question i.e. construction of hotel has been partly completed and no useful purpose would be served nor higher value can be achieved, if liquidation is ordered against the Corporate Debtor. In view of the peculiar facts and circumstances, he requested the bench to consider the present case as an exceptional case and allow restarting of the CIRP process of the Corporate Debtor.

In support of his arguments, he has relied upon the order of the coordinate bench of the NCLT Calcutta in IA (IB) No. 1275/KB/2020 in CP (IB) 1237/KB/2018 in *CA Kannan Tiruvengadam (RP/Chairman of the Monitoring Committee) Vs. Almas Global Opportunity Fund SPC (SRA)* wherein, the Id. NCLT Calcutta bench ordered restarting of CIRP even after expiry of 330 days.

15. Ms. M. Bhuteria Id. Counsel for the Financial Creditor also supports the cause of the RP and prayed for allowing their application for re-initiation of CIRP of the Corporate Debtor.
16. Upon specific query raised by this bench to the Counsel appearing for the RP as to whether the land dispute pertaining to the construction of the hotel building was resolved with the landowners (Personal Guarantors of the Corporate Debtor), to which he answered in negative saying that the dispute is still existing.

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17. We have carefully gone through the above referred citation of the Kolkata NCLT relied on by the RP. In the above case cited by the RP, the coordinate bench of Calcutta ordered restarting of CIRP process after taking judicial notice of the fact that the RP in that particular case is running the Corporate Debtor as a going concern and therefore ordered re-initiation of CIRP. However, in the present case on hand, it is the admitted case of RP that the project was struck up in the middle due to the land dispute and there were no business operations in the Corporate Debtor Company, nor the CD is being run as a going concern by the RP. Under these circumstances, this bench is of the considered opinion that even the process of liquidation in this case may not be possible leave alone the successful completion of CIRP, in view of its peculiar nature of the land dispute. It is also relevant and appropriate to mention here that the CIRP Order was passed against the Corporate Debtor way back on 21.12.2018 i.e., almost 5 years down the line and the period of 330 days as provided in the Code is the maximum time including the time spend for litigation. After expiry of 330 days from the date of ordering CIRP, an onerous responsibility is cast upon the Adjudicating Authority under the Code to order for liquidation at least to save further deterioration of the value of assets of the Corporate Debtor.
18. Therefore viewing from any angle, this bench is of the opinion that the present case in hand doesn't fall under "exceptional category" and on the other hand, this bench is of the considered opinion that delay in passing the order of liquidation would further deteriorate the value of the assets of the CD and escalate the legal disputes in the case.
19. For the aforesaid reasons, we are unable to accept the submissions made by the RP for reordering initiation of CIRP and accordingly inclined to order liquidation of the Corporate Debtor.
20. Hence, the Corporate Debtor, Bluefern Venture Private Limited, is hereby ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016, with the following directions:

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- i. Ms. Sudha Sarma having IBBI Registration IBBI/IPA-002/IP-N01251/2022-2023/14266, having address at SUDHA and Associates, 18, MRD Road, Bamunimaidam, Guwahati- 781021, e-mail ID- sudha.sarma@yahoo.com, is appointed as Liquidator of the CD. This appointment is subject to her possessing a valid Authorization for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit her consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days. The Liquidator's fee shall be paid in accordance with relevant law, and in particular, as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- ii. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iii. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The Liquidator is directed to adhere to it.
- iv. Public Notice as contemplated under Section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- v. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with Section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.

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- vi. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by her in the Liquidation process of the Corporate Debtor.
 - vii. On initiation of the Liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, save and except the liberty to the Liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
 - viii. In accordance with Section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
 - ix. In terms of Section 33(1) (b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.
21. With the above observation and directions, the present IA is hereby dismissed and disposed of.
 22. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
 23. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
 24. File be consigned to records.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

Signed this on 19th day of December 2023