

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 2278/2020

**In
CP(IB)No. 411(MB)/2019**

*Application filed under section 33(1)(a) of Insolvency
and Bankruptcy Code, 2016.*

Mr. Pankaj Sham Joshi, RP

Zaveri Constructions Private Limited

...Applicant

In the matter of

Reliance Home Finance Limited

...Financial Creditor

V/s

Zaveri Constructions Private Limited

...Corporate Debtor

Order Pronounced on :- 26.08.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)**For the Applicant/RP : Mr. Saurabh Nikalje, Advocate****For the Financial Creditor : Mr. Manoj Mishra, Advocate****ORDER****Per- Justice P.N. Deshmukh, Member Technical**

It is an application filed u/s 33(1)(a) of the Insolvency & Bankruptcy Code, 2016 by Mr. Pankaj Sham Joshi, Resolution Professional (RP) of Zaveri Constructions Private Limited seeking liquidation order and appointment of IP Vikas Prakash Gupta as liquidator, based on the resolution passed by the CoC in its 8th meeting held on 14.10.2020 with a requisite majority as contemplated under I&B Code, 2016.

2. On perusal of this application, it reveals that this CP(IB)-411(MB)/2019 was admitted by this Tribunal on 26.09.2019 and the applicant was appointed as IRP and subsequently with the approval of the CoC was appointed as Resolution Professional by this Tribunal. The Applicant submitted that during the course of Corporate Insolvency Resolution Process of the Corporate Debtor as many as 8 meetings were held. Further, at the instance of the CoC, Form-G was published by the RP in the two newspapers i.e. Navkal (Marathi Newspaper) and Free Press Journal (English News Paper) on 24.12.2019, inviting EoIs from the Prospective Resolution Applicants ("PRAs"), however, no EoIs or Resolution

Plan was received against the aforesaid invitation for consideration. Meanwhile, Mr. Kedar Chikodi, Mr. Kunal Vikamsey, Mr. Harshad Deshpande and Mr. Dharmesh Trivedi were appointed as the Registered Valuers and the valuation report was submitted on time.

3. On the basis of 4th meeting and the approval of the CoC on e-mail, the applicant once again published a Form-G in the two newspapers i.e. Navkal (Marathi Newspaper) and Free Press Journal (English News Paper) on 29.02.2020 and the last date for submission of EoI was mentioned as 15.03.2020. However, no EoI was received from any prospective Resolution Applicant. After the expiry of the last date of submission of EoI, Mr. Jain requested to be permitted to submit their EoI. Simultaneously, Mr. Ajay Dedhia of Ashmi Developers expressed their interest in submitting an EoI for the Corporate Debtor and further stated that the EoI was initially sent on 13.03.2020, however, the same was sent to a wrong e-mail ID by mistake.

The said issue was placed before the CoC for its consideration during the 6th CoC meeting which was held on 17.03.2020. After detailed discussion and deliberation, the members of the CoC resolved to extend the last date of submission of EoI under the re-issued Form G to 21.03.2020. Accordingly, a Corrigendum was issued by the Applicant in the same newspaper on 18.03.2020.

4. The Applicant submits that upon the expiry of the extended time period for submitting EoI, i.e. on 21.03.2020, the Applicant only received an EoI from Asmi Developers. However, upon conducting a due-diligence on the PRA based on the material on record, it was found that Asmi Developers does not satisfy the financial requirement set by the CoC under Section 25(2)(h) of the Code. It was also found that EoI was not accompanied by an undertaking that the PRA does not suffer from any ineligibility under Section 29A as envisaged under Regulation 36-A(7)(c) of the CIRP Regulations and also not accompanied by an undertaking to maintain confidentiality as envisaged under Regulation 36-A(7)(g) of the CIRP Regulations. Thus, Asmi Developers, was found to be ineligible to participate in the Resolution Process of the Corporate Debtor.

Thus, in the 8th CoC meeting held on 06.06.2022, the CoC with 100% voting share passed a resolution for Liquidation of the Corporate Debtor and further resolved with 93.45% voting share to appoint IP, Vikas Gupta, to be appointed as liquidator of the Corporate Debtor and be paid a professional fee as follows:

“i. Fixed Fee of Rs. 15,00,000 at the end of the liquidation when securities are sold at liquidation value. This includes fees to Liquidator at Rs. 50,000 per month which will be adjusted from the Fixed Fee payable at the end of Liquidation.

ii. Time-bound success fees based on time taken for sale realization.

Within 6 months- 2% of sale value.

Between 6 to 9 months- 1.50% of sale value.

Between 9 months to 12 months-1% of sale value.

5. The Applicant made various attempts to call for viable resolution plans, however, despite numerous attempts and even after extension of time provided for submission of EoI, no resolution Plan was received from eligible applicants. Moreover, the CoC in 8th meeting resolved to liquidate the company with 100% favourable voting. Looking at the application and averments, we are of the considered opinion that this is a fit case for liquidation, therefore, we hereby order for liquidation of the company with directions as follows:

- a. **Mr. Vikas Prakash Gupta**, holding Registration No. **IBBI/IPA-001/IP-P00501/2017-2018/10889**, is appointed as the Liquidator, in terms of Section 34 of the Code, with remuneration as agreed by the Committee of Creditors;
- b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

6. The **IA-2278/2022** filed by the RP for Liquidation of the Corporate Debtor stands **allowed**.

SD/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

SD/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)

Arpan,LRA