

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

C.A. 331 (PB) /2019

IN

Company Petition No. (IB) – 489 (PB) /2017

In the matter of:

Mr. Vikram Kumar

Applicant/Resolution Professional

AND

In the matter of:

Era Housing & Developers (India) Limited

Corporate Debtor

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016
for liquidation of the corporate debtor*

Judgment delivered on: 03.12.2019

Coram:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the RP: Mr. Shubhranshu Padhi & Mr. Rakshit Jain,
Advocates.

For the IFCI: Mr. Kush Chaturvedi & Ms. Priyashree Sharma,
Advocates.

For the Ex-director: Ms. Manisha Chaudhary & Ms. Deepti Bhardwaj,
Advocates.



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Era Housing & Developers (India) Limited.
2. The facts in brief as per the application are that one of the financial creditors, IFCI Limited, had filed an application under Section 7 of the Code bearing number IB-489(PB)/2017 for initiation of Corporate Insolvency Resolution Process against the corporate debtor, M/s Era Housing & Developers (India) Limited. The said application was admitted by this Tribunal on 08.02.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Era Housing & Developers (India) Limited and there in appointed Mr. Vikram Kumar, as the Interim Resolution Professional.



3. Thereafter in the first meeting of the Committee of Creditors held on 08.03.2018 the Interim Resolution Professional was appointed as the Resolution Professional in the matter of Corporate Insolvency Resolution process of Era Housing and Developers (India) Ltd (“Corporate Debtor”).
4. It has been submitted that the CIRP Commencement date for Era Housing & Developers (India) Limited was 08th February, 2018. The period of CIRP was further extended by a period of 90 days (beyond 180 days) vide order dated 24.07.2019 passed in CA No. 635(PB) of 2018. In addition, vide order 06.12.2018 passed in CA. No. 1184(PB)/2018, the period of 237 days was excluded from the CIRP process.
5. It is alleged that the Resolution Professional has faced significant challenges due to the non-cooperation on the part of the Management of the Corporate Debtor. Despite Court directions, the Management of the Corporate Debtor failed to hand over all the documents pertaining to the Corporate Debtor. Accordingly, delay was caused in the CIRP process in view of non-cooperation and non-supply of documents by the Management of the Corporate Debtor.



6. It is submitted that the Corporate Debtor has been stripped bare of assets and there are virtually no assets with the Corporate Debtor. On the other hand, the Corporate Debtor has incurred losses running into hundreds of crores despite no significant business being carried out. It is alleged that huge sums of money have been given in the form of Loans and advances to the associated companies by the Corporate Debtor without charging any interest, nor are there any agreements to substantiate such transactions. These transactions tantamount to asset stripping and transaction to defraud creditors. The Resolution Professional has filed appropriate application relying upon the Forensic Auditors Report which is pending consideration vide CA No. 1266(PB)2018. Notice in the said application has been issued which can be followed up by the liquidator during liquidation process of the Corporate Debtor.

7. It is submitted that despite two Expression of Interest ('EOI') having been issued, there has been no viable resolution plan received for consideration of Committee of Creditors. The Committee of Creditors has thus resolved to



liquidate the corporate debtor. The various steps taken with respect to the EOI issued are reflected in the application as follows.

- a. *The important dates regarding submission of EOI and resolution plan are stated in the table below:*

<i>SI No</i>	<i>Date of Publication of EOI</i>	<i>Last Date for submission of EOI</i>	<i>Last date of Submission of Resolution Plan</i>
<i>1.</i>	<i>24.05.2018</i>	<i>15.06.2018</i>	<i>09.07.2018</i>
<i>2.</i>	<i>27.07.2018</i>	<i>16.08.2018</i>	<i>17.09.2018</i>

- b. *That an Expression of Interest (EOI) was issued by the resolution professional on 24.05.2018 in all editions of "Financial Express", inviting Expression of Interest of prospective Resolution Applicants. The prospective Resolution Applicants were required to submit their EOI on or before 15th June, 2018 at the address of the Resolution Professional before the last date for submission of EOI i.e. up to 15th June, 2018, the resolution professional had received the EOI from one Goyal MG Gases Private Ltd. However, the said*




resolution applicant expressed his desire not to participate in submission of a resolution plan.

- c. It was decided in the 6th CoC meeting to issue 2nd Expression of Interest (EOI) in Financial Express and extend the date for receiving EOI, so that another opportunity may be given to the prospective resolution applicants to express their interest.*
- d. The Resolution Professional issued the second EOI in "Financial Express" dated 27.07.2018 and the date for submission of EOI was fixed as 16.08.2018.*
- e. On 31.07.2018, the Resolution Professional received an email from "Kwality Developers Private Limited", Mumbai expressing their interest. However, "Kwality Developers Private Limited" did not send the necessary documents to express their interest in the proposal.*
- f. On 16.08.2018, the Resolution Professional received an EOI from M/s. JS Grover Construction, Pathankot, Punjab. The net worth of the said applicant is Rs. 71.49 Crores as on 31.03.2017.*



- g. On 17.08.2018, the Resolution Professional wrote an email to M/s. Grover Constructions with a copy of the confidentiality agreement, requesting the Resolution Applicant to execute the confidentiality agreement so that the IM prepared by the Resolution Professional can be shared with the Resolution Applicant.
- h. On 21.02.2018, the Resolution Professional wrote an email to M/s. JS Grover Constructions the Resolution Applicant to provide the financial statements for 2017-2018 and net worth certificates as 31.03.2018 to ensure that the applicant meets the eligibility criteria as approved by the CoC in the 6th CoC meeting held on 11.07.2018. The Resolution Professional also requested the Resolution Applicant to provide the confidentiality agreement.
- i. On 23.08.2018, the Resolution Professional wrote an email to M/s. JS Grover Constructions reminding the Resolution Applicant that he has not replied to the previous emails of the Resolution Professional.



- j. On 30.08.2018, the Resolution Professional again wrote an email to the M/s JS Grover Constructions reminding the Resolution Applicant that the last date for submission of Resolution Plan was 17.09.2018 and the Resolution Applicant was requested to expedite the process. However, no response was received by the Resolution Professional from the Resolution Applicant.
- k. On 15.09.2018, the Resolution Professional again wrote an email to M/s JS Grover Constructions reminding him that no response was received by the Resolution Applicant.
- l. On 17.09.2018 The Resolution Applicant sent the confidentially agreement duly signed, however the same was not notarized by the Notary Public.
- m. On 17.09.2018 The Resolution Professional received an email from M/s. JS Grover Constructions to extend the time for submission of resolution plan by 30 days.
- n. On 21.09.2018 The Resolution Professional wrote an email to M/s. JS Grover Constructions requesting the Resolution Applicant to complete the pending



formalities at the earliest; however, his Resolution Plan if any can be considered only if extension of time is allowed by CoC.

- o. On 10.10.2018 The Resolution Professional received the provisional financial statements over email from M/s. JS Grover Constructions.*
- p. On 11.10.2018 The Resolution Professional received an email from M/s. JS Grover Constructions requesting for extension of time till 30th Oct, 2018.*
- q. On 29.10.2018 a resolution plan was submitted by the resolution applicant namely M/s. JS Grover Constructions, i.e. after the last date for submission of the resolution plan.*
- r. After exclusion of the time from the CIRP process, the CoC decided to take up the issue of the Resolution Applicant in all earnest. The CoC in the meeting held on 26.12.2018, invited M/s. JS Grover Constructions the only Resolution Applicant (RA) be invited to attend the next CoC meeting to be held on 11.01.2019.*
- s. The Applicant-Resolution Professional requested the Resolution Applicant vide his email dated*



28.12.2018 and 07.01.2019 to be present in the CoC meeting. However, the Resolution Applicant did not attend the CoC meeting held on 11.01.2019, despite being requested through correspondence as well telephonically requested by the Applicant-Resolution Professional. In spite of confirming to Applicant-Resolution Professional that he shall be present; the Resolution Applicant was not present in the CoC meeting held on 11.01.2019.

t. In spite of repeated follow-ups and umpteen opportunities given to the Resolution Applicant to submit a resolution plan, the said entity has not given any legally compliant resolution plan nor has it completed the necessary formalities required to be complete.”

8. It is submitted that the aforesaid issues were discussed in the 12th Meeting of the Committee of Creditors held on 01.02.2019. The Committee of Creditors discussed at length that as there was only one Resolution Applicant who was not serious, the only option left was to propose liquidation for the company. The Committee of Creditors



was of the view that no cause would be served by having another EOI as two EOI's had already been publicly announced. All the members of the Committee of Creditors present, after due deliberation agreed in unison to propose liquidation of the Corporate Debtor and authorized the Resolution Professional to move an application for liquidation of the Corporate Debtor.

9. Accordingly, the members of Committee of Creditors by way of 100% voting share passed the following resolution: -

“RESOLVED THAT the Corporate Debtor “Era Housing and Developers (India) Limited” be liquidated in accordance with the provisions as laid down in Section 33(2) of the Code”

“RESOLVED FURTHER THAT, the Resolution Professional be and is hereby authorized to file an application before the Hon’ble NCLT under Section 33(2) of the Code for liquidation of the corporate debtor”

10. The Resolution Professionals has filed the present application under Section 33(2) of the Code for liquidation of the Corporate Debtor as there is no viable resolution plan



and as the Committee of Creditors has unanimously decided that the corporate debtor be liquidated.

11. It is also pertinent to note that the word “may’ used in Section 30(4) of the Code is indeed a discretion given to Committee of Creditors either to reject or accept the resolution plan with 66% voting share, despite the plan in all respects is correct. Commercial decision of CoC is not open to judicial review. The Resolution Professional has filed the present application for liquidation of the Corporate Debtor as per unanimous decision of the Committee of Creditors and in the absence of any viable Resolution Plan.

12. It is pertinent to refer to the statutory provisions provided in Section 33 (2) of the Code which envisages that:

“where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors (approved by not less than sixty-six percent of the voting share) to liquidated the corporate debtor, the Adjudicating Authority



shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section(1).”

13. Under the provisions of the Code committee of creditors is the decision taking body and is the competent authority for taking appropriate commercial decision. Committee of creditors with 100% vote share decided to go for liquidation of the corporate debtor. Adjudicating Authority ought not transgress into the commercial decision and jurisdiction of the committee of creditors.

14. Hon’ble NCLAT in a similar matter has observed in CA (AT) (Ins) 124/2018 that *“In fact, the ‘Resolution Plans’ were taken into consideration but the CoC held that there is no viable ‘Resolution Plan’. In the absence of any viable plan, the adjudicating authority has rightly ordered for liquidation of Corporate Debtor.”*

15. In the factual background and upon failure of resolution process there being no approved resolution plan and on completion of the statutory CIRP period; Liquidation has to follow. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit



the Adjudicating Authority must give effect to it whatever may be the consequence.

- 16.** In the facts and in the absence of any approved resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the unanimous decision of the Committee of Creditors *for liquidation of the corporate debtor under Section 33 (1) (a) of the Code.*
- 17.** The resolution professional has shown his inability to act as a liquidator in the liquidation process and during hearing there was a request to appoint a liquidator from the panel to carry on the liquidation process in respect of the Corporate Debtor.
- 18.** Accordingly, the liquidator is to be appointed from the list of resolution professionals for appointment of liquidator as made available by the Insolvency and Bankruptcy Board of India.
- 19.** In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Era Housing & Developers (India) Limited in the manner laid



down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

- a.** Mr. Sunil Kumar Gupta having registration no. IBBI/IPA-001/IP-P00205/2017-18/10394, e-mail; id caskg82@gmail.com, New Delhi, is appointed as Liquidator in terms of Section 34(1) of the Code. He is directed to file his Written Consent in the specified Form within seven days from the date of this order.
- b.** The Liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and



to the Insolvency and Bankruptcy Board of India;

- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f.** The liquidator shall 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 its 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 and the Liquidator for taking necessary steps.
- j.** C.A. 331(PB)/2019 filed in IB 489(PB)/2017 is disposed of in the aforesaid terms.


03.12.2019

(M.M. KUMAR)
PRESIDENT



(S. K. MOHAPATRA)
MEMBER (T)