

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

IA No.357/2020 in
C.P. (IB) No.220/BB/2018
(Admitted Matter)

Under Section 33 of the
Insolvency and Bankruptcy Code, 2016

In the matter of:

M/S. PHOENIX ARC PRIVATE LIMITED ...Applicant/Financial Creditor

Versus

M/S. BASE CORPORATION LIMITED ... Respondent/Corporate Debtor

And in the matter of IA No.357/2020:

Mr. Aashish Gupta
Resolution Professional of Base Corporation Ltd.
...Applicant-Resolution Professional

Order delivered on: 26th April, 2022

Coram:

1. Hon'ble Shri. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant/
Resolution Professional : Ms. Sweta Dubey, Advocate

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This application has been filed by Mr. Aashish Gupta, the Resolution Professional of M/s. Base Corporation Limited (Corporate Debtor) under Section 33 of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the

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(Admitted Matter)

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matter of M/s. Base Corporation Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.

2. CP (IB) No.220/BB/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "M/s. Phoenix ARC Private Limited" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Base Corporation Limited was admitted on 02.08.2019 and Mr. Aashish Gupta was appointed as Interim Resolution Professional (IRP).
3. The facts of the case, briefly stated that, the Applicant received the order copy dated 02.08.2019, on 05.09.2019, i.e., on the 35th day of the Corporate Insolvency Resolution Process period. Subsequently, the Applicant made the Public Announcement on 07.09.2019. The 1st CoC meeting was held on 03.10.2019, the Applicant was unanimously appointed as the Resolution Professional. Further, the Resolution Professional issued invitation for submission of Expression of Interest (EOI) with the last date of submission of interest being 15.12.2019.
4. In the 3rd meeting of the CoC held on 16.12.2019, the CoC extended the timelines for submission of EOI till 09.01.2020. The second edition of the Invitation for submission of EOI was published on 22.12.2019, only two EOIs were received till 09.01.2020. The Information Memorandum was circulated amongst the members of the CoC on 24.10.2019 and Request for Resolution Plan (RFRP) for the Corporate Debtor was approved by the CoC in its 3rd meeting held on 16.12.2019. A further extension of 90 days beyond the 180 days was granted by this Adjudicating Authority vide order dated 14.01.2020 in IA.No.23/2020, thus the CIRP time limit was extended till 27.04.2020.
5. On 03.02.2020, the list of Prospective Resolution Applicants were finalized by the Resolution Professional, which included one eligible Prospective Resolution Applicant.
6. The lockdown due to the COVID-19 pandemic, was imposed from 25.03.2020 till 31.05.2020 in Bengaluru. As per the Orders of the Hon'ble Supreme Court and National Company Law Appellate Tribunal and Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

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Persons) (Third Amendment) Regulations, 2016, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown. Thus the CIRP time line got extended up to 04.07.2020.

7. On 06.03.2020, the Resolution Professional received a plan from Prospective Resolution Applicant, which was placed before the CoC members on 09.03.2020 and feedback was received from the members. The resolution plan submitted by the Prospective Resolution Applicant contained certain defects, hence a revised Resolution Plan was submitted on 27.06.2020 and 30.06.2020.
8. On 03.07.2020 at 9.11 pm, a revised Resolution Plan was submitted by the Prospective Resolution Applicant for the discussion and voting of the CoC on 04.07.2020, where in the Resolution Applicant was also present. The CoC members discussed the Resolution Plan dated 03.07.2020 and were of unanimous view that since the Resolution Plan has been shared with them only towards the end of the day on 03.07.2020, they would all need additional time for analyzing and reviewing the same. Further extension of 30 days was granted by this Adjudicating Authority vide order dated 03.08.2020 in IA.No.240/2020, thus the CIRP time line got extended up to 04.09.2020.
9. On 27.07.2020, 31.07.2020, 03.08.2020, 05.08.2020 and 17.08.2020, the Resolution Professional received revised Resolution Plans from the Resolution Applicant.
10. In the 11th meeting held on 29.08.2020, the members of the CoC discussed the revised Resolution Plan dated 28.08.2020, wherein the CoC requested the Resolution Applicant to submit a final Resolution Plan for the approval of the CoC and which was put up for e-voting before the CoC on 30.08.2020 (from 11.00 AM) to 02.09.2020 (till 06.00 PM). The Final Resolution Plan was rejected by the CoC on 02.09.2020. Thus, there was no Resolution Plan remaining for the Corporate Debtor; and therefore this application has been filed for liquidation of the Corporate Debtor under Section 33(1) of the Code. In the summary report of e-voting of 11th meeting on 02.09.2020; 74.70% voted against the Agenda Item B4 i.e., to consider and propose appointment of Mr. Aashish Gupta the existing RP,

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as liquidator and 53.11% voted against the Agenda Item No.B5 i.e. to consider and propose appointment of Mr. Rabinder Beleyur as liquidator. It is stated that CoC in its 11th meeting considered the issue of approval of liquidation of Corporate Debtor at Agenda Item No. B3 and the same is as under:

“RESOLVED THAT members of CoC be and hereby approve the Liquidation of Base Corporation Limited in accordance with provisions of Section 33(2) of the Insolvency & Bankruptcy Code, 2016 subject to approval of Hon’ble Adjudicating Authority.

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to take such steps as may be necessary, in relation to the above, to the extent required and to settle all matters arising out of and incidental thereto and sign and execute all applications, documents and writings that may be required and generally to do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution.

The said Resolution requires voting percentage of minimum 66% of voting shares for approval.

Results

Votes cast in favour of the Agenda item B3 is 49.65% by Axis Bank (through email), Bank of Baroda (Erstwhile Vijaya Bank), Bank of India (Bangalore Large Corporate Branch), IDBI Bank Ltd, Bank of Maharashtra, Union Bank of India & Punjab National Bank through E-Voting. Phoenix ARC Private Limited Trustee of Phoenix trust FY 16-23, Pegasus ARC Pvt Ltd and Central Bank of India together having 37.17% voted against the resolution. State Bank of India having 13.18% has not voted. Since the votes in favour of item B3 are 57.18% and is less than 66% of the voted share of the members of CoC, hence the resolution/agenda item is taken as NOT APPROVED.”

- 11.** The above narration of facts reveals that no Resolution Plan was approved by the CoC with required percentage of voting share. The Resolution seeking for passing of Liquidation order also didn't get the required percentage of voting share from the CoC. Similarly, the Resolution seeking for appointment of existing RP as a

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Liquidator and also the Resolution seeking for appointment of a new RP as a Liquidator also didn't get the required percentage of the voting share in the 11th Meeting of the CoC held on 29.08.2020. The CIRP period finally expired on 04.09.2020 and the instant Application seeking passing of the Liquidation order against the Corporate Debtor was filed on 09.09.2020 i.e., after the expiry of the CIRP period. Hence, this Application is required to be considered U/s 33(1) of the I&B Code, 2016.

- 12.** The Hon'ble NCLAT, in *Praveen Kumar Nand Kumar v. VSL Securities Pvt Ltd.* in CA No.1/2020 in CA No.308/2000, dated 09.06.2020, observed as under:-

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

- 13.** We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

- 14.** The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

“33. Initiation of liquidation.-

(1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan,

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intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share to liquidate 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).

Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”

15. Prescribed period for filing application- In the present case, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 02.08.2019 and the period of 180 days were completed on 28.01.2020. As per Order dated 14.01.2020 in IA No.23/2020 this Adjudicating Authority has allowed to extend the CIRP period by 90 days till 27.04.2020. Due to Covid -19 pandemic, lock down was imposed from 25.03.2020 till 31.05.2020 in Bengaluru, thus the CIRP was extended to expire on 04.07.2020. The IA No.240/2020 filed by the Resolution Professional seeking to extend the CIRP period by 30 days, thus the CIRP has expired on 04.09.2020. The present application is filed on 09.09.2020 i.e., after the expiry of the CIRP period. Hence, this application shall be considered under Section 33(1), but not under Section 33(2).

16. Appointment of Liquidator - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP shall, subject to submission of written consent, act as the Liquidator for the purpose of Liquidation. Section 34(4)(a) of the Code states that the resolution plan submitted by the resolution professional was rejected for failure to meet the requirements, the Adjudicating Authority shall by order replace the RP. In the present case, it is stated in the application that the plan submitted by the Resolution Professional was not approved in the CoC meeting and the final Resolution Plan was rejected by the CoC on 02.09.2020. Sub Section (7) of Section 34 of the Code says that the Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an Insolvency Professional as Liquidator by an order appoint such Insolvency Professional as Liquidator. It is seen that the Resolution seeking for

appointment of the existing RP as a Liquidator and also the Resolution seeking for appointment of the new RP as a Liquidator failed to attain the required 66% of voting share. In the circumstances, and to avoid any further complications in the smooth conducting of the Liquidation process, it is better to appoint a new RP, other than those two persons who failed to get the confidence of the CoC, as a Liquidator of the Corporate Debtor.

- 17.** In this regard a letter bearing File No.25/02/2022-NCLT dated 03.01.2022 has been received from National Company Law Tribunal, New Delhi forwarding therewith a copy of IBBI letter No.IP-12011/1/2020-IBBI/1103/2785 dated 30.12.2021 along with the guidelines and the panel of resolution professionals approved for NCLT, Bengaluru Bench for appointment as IRP or Liquidator. The panel is valid from 01.01.2022 to 30.06.2022. We select Mr. Konduru Prasanth Raju bearing Registration No.IBBI/IPA-002/IP-N00708/2018-2019/12200, having registered address at B-804, Shriram Suhaana Apartments, Harohalli, Nagenahalli Gate, Yelahanka, Bangalore 560064, email- ipkpraju@gmail.com and Contact No. 9980591019 of the panel to be appointed as Liquidator.
- 18.** Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder:-
- a. Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** -The CoC has not made compliance of Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 regarding the meeting of liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 regarding the contributions to liquidation costs.
- b. Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The CoC has not made any recommendation regarding sale of the Corporate Debtor as a

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going concern. Therefore, the Liquidator is directed to refer Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and take necessary action.

c. Fees of the Liquidator [Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The fee payable to the Liquidator is as per Regulations 4(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

19. Pending applications, if any, and its effects – The Learned Counsel for the Applicant has stated that IA No.363/2021 filed for a direction to restore the power supply to the Solan Plant of the Corporate Debtor is pending, but the same have no affect on the instant Application.

20. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Base Corporation Limited is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

i. That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the Corporate Debtor;

Provided that a suit or other legal proceeding may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

ii. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

iii. That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and

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- iv. That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator; and
- v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
- vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.
- vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
- viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.
- ix. The Liquidator shall file his written consent within one week from today.

21. Thus **I.A. No. 357 of 2020** stands disposed of.

22. Copy of this order be supplied to the Counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)