NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI– MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.10.2021 AT 13.00 HRS

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Miscellaneous Application/6/221 & IA (IBC)/341/2021 in CP (IB) No. 499/9/HDB/2019
NAME OF THE COMPANY	Aikya Infrastructure Pvt Ltd
NAME OF THE PETITIONER(S)	Potluri Raghavendra Rao
NAME OF THE RESPONDENT(S)	Aikya Infrastructure Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

MA 6/2021 & IA 341/2021 in CP (IB) No.499/9/HDB/2019 are listed for orders. Orders pronounced vide separate orders.

MEMBER (T) **MEMBER(J)**

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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

Miscellaneous Application/6/2021 in IA (IBC)/341/2021&
IA (IBC)/341/2021
In CP (IB) No. 499/9/HDB/2019
Under Section 60 (5) & 33 (2) of the Insolvency and Bankruptcy Code, 2016.

Filed by,

M/s. Aikya Infrastructure Private Limited,
Represented by its Resolution Professional
Mr. Krishna Komaravolu
H.No.7-1-214, vamsikrishna apartments
Dharam Karam road,
Ameerpet, Hyderabad-500016

... Applicant/Resolution Professional

In the matter of

Mr. Potluri Raghavendra Rao

... Operational Creditor

AND

M/s. Aikya Infrastructure Private Limited
H.No: 8-3-677/19, Plot No.19, 1st Floor
Sri Krishna Devarayanagar, Yellareddyguda
Hyderabad-500073

... Corporate Debtor

Date of order: 01.10.2021

Coram:

Shri Madan Bhalchandra Gosavi, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical

Appearance:

For Applicant: Mr. Krishna Komaravolu, Resolution Professional

Heard on: 23.07.2021, 27.08.2021 & 24.09.2021

PER: BENCH

1. The instant Application is filed by the Resolution Professional of the Corporate Debtor, M/s. Aikya Infrastructure Private Limited under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code" for liquidation of the Corporate Debtor due to non-receipt of resolution plan.

2. The Insolvency Petition was filed by Mr. Potluri Raghavendra Rao under Section 9 of the Code against Corporate Debtor vide CP (IB) No. 499/9/HDB/2019 and the same was admitted by this Tribunal vide order dated 26.09.2019. Mr. Krishna Komaravolu was appointed as an Interim Resolution Professional (IRP) for the Corporate Debtor.

3. The applicant has issued public announcement on 02.10.2019 inviting claims from the creditors and on receiving the claims he filed the list of creditors and constituted the Committee of Creditors (CoC). The CoC in its 1st meeting held on 29.10.2019 resolved to continue IRP as Resolution Professional (RP).

4. The applicant published Form-G in newspapers on 21.12.2019 and invited Expression of Interest (EOI) from Prospective Resolution Applicants (PRAs) for submission of Resolution Plan of the Corporate Debtor and the last date for receipt of EOI was 05.01.2021.

5. In the 3rd CoC meeting held on 20.01.2020 the applicant appraised the members regarding the letters received from the office of the Principal Commissioner of Central Tax, Hyderabad requiring the Company to appear before him in connection with Show Cause Notice O.R. No.59/2017-18 pertaining to the Service Tax. The applicant requested the Service Tax Department to keep the proceedings under abeyance till the completion of moratorium

period under the code and requested the Department to submit their claims but no claims were submitted by the Department.

6. The CoC members decided not to appoint Transaction Auditors for the conduct of audit as there was no revenue during the period of two financial years preceding the insolvency commencement date.

7. It is noted that no EOI was being received by the applicant till the last date of receipt of EOI. In 2nd CoC meeting they appointed Two Registered Valuers to determine the fair value and the liquidation value of the Corporate Debtor. Since there was no response to EOI, the valuation work was not carried out.

8. In the 4th CoC meeting held on 24/02/2020 the applicant appraised the members that there is no response to EOI and they discussed about going for fresh invitation for EOI or opt for liquidation of the Corporate Debtor and the members resolved with 100% voting right to liquidate the Corporate Debtor.

9. The CoC members directed the applicant to file an application before this Tribunal under Section 33 of the Code to liquidate the Corporate Debtor and decided to appoint the applicant himself as the Liquidator. The applicant has submitted his written consent to act as a Liquidator under Section 34 (1) of the Code and IBBI (Liquidation Process) Regulations, 2016.

10. This Tribunal directed the applicant to comply the provisions of Regulations 39 (B), 39 (C) and 39 (D) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 vide order dated 23.07.2021. Accordingly, on 31.07.2021 CoC meeting was held and passed resolutions pursuant to the said Regulations and the applicant filed an application vide Miscellaneous Application/6/2021 for taking on record of the resolutions passed by the CoC members pursuant to the said Regulations. Accordingly, Miscellaneous Application/6/2021 is taken on record and disposed of.

11. In the said CoC meeting the members resolved the resolution for Liquidation of the Corporate Debtor, the appointment of the Liquidator, meeting the liquidation costs and the fees of the Liquidator.

12. We have heard the Applicant in the matter. The Hon'ble Apex Court in K. Sashidhar vs. Indian Overseas Bank and Ors (2019) 148 LA 497 (SC) inter-alia held that,

"The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33 (1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors".

13. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33 (2) of the Code. Therefore, we have no option than to pass an order of liquidation of the Company in the manner laid down in Chapter-III of the Code.

ORDER

14. The Application is accordingly allowed with the following directions:-

A. The Corporate Person i.e., M/s. Aikya Infrastructure Private Limited shall be liquidated in the manner laid down in Chapter-III of the Code.

B. The Applicant Mr. Krishna Komaravolu, presently Resolution Professional of M/s. Aikya Infrastructure Private Limited is appointed as Liquidator.

C. He shall issue public announcement stating that the Corporate Debtor is in liquidation.

D. The Moratorium declared under Section 14 of the Code shall cease to operate here from.

E. Subject to Section 52 of the code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.

F. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

G. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) regulations, 2016.

H. Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.

I. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)

Vismaya(LRA)