



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH  
KOCHI

IA (IBC) No. 79/KOB/2023

In

C.P (IB) No. 01/KOB/2021

*In the Matter of:*

Application under Rule 11 of NCLT Rules, 2016 seeking direction to place the revised Resolution Plan before CoC and to re-conduct the voting on plan.

**-And-**

*In the Matter of:*

**Buildwell** Represented by its Managing Partner Mr. Saji Kumar K.P , 43/3623 – D-2, 2<sup>nd</sup> Floor, Maliyekkal Tower Pallissery Junction, Puthiya Road Thammanam Post- 682032

**... Applicant**

**-Versus-**

1. **Mr. Dileep K.P**, Resolution Professional Nucleus Premium Properties Pvt Ltd, Veluthedath House, Ponnurunni , Vyttila P.O, Kochi- 682019

2. **Mr. Mohanan T.S**, Authorised Representative Thekkinathil House, Valayanchirangara P.O, Vengola, Perumbavoor, Ernakulam District Ernakulam-Kerala, 683556

**...Respondents**

**-In-**

*In the Matter of:*

**Anoop John, Blessy and Ors;**

**...Financial Creditor**

**-Versus-**

**Nucleus Premium Properties Pvt. Ltd**

**...Corporate Debtor**

*Coram:*

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)



***Appearances (through video conference):***

For the Applicant : Mr. Vinod PV, Adv.  
For the Respondent/RP : Mr. Dileep K.P.

**Order reserved on: 15.03.2023**  
**Order pronounced on: 17.03.2023**

**ORDER**

1. This is an application filed by unsuccessful resolution applicant for direction directing the Resolution professional to place the Resolution plan dated 06.02.2023 of the applicant before the COC and to conduct voting.
2. The corporate debtor was admitted into CIRP on 18.11.2021 and the respondent was appointed as IRP then appointed as RP. In the course of Resolution process, the resolution plan received was rejected in the 6<sup>th</sup> COC with 100% voting on 23.09.2022. Then the respondent obtained consent of this Adjudicating Authority to receive the application on the ProjectWise resolution in terms of Regulation 37(m) of IBIB Regulations. In response to publication of inviting Expression of interest, the plan submitted by this applicant and another plan by M/s BR Nirman, these two holistic plans were found to be in compliance with the IBC 2016. Both the plan was failed to secure more than 50% voting share in the voting held on 28.01.2023 and 29.01. 2023. The plan which secured highest vote was again put on re-voting on 02.02.2023 and 03.02.2023 but the plan not secured required vote. When both the plans were not got through and R.P. exhausted maximum period of 450 days, in the 10<sup>th</sup> COC meeting held on 04.02.2023 it was resolved to file an application for liquidation, accordingly the respondent filed application I.A. No.74 /KOB/2023 under section 33(1) of IBC 2016 for liquidation. At this stage, this application has been filed to direct the respondent to place the Resolution plan dated 06.02.2023 of the applicant before the COC and to conduct voting.



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3. The application I.A.No.74/KOB/2023 filed by the respondent under section 33(1) of IBC 2016 was already heard and reserved for orders on 22.02.2023, at this stage this application cannot be entertained.
4. In the 10<sup>th</sup> COC meeting it is resolved to file an application for the liquidation of the corporate debtor accordingly application also filed. Now the plea of the applicant for direction to Respondent to convene the COC is against the resolution passed in the 10<sup>th</sup> COC meeting. It is the commercial wisdom of the COC to decide, further already maximum period of 450 days already exhausted. No direction can be issued when the plan submitted by the applicant is already not approved by the COC and after the expiry of the extended period of CIRP. Already sufficient time was granted and exhausted. It is the prerogative of the RP to convene the COC as and when required, but no direction can be issued at the request of outsider. Further, no case is made out by the applicants to concede his request. In consequence, this application is Dismissed.
5. 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,
6. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.03.17 15:59:01 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

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Date: 2023.03.17 15:36:54  
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**P. Mohan Raj**  
**Member (Judicial)**

Signed on this 17<sup>th</sup> day of March, 2023.

Supriya-P.s