

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.08 of 2020 in
C.P.(IB) No.215/BB/2019
U/s 33(2) of IBC, 2016

Ms. Shirley Mathew

No. 23, 5th Cross, Hutchins Road,
Cooke Town,
Bengaluru – 560 084

- Applicant/Resolution Professional

IN THE MATTER OF:

Reddarow Communications

Sree Srinivasa Nilayam,
D.No.1542/41, 1st floor,
South End 'B' Cross,
Bengaluru – 560 069.

- Petitioner/Financial Creditor

Versus

M/s. Veracious Builders and developers Pvt Ltd

No.302, Oxford Chambers
Rustum Bagh Mian Road,
Airport Road,
Bangalore – 560 017

- Respondent/Corporate Debtor

Date of Order: 17th January, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/RP : Shri Arjun Rao

Applicant/RP : Ms. Shirley Mathew

ORDER

Per: Rajeswara Rao Vittanala, Member (J)



1. I.A.No.08 of 2020 in C.P.(IB) No.215/BB/2019 is filed by Ms. Shirley Mathew (hereinafter referred to as 'Applicant/Resolution Professional') (Corporate Debtor) under Sections 33(2) of IBC, 2016 by inter alia seeking to liquidate the Corporate Debtor u/s 33(2) of the Code; to appoint the Applicant/RP herein as Liquidator; to issue public announcement stating that the Corporate Debtor is in liquidation ; to permit to submit a copy of order with Registrar of Companies etc.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) C.P.(IB No.215/BB/2019 filed by Reddarow Communications (hereinafter referred to as 'Petitioner/Financial Creditor') U/s 7 of the Code, 2016, R/w Rule 4 of the I&B (AAA) Rules, 2016 seeking to initiate CIRP in respect of Veracious Builders and Developers Pvt Ltd (hereinafter referred to as 'Respondent/Corporate Debtor') was admitted by this Adjudicating Authority, vide Order dated 30th July 2019 by initiating CIRP, appointing IRP , imposing moratorium, etc.
 - (2) Accordingly, the Interim Resolution Professional made a public announcement by inviting claims from the claimants and thus claims were received from the Financial Creditors and Operational Creditors including Govt. dues. Reliance AIF Management Company Limited and Reliance Nippon Life Asset Management Limited jointly claimed a financial debt due of Rs.65,20,53,795/- and the same was admitted. No other Financial Creditor has filed a proof of claim. Six operational creditors of the Corporate Debtor filed claims totally amounting to Rs.66,94,661/- out of which a sum of Rs.50,71,792/- has been admitted as on date. A claim for a sum of Rs.7,92,163/- said to be payable as commercial taxes submitted by the Deputy



Commissioner of Commercial Taxes, Koramangala, Bengaluru is under verification. Therefore, Committee of Creditors constituted consisting above two Financial Creditors with 100% voting rights.

- (3) Thereafter, in terms of Section 22(1) of the Code, the Committee of Creditors in its first meeting held on 11.09.2019. In the second meeting of the Committee of Creditors held on 19.09.2019, wherein, it was inter alia resolved to appoint the Applicant as the Resolution Professional subject to orders of this Hon'ble Tribunal. Further, the Committee resolved to seek early liquidation of the Corporate Debtor prior to the last date for submission of the information memorandum (IM) and preparation of a Resolution plan as per section 33(2) of the code, on the ground that the Corporate Debtor was not carrying on any business except sale of its business plans/new projects or team to carry on the business of the Corporate Debtor, which in any event did not have any future earnings prospects. The Adjudicating Authority has confirmed the appointment of the Applicant as Resolution Professional by way of an order dated 17.10.2019. Thereafter, in the third meeting of the Committee of Creditors held on 05.11.2019, wherein it was inter alia resolved to liquidate, and seek permission for liquidation of the Corporate Debtor from the Adjudicating Authority.
- (4) The Corporate Debtor has not filed annual returns with the Registrar of Companies, after the financial year 2014-2015. The suspended Directors of the Corporate Debtor have failed to provide complete books of accounts until the date of initiation of the corporate insolvency resolution process as required to ascertain the liquidation value as mentioned in IBBI (IRP for Corporate Persons) Regulations, 2016. The suspended Directors

have only made available the annual accounts for the years 2015-2016, and 2016-2017, which are said to be audited but have not been adopted in an AGM nor filed with Registrar of Companies. .

- (5) The total liabilities of the Corporate Debtor as stated in the balance sheet as on 31st March, 2017 is Rs.85,07,51,946 (Rupees Eighty Five Crore Seven Lakh Fifty One Thousand Nine Hundred and Forty Six), subject to further verification. However, claims amounting to Rs.65,87,48,456/- (Rupees Sixty Five Crore Eighty Seven Lakh Forty Eight Thousand Fur Hundred and Fifty Six only) have been received. In the Balance sheet as on 31st March, 2017, the assets are stated to be Rs.59,23,09,384/- (Rupees Fifty Nine Crore Twenty Three Lakh Nine Thousand Three Hundred and Eighty Four only). However, subject to further verification, it currently appears that the only available and/or realisable asset of the Corporate Debtor are 12 flats in the residential project constructed by the Corporate Debtor named Veracious Vani Villas, Doddaballapura, Karnataka. These are not likely to be worth sums even close to the value of assets claimed by the Corporate Debtor. The Committee of Creditors and Applicant are also engaging a value to determine the value of the assets of the Corporate Debtor.
- (6) It is further stated that the Financial Creditors held a mortgage over some of the immovable properties of the Corporate Debtor, and it appears that the suspended Directors of the Corporate Debtor had sold some of these properties (flats) worth crores without seeking consent/NOC from the mortgagor. As such, there is prima facie material to show that the said sales are illegal, and the said flats continue to be a realisable asset of the Corporate Debtor. The Committee of Creditors and the Applicant have

engaged transaction and Forensic Auditors to ascertain the extent of the fraud committed by the suspended Directors of the Corporate Debtor. The Applicant craves liberty to approach this Hon'ble Tribunal seeking directions in this regard.

- (7) The Corporate Debtor has not been carrying on any business since the previous year, apart from the sale of a few flats in the existing project. Further, the Corporate Debtor does not have any business plans to carry on business in the future and there are no future earnings prospects to revive the business operations of the Corporate Debtor, as well as its present status and future prospects. Therefore, taking into account of financial status, chances of reviving business of Corporate Debtor, the COC passed a resolution to liquidate the Corporate Debtor in its second and third meetings held on 19.09.2019, and 05.11.2019 respectively. Further, in the third meeting, a resolution was also passed to appoint the Applicant as the Liquidator. Both of the said resolutions were passed unanimously with hundred per cent of voting share.
- (8) Therefore, since the resolution to liquidate the Corporate Debtor was passed by the Committee of Creditors at this stage of the Corporate insolvency resolution process of the Corporate Debtor, no advertisement inviting expressions of interest for the submission of resolution plans in accordance with the provisions of Section 25(2)(h) of the Code was published. Further, revival through the corporate insolvency resolution process will not possible. Since the Committee of Creditors has passed a resolution unanimously to liquidate the Corporate Debtor, the mandate of section 33(2) of the Code is attracted and consequently, the Corporate Debtor is required to be liquidated.



- (9) The Applicant has filed her written consent dated 27.11.2019 in the prescribed form, to act as Liquidator in the matter of Liquidation of the Corporate Debtor, by interalia declaring that she is eligible to be appointed as Liquidator, as per law.
3. Heard Mr. Arjun Rao, learned Counsel for the Resolution Professional along with Ms. Shirley Mathew, (RP). We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made thereunder, and law on the issue.
4. As stated supra, Committee of Creditors (COC) of Corporate Debtor consist of Reliance AIF Management Company Limited and Reliance Nippon Life asset Management Limited. There are 3 (three) CoC meetings were held on 11.09.2019, 19.08.2019 and 05.11.2019 respectively. The CoC has discussed the entire issue of CIRP including the assets and liabilities of the Corporate Debtor, possibility of reviving the business of Corporate Debtor. Therefore, it was decided to liquidate the Company before the Information Memorandum, the CoC also taken into consideration extant rules of IBBI (CIRP) regulation relate into Liquidation cost and Liquidation assets as per the CoC the post estimate Liquidation cost including Liquidator fees, which would be around 30 Lakhs regarding post estimate of Liquidate assets etc.
5. It is relevant to refer the latest amendment in Section 33(2) of the IBC, 2016, which came into effect from 16/08/2019, which reads as under :

“Section 33(2) 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 2[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).

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) if section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

6. As stated supra, the Applicant was duly recommend to appoint here as Liquidator and she has filed her written consent dated 27.11.2019 in the prescribed form, to act as Liquidator in the matter of Liquidation of the Corporate Debtor, by interalia declaring that she is eligible to be appointed as Liquidator, as per law.
7. Therefore, there is no possibility to revive the Company under the provisions of the Code, and thus there would not serve any purpose to continue CIRP. The decision of COC to liquidate the Corporate Debtor based on justifiable analysis of the issue involved. Therefore, it would be just and proper to order Liquidation of the Corporate Debtor as per the provisions of the Code, as sought for in the instant Application.
8. In the result, the Adjudicating Authority, by exercising powers conferred on it, under provision of Section 33(2) of the I&B Code, 2016, I.A. No.08 of 2020 in C.P.(IB)No.215/BB/2019 is disposed of with the following directions:

(1) We hereby ordered to liquidate the Corporate Debtor i.e. **Veracious Builders and Developers Private Limited** in the manner as laid down in Chapter III(Liquidation Process) of the Part II of Code and relevant Rules made thereon by the IBBI from time to time, and thus appointed **Ms. Shirley Mathew** holding



IBBI Registration No.IBBI/IPA-001/IP-P01043/2017-18/11716
for initiation of liquidation process of CD;

- (2) Ms. Shirley Mathew is directed to issue public announcement stating that the Corporate Debtor is in liquidation, one in English language and one in Vernacular language, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (3) The Liquidator is directed to take expedite steps to conclude the liquidation process without waiting statutory period of liquidation to lapse;
- (4) The Liquidator is directed to submit a Preliminary Report to the Adjudicating Authority as expeditiously as possible but not later than n seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (5) The Registry is directed to communicate this Order to the Registrar of Companies, Karnataka and to the Insolvency and Bankruptcy Board of India.
- (6) Post the case for report of the Liquidator on the action taken by her, on **20th February, 2020**.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**