

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO. II)**

IA/373/2022

IN

CP (IB) 20/9/NCLT/AHM/2020

(Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016)

In the Matter of:

Mr. Anuj Bajpai,
Resolution Professional of
M/s. Anwasha Engineering & Projects Limited

...Applicant

In the Matter of:

Continental Piling & Excavation Private Limited

...Operational Creditor

Versus

Anwasha Engineering & Projects Limited

...Corporate Debtor

Order Pronounced On: 13/01/2023

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

Process ('CIRP') of the Corporate Debtor (M/s. Anwasha Engineering & Projects Limited) and appointed Mr. Sachin Bhattbhatt as the Interim Resolution Professional ('IRP').

3. The applicant submits that the public announcement was made on 29.01.2021 and claims were invited by the IRP. In compliance of Section 21 of Code read with Rule 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "**CIRP Regulation**"), the IRP constituted CoC comprising of the financial creditors namely State Bank of India (Voting Share 92.06%) and Axis Bank (Voting share 7.94%). In the 1st CoC meeting held on 25.02.2021, it was resolved to replace the IRP Mr. Sachin Bhattbhatt and to appoint resolution professional Mr. Anuj Bajpai, which was confirmed by this Adjudicating Authority vide order dated 20.04.2021.
4. After verification of claims, IRP reconstituted the CoC as per the CIRP Regulation and Aditya Birla Finance Limited added as the member of CoC. In the 2nd CoC meeting held on 25.03.2021, CoC resolved for appointment and approval of the fees of registered valuers.
5. The 3rd CoC meeting held on 12.04.2021 by IRP. CoC deliberated eligibility criteria for prospective resolution applicants as per section 25(2)(h) of the Code. The IRP published the form G for inviting the Expression of Interest('EOI') on 20.04.2021 and the last date for receipt of EOI was 07.05.2021.

6. In the 5th CoC meeting held on 24.06.2021. CoC resolved and approved the extension of time for submission of resolution plans till 30.07.2021. In this meeting, CoC requested to resolution professional to file an exclusion application for the period lost due to Covid-19 lockdown and resolution professional took the note of the same but no resolution was passed by the CoC.
7. IA 516 of 2021 was filed by resolution professional on 23.07.2021, seeking exclusion of 79 days of CIRP period for the reason being second wave of Covid-19 pandemic. The Adjudicating Authority vide order dated 26.10.2021, rejected and dismissed this application with following observation:

*“...The Bench is not inclined to give any exclusion as it is seen that the CoC has not even asked for any extension of 90 days as per Section 12 of the Code. Let 330 days be availed by RP for conducting CIRP and then exclusion will be considered for further period, required. In view of the same, the Application is rejected and dismissed.
The CoC may meet to consider and pass resolution with respect to extension under Section 12 of the Code.”*

8. In the 6th CoC meeting held on 31.07.2021, resolution professional received communication from 6 prospective resolution applicants (PRAs) for extension of time and no resolution plan was received by resolution professional from the PRAs. After due deliberation, CoC resolved and approved the extension of time for submission of resolution plan till 14.08.2021.

9. The 7th CoC meeting was held on 17.08.2021, but was adjourned and held on 20.08.2021, wherein the resolution professional informed to the CoC that only one resolution plan is received from prospective resolution applicant, *i.e.*, Kalpataru Power Transmission Limited out of 6 prospective resolution applicants. The said resolution plan of M/s. Kalpataru Power Transmission Limited was circulated to all the CoC members by resolution professional for discussion. Resolution professional also informed that PRA will be invited to the next CoC for providing necessary clarifications and negotiations, as may be desired by the CoC as per section 30(5) of the Code.
10. In the 8th CoC meeting held on 22.09.2021, CoC vetted the resolution plan submitted by Kalpataru Power Transmission Limited. Various clauses were found not in compliance with the provisions of Code or were not acceptable to the CoC from a commercial point of view. After detailed deliberation, CoC gave time till 28.09.2021 to the PRA to incorporate necessary changes along with improvised terms of the commercials and submit the revised plan.
11. The 9th CoC meeting was held on 21.10.2021, and CoC found that the Kalpataru Power Transmission Limited had not modified certain clauses in the plan which CoC had desired. CoC in its commercial wisdom resolved and approved the eligibility criteria for calling of fresh EOI.
12. It is further submitted that CIRP period of 180 days expired on 24.07.2021 and exclusion of time of CIRP was rejected, CoC also passed the resolution in the 9th meeting for extension of period of CIRP by 90 days of corporate

debtor beyond 180 days, and directed to resolution professional to file an application to the adjudicating authority for the same.

13. In pursuance of 9th CoC meeting, the resolution professional had filed an IA 800 of 2021 for extension of CIRP period by 90 days beyond 180 days and further till December 26.12.2021 for availing upto 330 days before the Adjudicating Authority, which was allowed vide order dated 01.12.2021 and CIRP was extended upto 26.12.2021.

14. It is further submitted that the revised form-G was published on 29.10.2021 by the resolution professional and last date for receipt of EOI was 14.11.2021, and last date for submission of resolution plans was on 16.12.2021.

15. In the 11th CoC meeting held on 20.12.2021, the CoC had passed the resolution for exclusion of period of Covid-19 in the CIRP of corporate debtor and also directed to resolution professional to file an application for the same.

16. In pursuance of 11th meeting, the resolution professional filed an IA 121 of 2022, seeking exclusion of 127 days from 25.01.2021 to 14.03.2021(48 days) and from 19.04.2021 to 30.06.2021(79 days). The Adjudicating Authority considered the exclusion of pandemic lockdown declared on 19.04.2021 to 08.06.2021 by the Central Government and partially allowed and granted exclusion of period from 19.04.2021 to 08.06.2021 of 51 days vide order dated 11.02.2022.

17. In the 12th CoC meeting held on 30.12.2021, the resolution professional informed that he had received 8 EOIs from PRAs but only 3 PRAs namely; 1. Velji Ratna Sorathia Infra Private Limited; 2. Kalpataru Power Transmission Limited and 3. Darwin Platform Refineries Limited. CoC discussed all plans and returned to PRAs for improvising and filing revised plans.

18. CoC in its 14th meeting held on 16.02.2022, passed the resolution for extension of CIRP to consider the resolution plans. The resolution professional filed an IA 192 of 2022 for extension of CIRP period. Vide order dated 03.03.2022, IA 192 of 2022 was allowed by the Adjudicating Authority and granted further 60 days from expiry of 330 days i.e., 15.02.2022 and also directed to the resolution professional to complete the process within the time period.

19. In the 16th CoC meeting held on 08.03.2022. The resolution professional verified and put all plans before CoC for consideration & deliberation. CoC members requested for additional time to go through all the resolution plans in detail, along with compliance report and observations. Resolution professional at the request of CoC deferred agenda for next day, 09.03.2022. On 09.03.2022, the members of the CoC deliberated in detail all the resolution plans one by one. Resolution professional put all three-resolution plans for voting before CoC. No comments were received from suspended directors on any of the resolution plans. E-voting was done from 10.03.2022 to 05.04.2022, and the CoC voted, with 100% voting share against the plans

received from Kalpataru Power Transmission Limited and Velji Ratna Sorathia Infra Private Limited. The plan of 3rd prospective resolution applicant M/s. Darwin Platform Refineries Limited was rejected with 94.79% votes. In this very meeting, CoC also passed the resolution for sale of corporate debtor as a “going concern” under liquidation Regulation and resolution is as follows:

Sr. No. 1

"RESOLVED THAT pursuant to the Regulation 39C of CIRP Regulations, 2016, the CoC hereby approves that the Liquidator will first explore the sale of Anwasha Engineering and Projects Limited as a "Going Concern" under clause Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016."

20. In the 17th CoC meeting held on 08.04.2022, the resolution professional took note of resolutions passed in the 16th CoC meeting. The plan of 3rd prospective resolution applicant i.e., Darwin Platform Refineries Limited received 5.21% vote in favour therefore, resolution professional referred to second proviso of Regulation 39(3B) of CIRP Regulations, 2016 and again put this plan for voting before the CoC. This plan got only 5.21% (ABFL) votes in favour and 94.79% (SBI- 90.58% and Axis bank- 4.21%) votes against. The plan of Darwin Platform Refineries Limited also failed to receive requisite votes as required under the Code. In this meeting, CoC also resolved to appointed the applicant (Mr. Anuj Bajpai) as liquidator of the corporate debtor. Hence, the resolution professional filed this application for the liquidation of the corporate debtor.

21. The CoC in its 17th meeting also passed the following resolution with 100% voting:

Sr. No. 3

"RESOLVED THAT, pursuant to Regulation 39D of CIRP Regulations, 2016 read with Regulation R 4(1) and 32A(4) of Liquidation Regulations, 2016 and Section 34 of the IBC, 2016, the CoC hereby approves the fees of Rs. 2.50 lacs per month plus GST and out of pocket expenses for the period of "Sale of CD as a Going Concern", for the period of 1st 90 days from the Liquidation Commencement Date."

Sr. No. 4

"RESOLVED THAT, pursuant to Regulation 39D of CIRP Regulations, 2016 read with Regulation 4(1) of Liquidation Regulations, 2016 and Section 34 of the IBC, 2016, the CoC hereby approves the fees payable to the liquidator at a discount of 50% of the liquidation table as provided per the Regulation 4(b) of Liquidation Regulation, 2016 for the period post 90 days from the Liquidation Commencement Date" towards the of Sale of Ainwasha Engineering and Projects Limited."

CoC passed the resolution on 17th meeting as mentioned above that the liquidator shall explore possibility under regulation 32A(4) for 'sale as going concern' of corporate debtor within 90 days from the date of liquidation order and if it fails then liquidator shall liquidate the assets of the corporate debtor.

22. Vide order dated 24.11.2022, during the clarification with respect to the publication in newspapers and CoC resolution vis-à-vis prayers was sought.

23. The resolution professional filed an affidavit on compliance of clarification & gave details about publication in 16 newspapers which were published in different states and also filed the legible copy of the newspaper advertisement

on 02.12.2022, and also clarified that applicant will first conduct the sale of the corporate debtor as a going concern and failing which then liquidator will liquidate the assets of the corporate debtor, as per the resolution passed by the CoC.

24. In light of the above facts in present case and as per provisions of Section 33 of Code which are reproduced for ready reference, we consider to order the liquidation of corporate debtor.

“Section- 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, intimates the adjudicating authority of the decision of the committee of creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority

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

25. Considering the submissions and documents placed on record, it is noted that CoC received 3 resolution plans from the prospective resolution applicants and after due deliberation, all were rejected. CoC passed the resolution for liquidation of corporate debtor with further direction that the liquidator will first explore the sale of corporate debtor as a ‘going concern’ under Regulation 32(e) of the IBBI (Liquidation Process) Regulation, 2016 failing which the corporate debtor will be liquidated as per provisions of the Code. We are of the view that the CoC in its commercial wisdom, has decided to take the Corporate Debtor into liquidation firstly to sell as a ‘going concern’ under regulation 32A(4) Liquidation Regulation, 2016, else to liquidate the assets of corporate debtor which is not required to be interfered with. Hence, we order liquidation of Ainwasha Engineering and Projects Limited under Chapter III of Part II of the Code read with regulations framed thereunder, and direct the liquidator to comply with the provisions of the Code while carrying out the liquidation. The present application, seeking liquidation of the Corporate Debtor M/s. Anwasha Engineering & Projects Limited, in the manner laid down in Chapter III of Part II of the Code, is allowed.
26. The CoC has proposed name of Mr. Anuj Bajpai to be appointed as the Liquidator, who has also consented to act as a Liquidator and filed his written consent in Form-AA having Registration No. IBBI/IPA-001/IP-P00311/2017-

2018/10575, having address at 1006, 10th Floor, Raheja Centre, Nariman Point, Mumbai- 400023. We appoint Mr. Anuj Bajpai, as liquidator of corporate debtor, in terms of Section 34 (1) of the Code with the following directions:

- a. The liquidator to issue a 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.
- b. The liquidator to proceed with the process of liquidation in a manner laid down in Chapter-III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- c. The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions etc.
- d. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- e. The Liquidator to 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.

12. As a consequence of the application being admitted, the moratorium as envisaged under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.
13. A copy of the order shall be communicated to the applicant resolution professional and the corporate debtor as well as to the liquidator above named. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and ROC for updating the Master Data. ROC shall send a compliance report to the Registrar, NCLT.
14. Application is allowed and disposed of in terms of above order.

-Sd-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Abhishek Singh