IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 48/JPR/2021
In CP No. (IB)- 170/7/JPR/2019

UNDER SECTION 7 OF IBC, 2016

IN THE MATTER OF:

AU Small Finance Bank Limited
19-A, Dhuleshwar Garden, Ajmer Road,
Jaipur- 302001 (Rajasthan)

...FINANCIAL CREDITOR

VERSUS

Coral Infragold Private Limited
Daga Chowk, Near Mahesh Bhawan,
Bikaner- 334001 (Rajasthan)

...CORPORATE DEBTOR

IA No. 48/JPR/2021

MEMO OF PARTIES

Mahesh Chandra Purohit
(Resolution Professional for Coral Infragold Pvt. Ltd.)
105/101, Vijay Path, Mansarovar,
Jaipur- 302020 (Rajasthan)

...APPLICANT

For the Applicant : Archit Bohra, Adv.

Order Pronounced On: 07.10.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application has been filed by Mr. Mahesh Chandra Purohit, Resolution Professional ('Applicant') for M/s Coral Infragold Private Limited ('Corporate Debtor') under Section 60(5) of Insolvency and Bankruptcy Code 2016 ('IBC' / 'Code'), read with Rule 11 of the NCLT Rules, 2016 seeking following reliefs:
   a. Waiving/ relaxing the compliances as stipulated in detail in Annexure-3 of the instant IA in relation to Section 29 and Section 39 of the Code and Regulations 27, 36(1), 36A, 36B, 37, 38 and 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016;
   b. Directions in relation to treatment of claims of the existing operational creditors; and
   c. Pass such further order/ orders as this Authority may deem fit and proper in the facts and circumstances of the instant case and to sub serve the ends of justice.
2. It is stated that the application for Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor was filed by AU Small Finance Bank

Limited ('Financial Creditor') under Section 7 of the Code and the same was admitted by this Adjudicating Authority vide order dated 25.11.2020. The Applicant was appointed as the Interim Resolution Professional ('IRP') and was directed to take over affairs of the Corporate Debtor in accordance with relevant provisions of the Code with focus on real estate project i.e., Project Coral Radha Krishna – CRK.

3. The said application was admitted under reverse CIRP mechanism referring the judgement of Hon'ble National Company Law Appellate Tribunal ('NCLAT') in *Flat Buyers Associate Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd. through IRP and Ors.* in Company Appeal (AT) Insolvency No. 926 of 2019 ('Umang Realtech') and CIRP under the Code was only centered around the particular project of the Corporate Debtor at hand i.e., Coral Radha Krishna, Plot No. 8, Green Triveni Marg, Sikar Road, Jaipur. It is further stated that this Adjudicating Authority gave directions for performance of duties of IRP / RP in order to smoothen the functioning of reverse CIRP process and has given utmost liberty to the Applicant in order to revive the construction at site and finish the project at the earliest in order to gain the maximum benefits for all the stakeholders.

4. It is further stated that Committee of Creditors ('CoC') was formed and 1st CoC meeting was convened wherein the Applicant was confirmed as the RP. The Applicant states that no construction is being going on since past 2 years in the project in consideration i.e., Coral Radha Krishna.

5. The Applicant stated that he is facing continuing non-cooperation from the suspended board of directors of the Corporate Debtor in providing necessary information as required under law and accordingly the Applicant has filed an application under Section 19(2) of the Code.
6. The Applicant further states that he has been facing dilemma in relation to the compliances as envisaged under the Code and Regulations made thereunder, as to whether they are to be performed or not in the present case of reverse CIRP which is a novel approach being adopted in relation to real estate projects. In view of this, the Applicant seeks clarification/ waivers in the form of directions and settle the law and mechanism in respect of reverse CIRP for future instances.
7. Moreover, the Applicant stated that 3-4 operational creditors have submitted their claims in respect of goods supplied and services provided for the project Coral Radha Krishna, however on inquiry to continue with the work, they have stated that they would only work in future if their existing claims are cleared in advance which would not be in consonance with the provisions of the Code as operational creditors cannot be given preference over and above the financial creditors (secured and unsecured). In this respect the Applicant seeks suitable directions in treatment of the existing operational creditors.

8. The Applicant has provided a model timeline of CIRP after appointment of the RP and is seeking waiver from complying with certain provisions, which is dealt in the following manner:

    a. *Payment to Operational Creditors (Existing):*
    There are around 3 claims received from operational creditors who are either suppliers of material at the project or service provider, however they have stated, they would only continue to work further if their dues are cleared at present stage. As the treatment of operational creditors is entirely different under the Act of 2016 and regulations thereunder, and as such there is no provision to clear the existing operational creditors during CIRP, appropriate directions are required on this aspect.
    The Applicant RP has filed the seventh status cum progress report wherein he has stated that Director of the Corporate Debtor, Mr. Mahendra Kalla has entered into an MoU with a contractor who has started work on the project. In view of this, the RP is directed to look into hiring new suppliers or service providers, if needed, for the purpose of completion of the project as directed by this Authority vide order dated 25.11.2020 and the cost of the same shall be included in CIRP cost. Further, the treatment of the existing operational creditors be done according to Section 53 of the Code.

    b. *Section 25(2)(c), (g), (h) & (i) of the Act of 2016 and Regulation 27 of the Regulations of 2016:*
    The purpose of valuation is estimation of fair value and liquidation value, which is shared with CoC after obtaining an undertaking for and the same is used by CoC while evaluating the Resolution Plan as the Resolution Plan value should not be less than Liquidation value. Since it is a case of Reverse CIRP, the same is not required as there would be no occasion for the Project going into liquidation. Hence, the RP is

seeking the direction that the appointment of valuer and CoC to evaluate any resolution plan as being required to be done may kindly be waived. As per the seventh status cum progress report, the erstwhile director of the Corporate Debtor Mr. Mahendra Kalla had shown interest in financing the project as independent financers. In furtherance to this, the financing plan submitted by him in the 4th CoC meeting dated 26.02.2021 was agreed upon by the members of the CoC. It is also stated that Mr. Kalla has deposited Rs. 21,00,000/- for the purpose of construction of Project CRK. In view of these developments, appointment of registered valuers for the purpose of valuation of the project and need for CoC to evaluate Resolution Plan have become redundant and thus, the RP is granted waiver from complying with these provisions.

c. *Section 29 of the Code and Regulation 36(1) of Regulations of 2016- Submission of Information Memorandum (IM) to CoC:*
IM is prepared for the Corporate Debtor as a whole and is shared with members of CoC after obtaining and entering into a Non-Disclosure Agreement (NDA). RP submitted that the IM prepared only for one project of CD is not feasible and would be meaningless. It is also stated that preparation/ sharing of IM is not needed as the same is one of the input/ basis for CoC for evaluating Resolution Plan which is not required to be done in Reverse CIRP. Also, in this case the members of CoC are Allottees/ Home Buyers represented by Authorized Representative (AR) besides secured lender and the NDA for the same is to be taken from each of the CoC members. Now the ambiguity arises, whether the NDA is to be obtained from AR on behalf of all the allottees or it is to be obtained from all the allottees individually. In case AR submits NDA, whether he can share with individual allottees, and that too with or without NDA from them?

During normal CIRP, IM is prepared for the purpose of formulating a Resolution Plan in respect of the Corporate Debtor but in the present case since the CIRP is project specific, there is no need for a Resolution Plan. However, the relevant information with respect to the Project CRK shall be collated and provided by the RP as was directed vide order dated 25.11.2020. Since, the RP is not required to prepare the IM, there is no need to obtain NDA from the Allottees/ Home buyers/ their Authorized Representative. In view of the same, the RP is granted waiver from complying with these provisions.

d. *Section 31 of the Code and Regulations 36A, 36B, 37, 38 and 39:*
Since this is a case of reverse CIRP where this Authority has already directed the IRP/ RP to get the project completed on priority basis, repay the loan of Financial Creditor and handover the possession of flats to respective allottees and homebuyers and make efforts to sell the flats which are not booked. For the same, the RP has been directed to obtain finances from 3 mechanisms i.e., promoters or Financial Creditor or 3rd party private lender. Therefore, the RP is not required to perform the above functions and so this requirement may be waived.
The abovementioned provisions for which the Applicant has requested waiver pertain to resolution plan. In the present case, vide order dated 25.11.2020, this Authority had directed the RP to complete the project on priority basis through existing promoters acting in the capacity of independent financiers and not promoters or Financial Creditor or 3rd party private lender to ensure that CIRP reaches success. And it is seen that erstwhile director of the Corporate Debtor has come forward as an independent financier for the purpose of completion of the project CRK.

In view of this, there is no requirement for inviting EOI for resolution plan and subsequent provisions in respect of contents of resolution and approval thereof become redundant.

9. In light of the factual matrix of the case and above waivers/ relaxations, the instant IA is allowed subject to the above directions. Thus, IA 48/JPR/2021 is disposed of.

Sd-

SH. RAGHU NAYYAR,
TECHNICAL MEMBER

Sd-

SH. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER