

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No. 205
(IB)-917(ND)2019

IA-44/2023, IA-355/2021, IA-378/2021

IN THE MATTER OF:

M/s. Ved Contracts Pvt. Ltd.

... **Applicant/Petitioner**

Versus

M/s. RG Infra Build Pvt. Ltd.

... **Respondent**

Under Section: 9 of IBC, 2016 (Liq.)

Order delivered on 16.03.2023

CORAM:

SHRI. ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER (J)

SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. P. Nagesh Sr. Adv., Adv. Kumar Anurag Singh,
Adv. Zain A. Khan, Adv. Akshay Sharma in IA.
44/2023

For the RP : Adv. Mohit Nandwani

For Ex-Board of Director : Adv. Saurabh Jain,

ORDER

IA-378/2021: Ld. Counsel appearing for the RP espoused that the CIRP in the captioned matter commenced on 25.09.2019 and no proposal for resolution/revival of the insolvent CD came forward. Para 16 of the application filed by the RP reads thus:

*“16. That the tenth meeting of the Coc was convened on 04.01.2020 wherein the CoC was apprised that the CIRP period of 330 days is over, and till date neither any resolution plan has been received nor a decision to liquidate the Corporate Debtor has been taken by the members of the CoC. That the RP further informed, that in accordance with Section 33(1) and 34(1) of the Code, the Corporate Debtor shall move into liquidation. The copy of the minutes of the tenth meeting of CoC held on 04.01.2020 is marked and annexed herewith as **Annexure-16.**”*

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As is apparent from the abovementioned, no proposal for resolution of the CD in insolvency came forward even after the expiry of the period much beyond 330 days was over. As has been provided in Section 33(1)(a) of IBC, 2016 in the event of there being no proposal received for the revival of CD within 330 days from the date of commencement of CIRP or the proposal being not accepted, this Tribunal needs to order for liquidation of the CD. In the wake, we have no option but to allow the IA-378/2021 and order for liquidation of the RP Mr. Rakesh Kumar Jain Registration No. IBBI/IPA-001/IP-P01297/2018-19/12068 shall act as a liquidator in terms of the provisions of Section 34(1) of IBBI (IRPC) Regulations 2016.

Accordingly, **Mr. Rakesh Kumar Jain** with **Reg. No: (IBBI/IPA-001/IP-P01297/2018-19/12068)** (**e-mail ID: rakeshjainca@rediffmail.com**) **Ph. No. 9811455641** so appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions inter alia:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed 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.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation. 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition,, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

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With this, the present IA stands allowed.

IA-355/2021: Arguments heard in part. Both parties are directed to file brief synopsis not exceeding 2 pages along with the judgments relied upon.

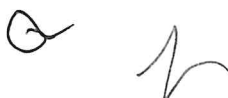
List on 26.04.2023.

IA-44/2023: In the captioned IA preferred by Atul Paper (Pvt.) Ltd., the plea espoused by the Applicant is for directing the RP of the CD (M/s. RG Infra-Build Private Limited) to consider the Resolution Plan for the revival of CD, to be proposed by the Applicant. Admittedly, the CIRP commenced on 25.09.2019 and as no plan for resolution could be received by the RP within the statutory period of CIRP extendable for 330 days, the RP could file the application i.e., IA. No. 378/2021 for liquidation of the CD. Para 16 of the IA reads thus:

*“16. That the tenth meeting of the CoC was convened on 04.01.2020 wherein the CoC was apprised that the CIRP period of 330 days is over, and till date neither any resolution plan has been received nor a decision to liquidate the Corporate Debtor has been taken by the members of the CoC. That the RP further informed, that in accordance with Section 33(1) and 34(1) of the Code, the Corporate Debtor shall move into liquidation. The copy of the minutes of the tenth meeting of CoC held on 04.01.2020 is marked and annexed herewith as **Annexure-16.**”*

As has been provided in Section 33(1)(a) of the IBC, 2016, in the event of non-receipt of the Resolution Plan before the expiry of the maximum period permitted for completion of CIRP under Section 12 thereof, the Adjudicating Authority should pass an order requiring the Corporate Debtor to be liquidated. In the present case, apparently, after the commencement of the CIRP, more than 3 and half years have passed. It is a matter of record that accepting the resolution dated 23.03.2020 passed by the CoC, this Tribunal had extended the CIRP for a period of 90 days beyond the normal CIRP period of 180 days. The IA-5336/2020, filed by the RP for exclusion of the time consumed in deciding the IA-3889/2020 was rejected on 23.12.2020. Even

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after the said date also a period of more than 2 years has passed. As has been noted hereinabove in the tenth meeting of CoC dated 04.01.2020, the RP apprised the CoC about the fate to be met by CD, as no Resolution Plan had been received. We may also be not oblivious to the fact that the Applicant in IA is Respondent No. 1 in IA. 355/2022 and is occupying the property of the CD. It is only after filing of the said IA for direction, inter alia, to the Applicant for handing over the property i.e., Unit No. B-101, First Floor, RG City Centre situated at Plot No. SU, LSC at B-Block, Lawrence Road, Delhi, in its occupation, to CD/RP, that it has come up with the plea for issuance of direction to RP to accept its Resolution Plan at this belated stage. The application filed by the Applicant cannot be perceived as a bonafide move to put the CD back to its feet, but is the one filed with an ulterior motive to delay the CIRP, so that the property occupied by Applicant may not be disposed of in liquidation. The Resolution Plan could be filed within 15 days of the issuance of Form G i.e., in the year 2019 itself. The captioned IA is against the scheme of IBC, 2016, thus, cannot be entertained at this stage. **Ergo, the same is dismissed.**



**(L. N. GUPTA)
MEMBER (T)**



**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**