

IA NO 378 OF 2021

Lingamaneni Landmarks Developers Private Limited

D.No.386/1,NH-5,Atmakuru Village,
Mangalagiri Mandal,CRDA,Guntur,
Andhra Pradesh-522 503

--Applicant

And

Sanjay Kumar Mishra

11th Floor, Tower II,
One International Centre,
S.B.Marg, Elphinstone (W)
Mumbai – 400013

---Respondent

Order delivered on: 25.05.2023

Coram: 1. Hon'ble Justice (Retd) T.Krishnavalli Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the (Liquidator)

In IA NO.181,272,378 OF 2021 :Ms.Poornima Hatti with Shri Aakash
Sherwal

For the Applicant in IA 272 OF 2021 : Shri A Murali

For the Applicant in IA 378 OF 2021 :Shri Atul Madhavan

Per: T.Krishnavalli Member (Judicial)

ORDER

1. This application has been filed by the Liquidator (hereinafter called as **Applicant**) under Section 35(n) r/w Rule 11 of the NCLT Rules, 2016 *interalia* seeking to withdraw the OS No.5553 of 2017 pending before the City Civil Judge (CCH 26), Bengaluru; the O.S.No.8046 of 2017 pending before the City Civil Judge (CCH 40),Bengaluru and WP No.45041 - 42/2017 pending before the Hon'ble High Court of Karnataka, Bengaluru.
2. The Facts of the case briefly stated as follows:

- a)** It is stated that, the applicant was appointed by this Tribunal vide order dated 18.06.2019.while defending the insolvency proceedings, the Corporate debtor had raised a contention that disbursement of sanctioned loans by Axis Bank (hereinafter “Financial Creditor”) had been delayed and several fraudulent actions had been taken by the Financial Creditor.
- b)** It is stated that the during the Corporate Insolvency Resolution Professional (herein after “CIRP”) the Insolvency Resolution Professional (herein after “IRP”) verified and admitted the claims filed by the Financial Creditor and did not find any irregularities in the same. The Transaction Audit report dated 25.05.2019 did not report any fraudulent transaction by the Financial Creditor, the same was filed along with IA No,297/2019.The Liquidator again verified the claims and filed the revised list of stakeholders on 14.09.2020.
- c)** It is submitted that, soon after the filing of the petition under Section 7 of IBC, the Corporate Debtor had instituted two suits and Writ Petition (hereinafter “Civil Litigations”) against the Financial Creditor as under:
- i.)** OS 5553 of 2017: The civil suit was instituted on 14.08.2017 for inter- alia declaring of the conduct of the Financial Creditor and its officials as fraudulent, illegal and contrary to RBI circulars/ guidelines and damages to the tune of Rs.1,10,77,08,460/-. This civil suit is pending before CCH 26, City Civil Court, Bengaluru and the matter is at preliminary stage and only the issued have been framed.
- ii.)**OS 8046 of 2017: The Civil Suit was instituted on 27.11.2017 for inter alia declaration that documents titled sanction of additional term loan, modification of sanction terms, acknowledgement of debt and an agreement dated 08.02.2015 be declared null and void. The Suit is pending before CCH 40, City Civil Court, Bengaluru and the matter is at preliminary stage and is currently at the stage of arguments.

iii.) Writ Petitions No.45041 & 45042 of 2017: The Corporate Debtor had filed the writ petitions on 03.10.2017 against Financial Creditor and Reserve Bank of India, seeking the cancellation of the banking license of Financial Creditor through these writ petitions.

d) It is submitted that, the last date of the liquidation period is 14.06.2023 pursuant to three extension orders of this Tribunal dated 29.10.2021, 12.07.2022 and 17.01.2023. The liquidation process period of the Corporate Debtor has been on-going on for a period of more than 3 years.

e) It is stated that the Liquidator has sold the sole asset of the Corporate Debtor and distributed the realized amounts to the stakeholders of the Corporate Debtor and the pendency of the Civil Litigations is delaying the completion of the liquidation process of the Corporate Debtor. Accordingly, the civil litigations are required to be withdrawn so that the Liquidator may proceed as per IBC to dissolve the Corporate Debtor.

f) It is further stated that the Liquidator has determined that the withdrawal of Civil Litigations would ensure the maximization of recoveries to the stakeholders of the Corporate Debtor

- 3.** On 15.02.2023, this Tribunal directed the Learned Counsel for the Liquidator to file latest position of the suits which is pending before the Hon'ble City Civil Court and Hon'ble High Court of Karnataka along with brief synopsis. The compliance to the above direction the Liquidator filed written submissions vide diary no 1255 dated 03.03.2023, same is taken on record.
- 4.** Heard, learned Counsel for the applicant and liquidator/. We have carefully perused the pleadings of the party and extant provisions of the Code and Rules made there under.
- 5.** We observed that, the Corporate Debtor filed the said suits soon after the filing of the Petition under Section 7 of the IBC by the Financial Creditor , same are still pending and before the CCH 26 & CCH 40, Civil Courts Bangalore, and the matter is at preliminary stage. The Transaction Audit Report dated 25.05.2019, did not report any fraudulent transaction by the

Financial Creditor. Moreover, the Liquidator has also placed on record Legal opinion according to which these Civil Litigations lack merit.

6. Further, the period of liquidation is going to end on 14.06.2023. It is noted that if the Civil Litigations continue Company in liquidation will face financial strain and delay in the liquidation process which has been ongoing for a period of more than 3 years. Moreover, the claim of the Financial Creditors have been verified and accepted during the Liquidation Process as per IBC. Therefore considering this current situation of the Company in Liquidation, this IA No 181 OF 2021 is hereby disposed of with a direction to the Liquidator to withdraw the above mentioned Civil Litigations in accordance with law and to complete the process of liquidation within the prescribed time period.

IA NO 272 OF 2021

1. The present application is filed on 31.08.2021 through authorized representative seeking direction to dismissal of application filed by the Liquidator for withdrawal of the Suit OS No.5553/2017.
2. However, in the separate order in IA No.181 of 2021 the matter of withdrawal of this Suit OS No.5553 of 2017 has been discussed. Considering the submissions of the Liquidator and the material available on record, this Tribunal has given approval to the liquidator to withdraw the Suit OS No.5553/2017 in accordance with law. In view of the order in IA 181 OF 2021, since this matter has already been considered and decided, accordingly IA NO 272 of 2021 is hereby dismissed.

IA 378 of 2021

1. The present application is filed by Lingamaneni Landmarks Developers Pvt Ltd, Corporate Guarantor and secured creditor of the Corporate Debtor seeking direction to dismissal of application filed by the Liquidator for withdrawal of the Suit OS No.5553/2017.
2. However, in the separate order in IA No.181 of 2021 the matter of withdrawal of this Suit OS No.5553 of 2017 has been discussed. Considering the submissions of the Liquidator and the material available on record, this Tribunal has given approval to the liquidator to withdraw the Suit OS

No.5553/2017 in accordance with law. In view of the order in IA 181 OF 2021, since this matter has already been considered and decided, accordingly IA NO 378 of 2021 is hereby dismissed.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T KRISHNAVALLI)
MEMBER (JUDICIAL)