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IN THE NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH

I.A No.239 of 2019 in
C.P. (IB) No.14/BB/2018
U/S 33 of IBC, 2016

Mr.Amit Chandrakant Shah

Resolution Professional of
Biodiversity Conservation (India) Pvt. Ltd
BDO Restructuring Advisory LLP
The Ruby-Level 9, NW Wing Senapati,
Bapat Marg, Dadar (West)
Mumbai - 400 028

- Applicant/
Resolution Professional

In the matter of:

M/s.Reliance Nippon Life Asset
Management Limited and Anr.

- Petitioner

Versus

M/s.Biodiversity Conservation
(India) Private Limited

- Respondent

Date of Order: 30th August, 2019

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Applicant

:

Shri Amit Shah, RP
Shri C.K.Nanda Kumar

For the Respondent

:

None



ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A No.239/2019 in C.P.(IB)No.14/BB/2018 is filed by Mr.Amit Chandrakant Shan (Applicant/Resolution Professional) under Section 33 of the I&BC, 2016, by inter seeking to pass an order to liquidate the Corporate Debtor; to grant leave to the Applicant to submit written consent to act as the Liquidator for the purposes of liquidation of the Corporate Debtor, subject to finalization of terms and conditions of the appointment between the Applicant and the CoC etc.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question , are as follows:

- 1) Initially, M/s.Biodiversity Conservation (India) Private Limited, was filed by M/s.Reliance Nippon Life Asset Management Limited & Anr., a financial creditor, under Section 7 of the I&BC, 2016 R/w Rule 4 of the I&BC(AAA) Rules, 2016, which was admitted on 09.08.2018 by initiating CIRP, appointing Mrs.Nidhi Seksariae, as Interim Resolution Professional etc. Subsequently, CoC of the Corporate Debtor in their first meeting held on 07.09.2018, confirmed the appointment of Mrs.Nidhi Seksaria as the Resolution Professional. The Adjudicating Authority vide its order dated 31.01.2019 extended CIRP of the Corporate Debt by further period of 90 days beyond 180 days starting from



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February 5, 2019, upon an application filed by the erstwhile RP U/s 12 of the Code R/w Regulation 40 of the IBBI Regulations, 2016.

- 2) Subsequently, the Adjudicating Authority vide its order dated 01.04.2019 permitted COC to change RP of the Corporate Debtor and appointed Mr.Amit Chandrakant Shah as the Resolution Professional in place of the erstwhile RP. During 9th Meeting of the CoC dated 12.04.2019, RP appraised the members of the CoC that the copy of the admission order of the Corporate Debtor was received by the erstwhile RP on August 11, 2018, which was two days, after the date on which the admission order was passed. Accordingly, an application for exclusion of the period of 2 days from the CIRP of 270 days of the Corporate Debtor has been filed before this Tribunal on 03.05.2019. The erstwhile RP had invited Expression of Interest from Interested parties/prospective resolution application vide its newspaper advertisement dated 23.10.2018.
- 3) In view of having a competitive process and maximizing the value for all stakeholders and in order to facilitate the participation of the resolution applications in the CIRP of the Corporate Debtor, the publication of 2nd Process of EIO ("Second Bid Process") and of 3rd process of EOI ("third Bid Process") was carried out. Under the Second Bid Process, the erstwhile RP once again invited EOI from interested parties/prospective resolution application vide its newspaper advertisement dated

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17.11.2018. In furtherance to the aforesaid publication, a corrigendum was published on 19.11.2018 in the business standard to clarify certain corrections. Under the third bid process, the erstwhile RP once again invited EOI from Interested parties resolution application vide its newspaper advertisement dated 07.12.2018.

In the above newspaper publications, the erstwhile RP has also placed the advertisements inviting EOI on the website of the Corporate Debtor (www.zed.in) and published the advertisement for inviting EOI in regional newspaper. The erstwhile RP encouraged all prospective Resolution Applicants to submit all necessary documents required before finally shortlisting the prospective Resolution Applicants, who were eligible to submit a resolution plan. However, out of four prospective Resolution Applications, only two Resolution Applicants were able to submit all necessary documents. The final shortlisted resolution application U/S 36A (12) of the CIRP Regulations were (i) Citrus Ventures Private Limited and (ii) A Padma Manohar.

- 4) Subsequently, the erstwhile RP issued a Bid Process Memorandum and Evaluation Matrix to submit the Resolution Plan for the Corporate Debtor on 18.12.2019 ("Process Memorandum") inviting the shortlisted prospective resolution applicants to submit a Resolution Plan for the Corporate Debtor. Further, the erstwhile RP in the 6th Meeting of the CoC held on 07.02.2019, informed the members of the CoC that one of the



prospective Resolution Applicants had sought extension of time for submission of the Resolution Plan. The CoC deliberated on the said issue and put the same to vote. As per the results of voting, the extended the time period for submission of the Resolution Plan till 16.02.2019, was approved by the members of the CoC by a majority vote of 94.53%.

- 5) Further, during 7th Meeting of the CoC dated 19.02.2019, the RP informed the Members of the CoC that no Resolution plan has been received from any of the prospective Resolution Applicants. One of the CoC member suggested RP that additional time should be granted to the prospective Resolution Applicant for completing their due diligence exercise, feasibility study on the Corporate Debtor and submission of the Resolution Plan. The CoC deliberated on the said issue and put the same to vote. As per the results of voting, the extended the time period for submission of the Resolution Plan till 26.02.2019 was approved by the Members of the CoC by a majority vote of 94.62%. During 8th Meeting of the CoC held on 14.03.2019, the RP once again apprised the members of the CoC that one of the prospective Resolution Applicants had sought a further extension of 20 days for submission of the Resolution Plan. The members of the CoC deliberated on the said issue and put the same to vote. As per the results of voting, the extension of the last date for submission of Resolution plan for Corporate Debtor till



31st March, 2019 was approved by the members of the CoC by a majority vote of 97.62%. In spite of best efforts made by the RP and COC, there was no Resolution Plan received by the RP for the CIRP of the Corporate Debtor.

- 6) In the light above situation having no viable Resolution plan submitted by any of the prospective Resolution Applicant, the RP called the 10th CoC meeting dated 15.04.2019 to discuss/deliberate the future course of action of the CIRP of the Corporate Debtor with the CoC. It was discussed and deliberated that the time period of 270 days of CIRP were going to expire on 06.05.2019, no Resolution plan was received from any prospective Resolution Applicant and that no request was received for further extension of date for submission of the Resolution Plan, the following Resolution was put to vote:

"To consider and approve liquidation of Biodiversity Conservation (India) Private Limited:

"Resolved that Pursuant to the provisions of Sections 33(2) of the I&BC, 2016, other applicable provisions of the I&BC, 2016 and the IBBI (Liquidation Process) Regulations, 2016, approval of the members of the CoC be and is hereby accorded for liquidation of Biodiversity Conservation (India) Private Limited.

Resolution further that the Resolution Professional, Mr.Amit Chandrakant Shah be and is hereby authorized to file the necessary application for liquidation of Biodiversity Conservation (India) Private Limited with the



NCLT, Bengaluru Bench on or before the last date of the CIRP.

Resolved further that the approval of the members of the CoC be and is hereby accorded to continue. Mr.Amti Chandrakant Shah, Resolution Professional as a Liquidator for undertaking the liquidation process of the Biodiversity Conservation (India) Private Limited.

Resolved Further that till the date of receipt of Liquidator order, the Resolution Professional and entities supporting the Resolution Professional shall continue to function as per existing practice and status-co shall be maintained in order to keep Biodiversity Conservation (India) Private Limited Operational and maintain its going concern".

The applicant craves leave to refer to and rely upon the minutes of the 10th CoC meeting if required.

As per voting results of the 10th CoC meeting held on 18.04.2019, the aforesaid resolution was passed by a majority of 94.31% votes. Accordingly, the Resolution for liquidation of the Corporate Debtor was approved by the CoC with the requisite majority as required under Section 33(2) of the I&BC, 2016. Hence this Application.

3. Heard Shri C.K.Nandakumar learned Counsel for Resolution Professional and Shri Amit Shah, learned Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code.

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4. As detailed supra, the Resolution Professional and the CoC of the Corporate Debtor have made best efforts to find a suitable Resolution Plan of the Corporate Debtor. However, no suitable Resolution Plan is submitted so as to consider the same by the CoC. Therefore, there is no alternative for the CoC except to seek to order to liquidate the Corporate Debtor as per the provisions of the Code. The Resolution to initiate liquidation was also approved by the CoC with a majority of 94.31% votes and the instant Application is filed strictly in accordance with law. The CoC has also decided to continue the existing IRP as a Liquidator for liquidating the Corporate Debtor, who is eligible to be appointed as such. He has also filed a written consent to act as Liquidator of the Corporate Debtor i.e. M/s.Biodiversity Conversation (India) Private Limited under Section 34(1) of the IBC, 2016, by inter alia declaring that he is registered with the Board as an Insolvency Professional; he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency; he do not suffer from any disability to act as Liquidator etc. Therefore, it is a fit case to initiate Liquidation in respect of Corporate Debtor.

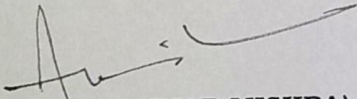
5. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred under Section 33 of the IBC, 2016 disposed of IA No.239/2019 in C.P.(IB) No.14/BB/2018 with following directions:


- a) We hereby order that M/s.Biodiversity Conversation (India) Private Limited, Corporate Debtor to be liquidated



in the manner as laid down in Chapter III Liquidation process of the Code.

- b) We hereby appointed Shri Amit Chandrakant Shah as a Liquidator subject to the terms and conditions to be agreed upon by the parties in the light of extant provisions of the IBBI.
- c) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.
- e) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder framed by the IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- f) Post the case for report of Liquidator on 16.09.2019


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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National Company Law Tribunal
Bengaluru Bench
