

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. NO. 296 OF 2020

Filed by

Mr. Sidney Ralph Vaz

Office at: Flat No. 03, Sai Corner,
Plot No. 15, CIDCO, Aurangabad 431003

...Applicant

In the matter of

C.P. (IB) No. 530 OF 2019

Mr. Satyaprakash Agarwal

Mahavir Darshan, C.H.S. A/302, R.D.
P-2, Charkop, Sector-2, Kandivali (West),
Mumbai-400067

...Petitioner

versus

R.K. Constro Projects Pvt. Ltd.

R.K.B. Bhavan, H.No. 34, Bhagya Nagar,
Adalat Road, Aurangabad, 431001

...Corporate Debtor

Order Pronounced on: 25.01.2021

Coram:

Shri. H.V. Subba Rao, Member (Judicial)

Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the Resolution Professional: Adv. Sandeep Bajaj a/w Adv.
Anuj Jhaveri

For the Homebuyers: Adv. Akshay Paranjape, Adv. Amit Tungare

Per: Shri. H.V. Subba Rao, Member

ORDER

1. This is an Interlocutory Application filed by one Mr. Sidney Ralph Vaz who is a home buyer and was allotted Flat No.08 in Building No. 09 at a purchase consideration of Rs.13,25,000/- in R.K. Fourth Dimension i.e. a project promoted by the R.K. Constro Projects Pvt. Ltd. (hereinafter called as "Corporate Debtor"). This

application has primarily filed for seeking stay on liquidation of the Corporate Debtor.

2. The counsel for the applicant stated that the Corporate Debtor is the promoter of a residential property R.K. Fourth Dimension situated at Jalna Road, Aurangabad. After the initiation of CIRP against the Corporate Debtor, the Interim Resolution Professional (IRP) published the Public Announcement as per the requirements of the Code. The last date of submission of the claims was set on 23.07.2019. and the IRP received claims from just 42 homebuyers out of the total 394 bookings i.e. 10.66% of the homebuyers were able to submit their claims within the stipulated time. A total of 352 homebuyers were unable to submit their claims. The petitioner and 59 homebuyers were unaware of the issuance of public announcement and the initiation of the CIRP process and hence, did not file their claims. Also, the IRP did not take any extra efforts to locate the homebuyers who were not able to submit the claims.
3. The counsel for the applicant alleged that the financial institutions have used the situation to hijack the CoC and made other members of the CoC including the RP to dance to their tunes. He stated that inclusion of the petitioners and other homebuyers in the CoC would have diluted the financial institutions' voting rights in the CoC and would provide a balance to the whole conduct of the CIRP. He further alleged that the Corporate Debtor has mismanaged the funds as the completion of construction is directly proportionate to the payments released by the homebuyers.
4. The applicant stated that in the second meeting of the CoC which was held on 16.09.2019, where a resolution was passed to invite eligible persons to submit Resolution Plans and a suggestion for conducting forensic audit was made by the Resolution Professional as it will help in finding out the avoidable transactions. But this was rejected by the banks to hide the mismanagement of funds as they are only interested in recovering their dues. The applicant stated that he has no issue in bank recovering of their dues but only requests that the banks should consider that there are 116

homebuyers whose financial and emotional investments also form part of the total debt of the Corporate Debtor.

5. The CoC also rejected an expression of interest by Mr. Shailesh Bhagat received vide email just a day later than the date stipulated in the invitation for the expression of interest. The CoC rejected the offer to invite fresh interests as it thought that the Corporate Debtor was beyond the scope of the revival and should be liquidated. The CoC had ample of time, almost two more months before the completion of the period of 180 days. The main agenda of discussion during all the CoC meetings was CIRP costs only as is evident from the records of CoC meetings. The RP has also filed an application for approval of CIRP cost which includes the fees of the RP. The motive of financial institutions behind liquidation is not to incur additional CIRP costs for continuation of CIRP during bid evaluation stage.
6. The applicant further mentioned that the homebuyers requisitioned a CoC meeting which was held on 24.12.2019 vide tele-conferencing to discuss three agendas viz. Withdrawal of liquidation, Extension of CIRP period by 90 days and Replacement of the RP. The homebuyers with a voting percentage of 54% assented to the proposals. But the CoC had decided to liquidate the Corporate Debtor.
7. The following are the prayers sought by the applicant:
 - a) Allow the applicant and other homebuyers to submit their claims and include the same in the CoC;
 - b) To defer the Liquidation of the Corporate Debtor till completion of CIRP;
 - c) Extend the period of CIRP by 90 days;
 - d) To appoint the Authorised Representative of the homebuyers as the RP for the extended CIRP Period;
 - e) Allow the issue of new Expression of Interest for possible new resolution applicants.

8. We have heard all the parties concerned and perused all the documents submitted by them and accordingly the following order is hereby passed:

FINDINGS

9. This application has been filed by a homebuyer on behalf of himself as well as other homebuyers. The prayer a) which is sought by him cannot be granted as they (home buyers) were late in submitting their claims and now the period of CIRP has already completed. Secondly, this Bench has allowed the application for liquidation of the Corporate Debtor by an order in MA 3666 of 2019.
10. Secondly, it is observed that this application has been filed long back when the period of CIRP was still available. Now the CIRP is at this stage that the period has already lapsed and there is no resort but to liquidate the Corporate Debtor. Also, the CoC unanimously has decided to liquidate the Corporate Debtor and as it is the commercial wisdom of the CoC, we are not intending to interfere with its decision.
11. Prayer clause c) cannot be granted as, first of all, it is the RP who has to make an application for extension of the CIRP period and here the applicant is a homebuyer and not the RP and secondly, the CIRP period cannot be extended as the period has already been over and the liquidation application has been allowed by this Bench.
12. Prayer d) of the applicant cannot be granted as it is the CoC who has to approve, with the required majority, the name of RP and the applicant herein has no locus to make such a prayer. Also, prayer e) for making a new expression of interest for calling the new resolution applicants cannot be granted as now it is very late and the liquidation of the Corporate Debtor has already been allowed by this Bench and the above reliefs cannot be granted at the instance of a single home buyer. Even otherwise, the reliefs sought by the applicant are against the scheme and objects of the IBC. Since, the

maximum time provided in the Code for completing the CIRP is completed long back without any resolution, the CoC has rightly decided to liquidate the Corporate Debtor and the applicant cannot assail the said decision of the CoC as per the law laid down by the Courts.

13. Therefore, with the above directions and observations and in view of allowing the liquidation application bearing No. 3666 of 2019 filed by the RP, nothing survives in this M.A. No. 296 of 2020 and therefore, is accordingly disposed of.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H. V. SUBBA RAO
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

M.A. NO. 3308 OF 2019

- 1) **Rameshwar S/o Narayan Sonat**
Age-47 years,
R/o. House No. G-50, F-1, H-1, N-4, CIDCO,
Aurangabad

- 2) **Anand S/o Gopaa Wani,**
Age: 39 years, Occu: Private Service,
R/o. C/o. Shri. Gopal Govind Wani,
Near Satara Bridge, Garud Plot, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon, 425201

- 3) **Ashok S/o Radhakrishna Badade,**
Age- 37 years, Occu- Service
R/o. C/o Row House No. 21, Gut No. 46,
Sainath Villa, Sundarwadi, Near Cambridge
School, Aurangabad

- 4) **Narendrasing S/o Ajitsing Maurya**
Age- 38 years, Occu: Private Service,
R/o. Flat No. 06, Aapulki Apartment, Plot No.
34, Dashmesh Nagar, Aurangabad

- 5) **Sachin S/o Kishan Ransubhe,**
Age- 38 years,
R/o. I-15/4, Near SBI Quarters, Shastri
Nagar, N-7, CIDCO, Aurangabad.

- 6) **Bhupendra S/o Vishwanath Singh,**
Age- 49 years, Occu-Business,
R/o. C/o. E-22/02, Gulmohar Colony, N-5,
CIDCO, Aurangabad

- 7) **Amol S/o Barsu Bonde,**
Age- 36 years, Occu: Service,
R/o. Vishnu Nagar, Aurangabad. 431005.

....Applicants

versus

R.K. Constro Projects Pvt. Ltd.

....Corporate Debtor

In the matter of

C.P. No. 530 of 2019

Mr. Satyaprakash Agarwal,

Mahavir Darshan C.H.S., A/302, R. D. P-2,
Charkop, Sector-2, Kandivali (West),
Mumbai- 400067

...Petitioner

versus

R.K. Constro Projects Pvt. Ltd.

R.K.B. Bhavan, H. No. 34, Bhagya Nagar,
Adalat Road, Aurangabad- 431001
...Corporate Debtor

Order Pronounced on: 25.01.2021

Coram:

Shri. Venkata Subba Rao Hari, Member (Judicial)

Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the Resolution Professional: Adv. Sandeep Bajaj a/w Adv.
Anuj Jhaveri

For the Homebuyers: Adv. Akshay Paranjape, Adv. Amit Tungare,
Adv. Ramraje Kawade

Per: Shri. H.V. Subba Rao, Member

ORDER

1. This is an application filed by the homebuyers in the project namely M/s R.K. Constro Projects Ltd. (hereinafter called as the "Corporate Debtor"). The Corporate Debtor is a construction company against whom the Corporate Insolvency Resolution Process was started vide an order of this Tribunal dated 28.06.2019 which was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code").
2. The applicants submitted that after passing the orders, the builders failed to refund the entire amount and therefore, the applicants had approached the Consumer Forum by filing the Criminal Execution Application under Section 27 of the Consumer Protection Act, 1986. The Ld. Forum issued standing warrants against the builders.
3. The applicants submitted that during the pendency of this Criminal Execution Application, this Tribunal passed the order on 28.06.2019 initiating the CIRP against the Corporate Debtor due to

which the Ld. Consumer Forum passed the order in some of the complaints and same are dismissed in view of the order passed on 28.06.2019 as per Para (a) which is re-produced here:- (a) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of b the Corporate Debtor any of its assets or legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. Therefore, the applicants have prayed to this Tribunal that they may be permitted to continue with the Criminal Execution Application.

4. The applicants further submitted that they have already invested huge amounts with the builders and simultaneously paying the monthly instalments to the bank because of which they are found in financial crises and are not in a position to pay the amount towards the professional charges. Now presently, since 2011 the applicants are suffering from problems either by builder as he could not complete the project with in stipulated period and thus now are very cautious about their hard earn money. But despite several proceedings and orders in favour, the applicants could not get the benefits of those orders and therefore, the applicants are not in a position to pay more amount towards the proceedings. The applicants are not ready to proceed with this Tribunal at any cost. Therefore, the applicants have ready to withdraw the proceeding filed against the builders and ready to withdraw the instant claim at their own risk by filing present Misc. Application.
5. The applicants submitted that the corporate Debtor has invested applicants' money with the other projects at Nanded, Hyderabad etc. and have also acquired movable and immovable properties in the names of the blood relatives of the directors. The applicants alleged

that the property which is in the custody of the Corporate Debtor company is of only approximately 3 to 4 crore and the financial creditors invested the amount of approximate 15 to 16 crores. Therefore, there are less chances to recover the entire amount of Financial Creditors along with interest from the Corporate Debtor under the Code.

6. The applicants stated that the learned Consumer Forum issued the standing warrants against the builders/directors under the Criminal Execution Application U/s. 27 of the Consumer Protection Act, 1986. The efforts made by the applicants under Criminal Execution Application is of no use due to order dated 28.06.2019 passed by this Tribunal and mere submissions of the claim by the applicants. The applicants stated that the Ld. District consumer Forum at Aurangabad kept the Criminal Execution application for dismissal on 30.10.2019. The applicants herein pray for modification of order in respect of **execution of Judgments**.

7. The applicants submitted that they had sent an E-mail on ip.rkconstro@yahoo.com for withdrawal of claims submitted by the Financial Creditors. The applicants want to proceed with the Consumer Forum under Section 12 and Section 27 i.e. Criminal Execution Application and therefore have filed this application praying the following:

- a) *This Miscellaneous Application may kindly be allowed.*
- b) *That the Applicants/Financial Creditors may kindly be permitted to withdraw the claims submitted as per the Form "C" and "CA" with liberty to approach before learned Consumer Forum.*

AND

- c) *The order dt. 28.06.2019 passed by this Hon'ble Court in C.P. (IB) 530/2019 may kindly be modified accordingly to the extent of criminal execution applications.*
- d) *Ad-interim protection may kindly be granted in favour of applicants in terms of Clause B and C till the final disposal of this Miscellaneous Applications.*

e) Any other appropriate orders be passed in the interest of justice in favour of applicant on or before 30.10.2019.

FINDINGS

We have heard the parties concerned and perused all the documents submitted by them and we are passing the following order:

8. The applicants herein are the homebuyers and the prayers sought by them cannot be granted being bad in law. The prayers a) and b) sought by them cannot be granted as already the CIRP of the Corporate Debtor has started long back and according to the provisions of the Code, once the CIRP is triggered, the affairs of the Corporate Debtor are in the hands of the RP and this Tribunal has the supervisory powers over the process. All the other proceedings pending before other Courts are suspended and therefore, the Ld. Consumer Forum had decided to dismiss the application filed by the applicants. The Insolvency and Bankruptcy Code, 2016 is an entire Code in itself therefore, the other proceedings get suspended automatically as per the provisions of IBC. However, keeping the interest of the homebuyers in mind, we suggest that the homebuyers may file their claims before the liquidator.

9. Further it is observed that prayer c) cannot be granted at this belated stage as the CIRP of the Corporate Debtor is already at an advanced stage and the order passed by this Tribunal dt. 28.06.2019 admitting the Company Petition bearing no. 530/2019 is correct and cannot be interfered. Further the CoC has already made up its mind and recommended to liquidate the Corporate Debtor with approved majority of 100%. Hence, the prayer d) also cannot be granted as we are disposing of this application and allowing the liquidation application bearing No. 3666 of 2019 by way of which the affairs of the Corporate Debtor company will be in the hands of the liquidator. Clause e) seeks for interim/final reliefs on or before 30.10.2019 and as we are dismissing this application, no need to comment on this prayer clause.

10. Here we would like to mention that we have allowed the application bearing no. 3666 of 2019 filed for liquidation on the ground that the CIRP period has already crossed the time lines and the CoC has decided to liquidate the Corporate Debtor. Basing on the settled principle of law that it is the commercial wisdom of the Committee of Creditors (CoC) to liquidate the Corporate Debtor, we cannot interfere in its decision when the decision is taken with the required majority and here in this matter, the CoC has unanimously decided to liquidate the Corporate Debtor.

11. With the above directions and observations made here in the above paras and in view of allowing the liquidation application bearing No.3666 of 2019 filed by the RP, nothing survives in this M.A. No. 3308 of 2020 and therefore, is accordingly disposed of.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H. V. SUBBA RAO
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

M.A. NO. 3554 OF 2019

- 1) **Ravikumar S/o Arvind Sharma,**
Age-30 years,
R/o. Shree Ganesha Residency, Building No.
C, Flat No. 10, Opposite to Air Port,
Chikhalthana, Aurangabad, 431001.
- 2) **Dnyandeo S/o Govinda Salve,**
Age: 50 years, Occu: Service,
R/o. C/o. Type 5 Quarter AAI, Residential
Colony, Airport Aurangabad, 431001
- 3) **Vanmalla W/o Ishwar Rajput,**
Age- 60 years, Occu- Household,
R/o. Tulsi, Plot No. 3, Vivek Society,
N-2, Cidco, Behind Bhar Petrol Pump,
API Corner, Aurangabad, Tq. & Dist.
Aurangabad, 431003.
- 4) **Gajanan S/o Shankar Nalegaonkar,**
Age- 33, Occu Private Service,
R/o. Plot No. 48, Mahalaxmi Chowk,
Thakre Nagar, N-2, CIDCO, Aurangabad,
431001
- 5) **Dadasahab S/o Ramrao Tambe,**
Age- 42 years, Occu- Business,
R/o. Plot No. 11, Ganesh Housing Society, N-
8, Bajrang Chowk, CIDCO, Aurangabad,
431001
- 6) **Dilip S/o Pandharinath Kakade,**
Age- 49 years, Occu-Service,
R/o. C/o. Jeevan Vikas Vidyalay, Dusarbid,
Ward No. 1, Teacher Colony, Dusarbid, Tq.
Shindkheda Raja, Dist. Buldhana.
- 7) **Sunil S/o Hiralal Sonawane**
Age- 50 years, Occu: Service,
R/o. N-2, CIDCO, R-16/3 Tornagad Nagar,
Jalna Raod, Aurangabad. 431005.

....Applicants

versus

R.K. Constro Projects Pvt. Ltd.

R.K. Bhawan, H. No.34, Bhagya Nagar,
Adalat Road, Aurangabad,
431 001.

....Corporate Debtor

In the matter of

C.P. No. 530 of 2019

Mr. Satyaprakash Agarwal,

Mahavir Darshan C.H.S., A/302, R. D. P-2,
Charkop, Sector-2, Kandivali (West),
Mumbai- 400067

...Petitioner

Vs.

R.K. Constro Projects Pvt. Ltd.

R.K.B. Bhavan, H. No. 34, Bhagya Nagar,
Adalat Road, Aurangabad- 431001

...Corporate Debtor

Order Pronounced on: 25.01.2021

Coram:

Shri. H.V. Subba Rao, Member (Judicial)

Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the Resolution Professional: Adv. Sandeep Bajaj a/w Adv.
Anuj Jhaveri

For the Homebuyers: Adv. Akshay Paranjape, Adv. Amit Tungare,
Adv. Ramraje Kawade

Per: Shri. Shyam Babu Gautam, Member

ORDER

1. This is an application filed by the homebuyers in the project namely M/s R.K. Constro Projects Pvt. Ltd., Gut No. 30, (P), Hirapur, Tal. Dist. Aurangabad. M/s R.K. Constro Projects Ltd. (hereinafter called as the "Corporate Debtor") is a construction company against whom the Corporate Insolvency Resolution Process was started vide an order of this Tribunal dated 28.06.2019 which was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code").
2. The main allegation of the applicants is that the Resolution Professional (RP) do not provide the information about the property

description and assets and account details of the Corporate Debtor and that the applicants are unaware about the how much property is in the custody of the RP. The property which remains with Corporate Debtor is less in value and due to the default made by the builders, the property could not get more value.

3. The applicants submitted that the learned District Consumer Forum at Aurangabad is going to dispose of the Criminal Execution Application against the builders, as per the para No. 5(a) of the order which is re-produced here:- (a) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of b the Corporate Debtor any of its assets or legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. Therefore, the applicants have prayed to this Tribunal that they may be permitted to continue with the Criminal Execution Application.
4. The applicants further submitted that they have already invested huge amounts with the builders and simultaneously paying the monthly instalments to the bank because of which they are found in financial crises and are not in a position to pay the amount towards the professional charges. Now presently, since 2011 the applicants are suffering from problems either by builder as he could not complete the project with in stipulated period and thus now are very cautious about their hard earn money. But despite several proceedings and orders in favour, the applicants could not get the benefits of those orders and therefore, the applicants are not in a position to pay more amount towards the proceedings. The applicants are not ready to proceed with this Tribunal at any cost. Therefore, the applicants have ready to withdraw the proceeding

filed against the builders and ready to withdraw the instant claim at their own risk in view of section 12-A of the Code by filing present Misc. Application.

5. The applicants submitted that the corporate Debtor has invested applicants' money with the other projects at Nanded, Hyderabad etc. and have also acquired movable and immovable properties in the names of the blood relatives of the directors. The applicants alleged that the property which is in the custody of the Corporate Debtor company is of only approximately 3 to 4 crore and the financial creditors invested the amount of approximate 15 to 16 crores. Therefore, there are less chances to recover the entire amount of Financial Creditors along with interest from the Corporate Debtor under the Code.
6. The applicants submitted that the flats of the some of the applicants are almost complete. Near about 90% of construction is complete and those applicants are ready to take possession of the flats and complete the remaining construction with their own costs.
7. The applicants stated that the learned Consumer Forum issued the standing warrants against the builders/directors under the Criminal Execution Application U/s. 27 of the Consumer Protection Act, 1986. The efforts made by the applicants under Criminal Execution Application is of no use due to order dated 28.06.2019 passed by this Tribunal and mere submissions of the claim by the applicants. The applicants stated that the Ld. District consumer Forum at Aurangabad kept the Criminal Execution application for dismissal on 30.10.2019. The applicants herein pray for modification of order in respect of **execution of Judgments**.
8. The applicants submitted that they had sent an E-mail on ip.rkconstro@yahoo.com for withdrawal of claims submitted by the Financial Creditors. The applicants could not pay the fees given by the RP at this stage, because applicants are found in economical crunches. Therefore, the applicants are ready to proceed with the criminal execution application against the builders/developers.

9. The applicants want to proceed with the Consumer Forum under Section 12 and Section 27 i.e. Criminal Execution Application and therefore have filed this application praying the following:

- a) *This Miscellaneous Application may kindly be allowed.*
- b) *That the Applicants/Financial Creditors may kindly be permitted to withdraw the claims submitted as per the Form "C" and "CA" with liberty to approach before learned Consumer Forum under Section 27 of consumer Protection Act, 1986.*

AND

- c) *The order passed by this Hon'ble Court dt. 28.06.2019 in C.P. (IB) 530/2019 may kindly be modified accordingly to the extent of criminal execution applications.*
- d) *Ad-interim protection may kindly be granted in favour of applicants in terms of Clause B and C till the final disposal of this Miscellaneous Applications.*
- e) *Any other appropriate orders be passed in the interest of justice in favour of applicants on or before 30.10.2019.*

FINDINGS

We have heard the parties concerned and perused all the documents submitted by them and we are passing the following order:

10. The applicants herein are the homebuyers and the prayers sought by them cannot be granted being bad in law. The prayers a) and b) sought by them cannot be granted as already the CIRP of the Corporate Debtor has started long back and according to the provisions of the Code, once the CIRP is triggered, the affairs of the Corporate Debtor are in the hands of the RP and this Tribunal has the supervisory powers over the process. All the other proceedings pending before other Courts are suspended and therefore, the Ld. Consumer Forum had decided to dismiss the application filed by the applicants. The Insolvency and Bankruptcy Code, 2016 is an entire Code in itself and therefore, the other proceedings get suspended automatically as per the provisions of IBC. However, keeping the

interest of the homebuyers in mind, we suggest that the homebuyers may file their claims before the liquidator.

11. Further it is observed that prayer c) cannot be granted at this belated stage as the CIRP of the Corporate Debtor is already at an advanced stage and the order passed by this Tribunal dt. 28.06.2019 admitting the Company Petition bearing no. 530/2019 is correct and cannot be interfered. Further the CoC has already made up its mind and recommended to liquidate the Corporate Debtor with approved majority of 100%. Hence, the prayer d) also cannot be granted as we are disposing of this application and allowing the liquidation application bearing No. 3666 of 2019 by way of which the affairs of the Corporate Debtor company will be in the hands of the liquidator. Clause e) seeks for interim/final reliefs on or before 30.10.2019 and as we are dismissing this application, no need to comment on this prayer clause.
12. Here we would like to mention that we have allowed the application bearing no. 3666 of 2019 which was filed for liquidation of the Corporate Debtor on the ground that the CIRP period has already crossed the time lines and the CoC has decided to liquidate the Corporate Debtor. Basing on the settled principle of law that it is the commercial wisdom of the Committee of Creditors (CoC) to liquidate the Corporate Debtor, we cannot interfere in its decision when the decision is taken with the required majority and here in this matter, the CoC has unanimously decided to liquidate the Corporate Debtor.
13. With the above directions and observations made here in the above paras and in view of allowing the liquidation application bearing No. 3666 of 2019 filed by the RP, nothing survives in this M.A. No. 3554 of 2020 and therefore, is accordingly disposed of.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

M.A. 3666 OF 2019

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Filed by

Mr. Ajay Murarilal Agarwal

Shop No.2 First Floor, Matoshree
Apartment, Satnami Nagar, Nagpur
440008

Applicant/Resolution
Professional

In the matter of

C.P. No. 530 of 2019

Mr. Satyaprakash Agarwal,

Mahavir Darshan C.H.S., A/302, R. D.
P-2, Charkop, Sector-2, Kandivali
(West), Mumbai- 400067

Petitioner

Vs.

R.K. Constro Projects Pvt. Ltd.

R.K.B. Bhavan, H. No. 34, Bhagya
Nagar, Adalat Road, Aurangabad-
431001

...Corporate Debtor

Order delivered on: 25.01.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Resolution Professional: Adv. Sandeep Bajaj a/w

Adv. Anuj Jhaveri

Per: Shri Shyam Babu Gautam, Member

ORDER

1. It is an application filed by Resolution Professional, Mr. Ajay Murarilal Agrawal seeking liquidation of R.K. Constro Projects Private Limited (hereinafter referred as Corporate Debtor) on the ground that no resolution plan has been approved and the Committee of Creditors (CoC) has unanimously decided to initiate liquidation proceedings of

the Corporate Debtor in its 3rd CoC meeting. Hence this application under Section 33(1) read with Section 60 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. *That this Hon’ble Tribunal may be pleased to pass an order for liquidation of the Corporate Debtor under Section 33(1) of the Insolvency and Bankruptcy Code, 2016;*
 - b. *That this Hon’ble Tribunal may be pleased to pass an order for the discharge of the Resolution Professional to act as a liquidation for the purpose of liquidation;*
 - c. *That this Hon’ble Tribunal may be pleased to pass an order for the appointment of Liquidator*
 - d. *For such further and order reliefs as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
2. The applicant submitted that the captioned petition was admitted by this Tribunal vide an order dated 28.06.2019 which was filed under Section 9 of the Code by Mr. Satyaprakash Agarwal (Operation Creditor) wherein the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was initiated and Mr. Ajay Murarilal Agrawal was appointed as the Interim Resolution Professional who was later confirmed as Resolution Professional by the CoC with 100% voting.
3. The applicant/RP further submits that the CIRP period of 180 days expired on 25.12.2019, and no Resolution Plan has been received by the RP for the Corporate Debtor. Further, the CoC is also not desirous of seeking any extension of time for the CIRP as there is no Resolution Plan nor has the RP received any Expression of Interest from any Applicant. In the circumstances, the CoC deems fit that the Corporate Debtor shall be liquidated as per the provisions of the Code.

ORDER

We have heard all the parties concerned and perused all the documents submitted by them. It is observed from the minutes of

the meeting that the CoC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the CoC, we hereby allow this Miscellaneous Application bearing Number M.A. 3666 of 2019 with the following observations and directions:

- a. **Mrs. Neeraja Kartik**, having Registration No. IBBI/IPA-001/IP-P-01445/2018-2019/12137 is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. M.A. No. 3666 of 2019 is hereby allowed and disposed of.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

M.A. 3741 OF 2019

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Filed by

Mr. Ajay Murarilal Agarwal

Shop No.2 First Floor, Matoshree

Apartment, Satnami Nagar, Nagpur

440008

...Applicant/Resolution Professional

versus

1. State Bank of India

2. Bombay Mercantile Co-Operative Bank

3. Class of Creditors

Through their Authorised

Representative Mrs. Neeraja Kartik

...Respondents

In the matter of

C.P. No. 530 of 2019

Mr. Satyaprakash Agarwal,

Mahavir Darshan C.H.S., A/302, R. D. P-2, Charkop, Sector-2, Kandivali (West), Mumbai- 400067

Petitioner

Vs.

R.K. Constro Projects Pvt. Ltd.

R.K.B. Bhavan, H. No. 34, Bhagya Nagar, Adalat Road, Aurangabad-431001

...Corporate Debtor

Order delivered on: 25.01.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Resolution Professional: Adv. Sandeep Bajaj a/w

Adv. Anuj Jhaveri

Per: Shri Shyam Babu Gautam, Member

ORDER

1. This is an application filed by Resolution Professional, Mr. Ajay Murarilal Agrawal (hereinafter referred to as the “applicant” or the “RP”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to the “Code”) r/w Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the “Regulations”) for insolvency resolution process costs.
2. The counsel for the applicant stated that an application under Section 9 was filed by one Mr. Satyaprakash Agarwal (Operational Creditor) against R.K. Constro Projects Private Limited (hereinafter referred as Corporate Debtor) which was admitted by this Tribunal vide an order dated 28.06.2019 and the applicant was appointed as the Interim Resolution Professional (IRP).
3. The 1st meeting of the Committee of Creditors (CoC) which was held on 08.08.2019 wherein the CoC was informed that the total debt of the Corporate Debtor is INR 13,40,47,836.30/-. Also, in this meeting, the IRP had placed for ratification before the CoC the cost of Rs.4,45,500/- incurred by him as the IRP. This cost was unanimously approved by the CoC. However, the out of this amount of Rs.4,45,000/-, the total cost incurred by the IRP for the 1st CoC meeting was Rs.4,32,200/-. Also, the IRP was confirmed as the RP and his fees was decided to be Rs.2,25,000/- per month.
4. During the 2nd CoC meeting held on 16.09.2019, the RP informed the members of the CoC that the RP had appointed 2 valuers each for valuation of Land and Building and Financial Assets. The RP had also appointed an Advocate for providing search report of the projects developed under the Company. The total fees payable towards the said professionals was Rs.2,55,000/- which was unanimously approved by the CoC along with a further expenditure of Rs.1,40,000/- towards the newspaper advertisement, fees of Authorised Representative and other expenses.

5. The counsel for the RP further stated that the fees of the RP from 09.08.2019 to 08.10.2019 was Rs.4,50,000/- and therefore, the RP vide emails dated 17.09.2019, 20.09.2019 and 30.09.2019 called upon the CoC members to make the outstanding cost of Rs.12,78,072/- incurred towards the expenses of the 1st and 2nd CoC meetings. This issue was also put before the CoC
6. Further, he stated that during the 3rd CoC meeting which was held on 17.10.2019, the CoC had voted unanimously in favour of liquidation of the Corporate Debtor and the RP also informed the CoC that the costs incurred for the 1st and 2nd meetings remained unpaid and requested them to contribute towards their respective share for smooth conduct of CIRP. Thereafter, the RP had put forth for voting the estimated expenditure of Rs.1,20,000/- to be incurred by him for travelling expenses, legal expenses, fees of Authorised Representative and other expenses. This was also unanimously approved by the CoC.
7. The counsel for the RP further stated that during the 4th CoC meeting held on 31.10.2019, the main agenda of which was proposing a name of liquidator, the RP put forth the estimated expenditure of Rs.15,000/- to be incurred by him for fees of Authorised Representative and also the fees of the RP from 09.10.2019 to 08.11.2019 which comes to a tune of Rs.2,25,000/-. Later, the RP through email dated 05.11.2019 called upon the CoC members to make payment for outstanding cost but despite all this, the CoC has not till date paid the RP.
8. The counsel for the RP submitted that the total outstanding amount payable by the CoC to the RP as on 15.11.2019 amounts to Rs.16,33,726/- as it was not paid by the CoC stating that there are no funds in the accounts of the Corporate Debtor that can meet the aforesaid costs.

ORDER

We have heard all the parties concerned and perused all the documents submitted by them. We are satisfied that the Resolution Professional who was also the Interim Resolution Professional has not been paid by the members of the CoC. Now the CIRP of the Corporate Debtor is at such a stage that this Bench has approved the liquidation of the Corporate Debtor by allowing MA 3666 of 2019 which was filed by the RP for liquidation. We believe that the RP has performed his duties and the CoC is therefore, liable to pay the RP for all the costs incurred by him along with his entire fees. Also, the RP is the officer of the Court and therefore, the Code safeguards his rights and entitles him to be paid for all the efforts taken by him as well as all the costs incurred by him during the CIRP of the Corporate Debtor. Thus, we direct the CoC to pay the fees of the RP in full and all the other overhead expenses incurred by him within 4 weeks from the date of this order.

With the above observations and directions, the present application i.e. M.A. No. 3741 of 2019 is hereby allowed and disposed of.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

M.A. 3825 OF 2019

Caveat Application

Filed by

Mr. Sydney Ralph Vaz

Flat No. 03, Sai Corner, Plot No. 15,
N-7, CIDCO, Aurangabad

...Caveator

In the matter of

C.P. No. 530 of 2019

Mr. Satyaprakash Agarwal,

Mahavir Darshan C.H.S., A/302, R. D.
P-2, Charkop, Sector-2, Kandivali
(West), Mumbai- 400067

Petitioner

Vs.

R.K. Constro Projects Pvt. Ltd.

R.K.B. Bhavan, H. No. 34, Bhagya
Nagar, Adalat Road, Aurangabad-
431001

...Corporate Debtor

Order delivered on: 25.01.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Caveator: Adv. Amit Tungare

Per: Shri H.V. Subba Rao, Member

ORDER

1. It is a caveat application filed by one of the Homebuyers Mr. Sidney Ralph Vaz seeking no orders to be passed in any application filed or expected to be filed or in any petition or application or Interlocutory Application that may be preferred by except the caveator without service of notice on the caveator.
2. This application was filed by the caveator long back after the initiation of CIRP of the Corporate Debtor and after the public

announcement for inviting prospective Resolution Applicants for submitting their Resolution Plans. This application being a caveat application, the only prayer was for serving the applications on the caveator and hearing him before passing any orders in this matter. Now at this belated stage, we would like to mention that the caveator has been heard in detail in all the applications and therefore, nothing survives in this application.

This caveat application bearing number MA 3825 of 2019 is infructuous. MA 3825 of 2019 is hereby disposed of.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)