

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA No. 2135/2019
In
C. P. 1667/I&B/2018**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of
Andhra Bank

... Financial Creditor

V/s.

Provogue (India) Ltd.

... Corporate Debtor

M.A. No. 2135/2019

Mr. Amit Gupta, CA

... Applicant/

Resolution Professional

Order delivered on 14.10.2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

For the Applicant: Ms. Mahima Singh, Counsel, a/w. Mr. Jigneshkumar A.
Gandhi, Arihant Associates.

Mr. Rohan Agarwal, Advocate, i/b. MDP & Partners for
Andhra Bank

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor namely Provogue (India) Ltd. The Adjudicating Authority vide its order dated 25.07.2018 on a Petition filed by the financial Creditor under Section 7 of the Code, wherein Mr. Jitendra Kumar Yadav, was appointed as Interim Resolution Professional (IRP). Thereafter, on 24.08.2018 in the 1st Committee of Creditors (CoC) meeting Mr. Amit Gupta, CA, was resolved to be

appointed as Resolution Professional (RP) and the same was approved by this Bench on 26.09.2019. The IRP constituted the CoC.

2. The RP submits that the public announcement was made on 03.08.2018, in various newspapers i.e. "The Times of India, Tribune, Economics Times, Financial Express" in English, "Maharashtra Times, Loksatta" in Marathi, "Danik Nayay Sethu, Swadesh, Indore Samachar, Lokbharti, Navbharat Times" in Hindi and "Gujarat Today" in Gujarati fixing 15.08.2018 as the last date for submitting the claim. Subsequently, the RP constituted the CoC.

3. The RP submits that IRP on 04.09.2018 and the RP on 28.11.2018 appointed two registered Valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation. It is further submitted that in the 4th meeting of CoC held on 22.10.2018 an advertisement was issued, inviting Expression of Interest in Form G on 23.10.2018 fixing 22.11.2018 and as last date for submission of Expression of Interest by the Prospective Resolution Applicants.

4. The Resolution Professional submits that 16 (Sixteen) Expression of Interest was received by him from Prospective Resolution Applicants ("PRAs"). The PRAs was given opportunity to raise objection, if any, regarding inclusion and exclusion in the provisional list within 5 days. Subsequently, upon consideration of objection received from some PRAs, the RP on 07.12.2018, issued a final list of 10 (Ten) eligible PRAs to the CoC.

5. The CoC in the 6th CoC meeting held on 02.01.2019 decided to extend the time of the CIRP by another 90 days and the same was extended with the CIRP ending on 19.01.2019. Consequently, the RP published a revised Form G with the last date for submission of resolution plan extended to 19.01.2019. Upon publication the RP received 2 (Two) resolution plans from:

- i. Donear Industires Ltd. ("Donear") and
- ii. Dimaond Forever International ("DFI")

6. The CoC in the 9th meeting held on 20.03.2019, decided that the plans which were submitted were incomplete with respect to compliances under the Code and the Resolution applicants were informed to submit final resolution plan by 25.03.2019. The CoC in the 11th meeting held on 04.04.2019, discussed

about revised unsigned financial proposal form Dimaond Forever International (“DFI”) and Invent ARC, as per the revised proposal the promoters of the Corporate Debtor were proposed to be co-applicants with DFI and Invent ARC.

7. The CoC in the 13th meeting held on 16.05.2019, decided that the promoters of the Corporate Debtor are eligible to participate as resolution applicants, under Section 29A (c) (b) and (h) of the Code. Subsequently, by a vote of 65.60%, the CoC approved the inclusion of Mr. Nikhil Chaturvedi and Mr. Salil Chaturvedi (i.e. suspended directors/ promoters of the Corporate Debtor) as co-applicants with Invent ARC and Mr. Pranav Jain in individual capacity.

8. The RP submits that the Donear Industires Ltd. (“Donear”) were also asked to submit their final plan, but the representative of Denear submitted that there would be no further revision in the plan and their last signed resolution plan should be considered as final. The RP also received the final signed resolution plan form consortium of DFI, Mr. Pravav Jain, invent ARC, Mr. Nikhil Chaturvedi and Mr. Salil Chaturvedi (“DFI Consortium”).

9. The CoC in the 15th meeting held on 03.06.2019, it was decided that among both the resolution plans, majority of CoC members having 82.04% voting share decided that only one resolution plan of H1 applicant, i.e. DFI Consortium, should be kept for voting. Pursuant to e-voting, the CoC of the Corporate Debtor having 80.03% voting shares rejected the resolution plan of DFI Consortium.

10. In the 15th CoC meeting held on 03.06.2019, the CoC having 80.03% voting rights passed a resolution for liquidating the company in view of the fact that no Resolution Plan was approved by the CoC during the 270 day’s period stipulated under the Code. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

11. The Applicant/ Resolution Professional Mr. Amit Gupta CA, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.

12. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, the RP has complied with the

procedure laid down under, the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), for the valuation report filed by the valuer has not been disputed by the CoC, on verification of the papers/ documents placed before this Bench, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been approved by the Adjudicating Authority and accordingly, this Bench orders;

- a. 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.
- b. that the Mr. Amit Gupta, CA, Registration No. IBBI/IPA-001/IP-P00016/2017-18/10040, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. 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.
- d. 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.
- e. that the liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- f. 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.
- g. 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.

13. Consequently, as stated supra, Resolution Professional is appointed as the Liquidator as provided under section 34(1) of the Code. 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;
14. Accordingly, this Misc. Application is hereby allowed directing 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.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

/Sg/-

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)