

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

M. A. No. 3817 of 2019

In

C.P. No. 587/IB/2018

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of
Ms. Rama Subramanian
... Operational Creditor

V/s.
Sixth Dimension Project Solution Ltd.
... Corporate Debtor

M.A. No. 3817/2019

Mr. Santanu T. Ray

... Applicant/
Resolution Professional

Order delivered on 01.03.2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Rohit Gupta, a/s. Rubina Khan, Advocates

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

ORDER

1. This is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (M/s. Sixth Dimension Project Solution Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *To allow the application.*
- b. *To pass an order requiring the Corporate Debtor namely Sixth Dimension Project Solutions Ltd. be liquidated in the matter as laid down in chapter III of the Insolvency & Bankruptcy Code, 2016;*
- c. *To appoint the Applicant Resolution Professional Mr. Santanu T. Ray as the Liquidator of the Corporate Debtor;*

- d. *To direct Liquidator within five days from his appointment to make public announcement in Form B under regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
 - e. *To direct Liquidator and the Registry of NCLT, Mumbai to intimate the concerned Registrar of Companies about the liquidation of Corporate Debtor;*
 - f. *As per Section 33(5) and, that subject to Section 52 of the Code, no suit or other legal proceedings shall be initiated by or against the Corporate Debtor except in relation to the transaction as may be notified by the Central Government; provided that a suit and other legal proceedings may be instituted by the Liquidator on behalf of the corporate debtor with prior approval of this Bench;*
 - g. *That this order of liquidation may, deemed to be intimation to the officers, employees and workmen of the Corporate Debtor is a notice of discharge;*
 - h. *That 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 all such powers shall be vested in the liquidator;*
 - i. *To direct all the personnel of the Corporate Debtor to extend all assistance and co-operation to the Liquidator as may be required in managing the affairs of the Company in discharging his function as specified under section 35 of the code;*
 - j. *To handover to the Liquidator all records of the Corporate debtor, provide access to books of accounts and also share login credentials for filing returns with statutory authorities.”*
2. The Adjudicating Authority vide its order dated 09.10.2018 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Sixth Dimension Project Solution Ltd., wherein Mr. S. Gopalakrishnan, was appointed as Interim Resolution Professional (IRP). Thereafter, in the 3rd Committee of Creditors (CoC) meeting held on 03.12.2018, CoC decided to appoint Mr. Santanu T. Ray as Resolution Professional. The CoC accordingly filed application for approval but the same application was dismissed vide an order dated 13.03.2019. Thereafter the CoC challenged the above order passed by this Tribunal before the Hon'ble NCLAT. The Hon'ble NCLAT vide an order dated 16.08.2019, appointed Mr. Santanu

T. Ray as Resolution Professional (RP) and also extended the CIRP for 90 days. The Axis Bank Limited is the sole financial creditor.

3. It is submitted that the public announcement of the initiation of the CIRP was issued in Form A on 14.10.2018 in "Financial Express" and "Free Press Journal". The last date for submission of claims by creditors is 28.10.2018.
4. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 26.09.2019 in "Financial Express" in English in all editions and "Navshakti" in Marathi in Mumbai edition. The last date for submission of Expression of Interest was 11.10.2019.
5. The CoC in its 5th meeting held on 22.03.2019 decided to appoint a Valuer. The RP accordingly 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.
6. The RP submits that the response to the publication in Form G, Expression of Interest from two applicants were received from prospective Resolutions namely M/s. Arth Rural Connect Services Pvt. Ltd. and Cornerstone Interiors LLC (Jointly) and Alchemist Asset Reconstruction Company Limited. Thereafter, the prospective resolution applicant was provided with the information, evaluation matrix and others necessary documents and given time to submit Resolution plan. However, the RP received one Resolution plan from M/s. Arth Rural Connect Services Pvt. Ltd. and Cornerstone Interiors LLC (Jointly) on 04.11.2019.
7. The RP submits that the offer made by the sole Resolution Applicant was not acceptable to the members of CoC as it offered marginal upfront cash and rest in deferred payments over a period of 18 months, with 7% p.a. interest. The secured financial creditor was of the view that they and other stakeholders stand to gain much higher in the event of a liquidation. Further the plan was not in compliance with Section 53 and Regulation 38 (1) of IBBI Regulations. The members of CoC requested the Resolution Applicant to make modification in their offer and inform

the members of CoC on the same day by 3 pm. The said meeting was therefore adjourned until 3 pm. Thereafter, the Resolution applicant informed the members of CoC that their revised Resolution plan is final and they are not interested in modification. Therefore, the CoC member Axis Bank Ltd. representing 96.31% rejected the resolution plan.

8. The CoC in the 9th CoC meeting held on 13.11.2019 was informed in the meeting that there are no chances of revival of the Corporate debtor Company and therefore the CoC in its wisdom passed the following Resolution;

“Resolved further that Sixth Dimension Project Solution Ltd. Corporate Debtor having U74900MH1998PLC116838 shall be liquidated as the Resolution Plan submitted by the eligible Resolution Applicant was not acceptable by the Members of CoC;

Resolved further that the Company shall be liquidated as a going concern under Regulation 32(e) of the IBBI (Liquidation Process), 2016;

Resolved further that the cost of Liquidation shall be funded out of the Rental Income received from the Lessee of the Corporate Debtor’s Premises.”

9. Hence, the CoC in its 9th meeting held on 13.11.2019, with 96.31% voting rights passed a resolution for liquidating the company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).
10. The Applicant/ Resolution Professional Mr. Santanu T. Ray, has agreed to act as liquidator and given consent to carry on the process of liquidation.
11. Upon hearing the submissions of the Applicant and on the perusal of the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code; Regulations made thereunder. The reasons assigned in the petition with regards to taking the decision of liquidation of Corporate Debtor by CoC appears to be genuine in the present market scenario and convincing. On verification, 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 for

liquidation in the absence of any resolution plan. Accordingly we pass the following:

ORDER

- a. The M. A. No. 3817 of 2019 is hereby allowed.
- b. **Mr. Santanu T. Ray**, Registration No. IBBI/IPA-002/IP-N00360/2017-2018/11055, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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.

- h. 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.
- i. 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.
- j. 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.
- k. The M. A. No. 3817 of 2019 is hereby allowed and disposed of.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)