

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

IA/670/2020 in CP/1156/IB/2018 filed
under *Sections 33 (2)* of the Insolvency and
Bankruptcy Code, 2016

In the matter of ***M/s. RA-NI Precast Private Limited***

Pathukasahasram Raghunathan Raman
IBBI Reg. No. IBBI/IPA-002/IP-N00295/2017-18/10896
Resolution Professional of
M/s. RA-NI Precast Private Limited
Ground Floor, Srishas Kamalam Apartment,
No.93, Sivan Koil South Street, Vadapalani,
Chennai – 600 026

... Applicant /Resolution Professional

Order Pronounced on 23rd December 2020

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : *P R Raman, Resolution Professional*

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This is an application filed under Section 33(1) and 34 (1) of the Insolvency and Bankruptcy Code 2016 (in short 'IBC, 2016') seeking relief as follows:



- (i) Pass necessary order Liquidating the Corporate Debtor – M/s. RA-NI PRECAST PRIVATE LIMITED, and
- (ii) Appoint the Applicant herein as the “Company Liquidator” to carry out Liquidation Process for the Corporate Debtor”

2. In Section 9 application filed by the Operational Creditor against the Corporate Debtor viz., Ra-Ni Precast Private Limited, this Tribunal vide order dated 05.04.2019 initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor and appointed the Applicant herein as Interim Resolution Professional (IRP).

3. It is averred in the application that pursuant to the Applicant being appointed as IRP, he caused Public Notice in **Form-A** on 13.04.2019 for submission of the claims by the stakeholders in the newspapers viz., BUSINESS STANDARD - English Edition and MAKKAL KURAL - Tamil Edition. Thereafter, the IRP has also filed the list of creditors as mandated under section 18 of I&B Code 2016 before this Tribunal on 29.04.2019.

4. It is stated in the application that the 1st CoC Meeting in relation to the Corporate Debtor was held on 06.05.2019, in which, the



applicant herein was confirmed to act as a Resolution Professional (RP) of the Corporate Debtor. Thereafter, the applicant appointed two registered Valuers as stipulated under Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to ascertain the Fair Value and Liquidation Value of the properties of Corporate Debtor.

5. It is also stated in the application that the erstwhile promoters/directors of the Corporate Debtor and the key officers of the Corporate Debtor refused to cooperate with the applicant herein and as such the applicant was not able to get sufficient information in relation to the Corporate Debtor and was also unable to ascertain the affairs of the Corporate Debtor. The applicant submitted that the tally back-up given by the erstwhile directors in a hard disk was partially corrupted and as such no information were forthcoming from the erstwhile Managing Director of the Corporate Debtor. It was submitted by the applicant that the 2nd CoC Meeting was convened on 07.01.2019 wherein the applicant has informed the CoC Members about the lack of information regarding the amount receivables, details of fixed assets and preparation of accounts and valuations could not be undertaken and as such the Information Memorandum could not be prepared. The applicant submitted that due to the non-



cooperation on the part of the erstwhile Directors of the Corporate Debtor, the applicant filed MA No.590/2019 before this Tribunal and this Tribunal vide its order dated 11.07.2019 directed the shareholders and the Managing Director to extend assistance and cooperation to the applicant by providing all relevant information of the Corporate Debtor including the Debtors Ledger, Books of Accounts, Financial details etc., However, it is stated that the shareholders have failed to comply with the said orders.

6. The applicant submitted that he has filed an application under section 66 of IBC 2016 for the reversion of a sum of Rs.67,79,967/- which was fraudulently diverted one Mr. Kolanchinathan, and Mr. Sathyamurthy, Mr. Balaji Shreedhar, which application is numbered as MA 820/2019, and the same is pending adjudication.

7. It is also stated by the applicant that he has sent various notices to the erstwhile directors, shareholders and also to the Statutory Auditor of the Corporate Debtor to extend their cooperation in providing details of financials and asset for finalization of the statutory audit and for preparing the Information Memorandum, however, all those efforts put forth by the applicant remains to be futile.



8. Thereafter, it is averred that the applicant convened the 4th CoC Meeting on 03.09.2019 wherein the issues relating to the collection of amount from the sundry debtors and the financial information memorandum certain explanation of interest and the valuation of plant and machinery, land and building was discussed at length and in the said meeting, the CoC has also directed the applicant to file an application under section 19(2) of IBC 2016 against the erstwhile Directors and Key Officers and Statutory Auditor of the Corporate Debtor and accordingly, the Applicant filed MA/1066/2019 under section 19(2) of IBC 2016 which is also pending disposal before this Tribunal. In the meantime, it was submitted that the 180 days of the CIRP in relation to the Corporate Debtor came to an end on 01.10.2019 and as such the CoC has unanimously resolved to extend the CIRP for a further period of 150 days and accordingly the applicant herein has filed an application MA/1051/2019 before this Tribunal and this Tribunal vide order dated 03.10.2019 extended the CIRP in relation to the Corporate Debtor for a further period of 150 days with effect from 01.10.2019.

9. It is stated in the application that in the 5th CoC Meeting held on 03.01.2020, the applicant discussed about filing of an application under section 424 of the Companies Act, 2013 seeking for protection



of document from all major sundry debtors of the Corporate Debtor as a last resort to get the account reconciled. The CoC accepted the request of the applicant and accordingly the applicant filed MA/105/2020 before this Tribunal against M/s. BGR Energy Systems Ltd., directing them to remit a sum of Rs.32,50,375/- along with the documents pertaining to the transactions done in relation to the Corporate Debtor for the preceding two years. The Applicant has filed similar applications viz. MA/279/2020 and MA 288/2020 in relation to recovery of dues from other sundry debtors, which are all pending adjudication before this Tribunal.

10. Further in the 5th CoC Meeting which was held on 03.01.2020 a decision in relation to the extension of the CIRP in relation to the Corporate Debtor was also discussed as the 330 days to CIRP was about to end on 20.08.2020. After much discussions and deliberations, the CoC has unanimously resolved to extend the CIRP in relation to the Corporate Debtor for a further period of 90 days with effect from 29.02.2020 and accordingly the applicant filed IA/203/2020 to extend the CIRP in relation to the Corporate Debtor for a further period of 90 days. However, this Tribunal vide order dated 04.03.2020 dismissed the said IA 203/2020 as it could not find exceptional circumstances to extend the CIRP beyond 330 days. As

things stands thus, the applicant in view of dismissal of the application for extension of CIRP period beyond 330 days by this Tribunal, has filed the present application for liquidation of the Corporate Debtor, which has been unanimously resolved by the CoC in its 6th meeting held on 27.02.2020. The applicant herein has also filed his written consent to act as Liquidator of the Corporate Debtor if he is being appointed by this Tribunal as the Liquidator of the Corporate Debtor and as such it has also been stated that no disciplinary proceedings is pending against the applicant by the IBBI or by any Insolvency Professional Agencies. The applicant has also placed on record the Authorisation For Assignment (AFA) issued by the Institute of Insolvency Professionals.

11. In so far as the Liquidation of the Corporate Debtor is concerned, from the facts narrated above, it is seen that this Tribunal vide order dated 04.03.2020 passed in IA/203/2020 has declined to extend the CIRP period beyond the 330 days. At this juncture, it is relevant to refer to Section 33(1)(a) of IBC, 2016, which is extracted hereunder;

33 (1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency



resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

- (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –
 - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
 - (iii) require such order to be sent to the authority with which the corporate debtor is registered.

12. Section 33(1) of IBC, 2016 contemplates that this Tribunal can pass an order of Liquidation of the Corporate Debtor if the maximum period permitted for the completion of the CIRP is over. Admittedly, in the present case, the extension of CIRP period beyond the 330 days period was declined and not granted by this Tribunal and as such by operation of Section 33(1)(a) of IBC, 2016, the Corporate Debtor is necessarily required to be ordered for liquidation as stipulated under 33(1)(b)(i) of IBC, 2016.

13. During the course of submissions, it was brought to the knowledge of this Tribunal that the promoters have submitted a Resolution Plan and till such time the Resolution Plan is considered



this Tribunal should abstain from passing an order of Liquidation. However in the present case, it is to be noted that the 330 days period of CIRP has already expired and the CoC in its 6th meeting held on 27.02.2020 has unanimously resolved to liquidate the Corporate Debtor. Further, even during the Liquidation process, subject to Section 29A of the IBC, 2016 and as per Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, a 90 day time period is provided to submit a Scheme as contemplated under Section 230 of the Companies Act, 2013, and if the Promoter / Director of the Corporate Debtor is otherwise found eligible can very well submit a Scheme for the revival of the Corporate Debtor

14. Thus, in view of the facts and circumstances of the case, this Tribunal hereby order, liquidation of the Corporate Debtor by appointing **PATHUKASAHASRAM RAGHUNATHAN RAMAN**, IBBI Reg. No. IBBI/IPA-002/IP-N00295/2017-18/10896 as the Liquidator of the Corporate Debtor to carryout the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy



(Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.

- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.



- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

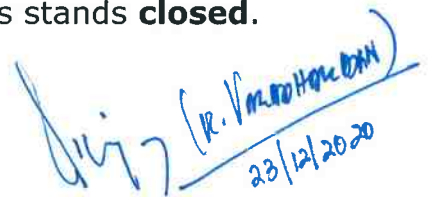


j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

15. The application IA/670/2020 stands **disposed of** with the aforesaid terms. All the connected Applications stands **closed**.



ANIL KUMAR B
MEMBER (TECHNICAL)



R. VARADHARAJAN
MEMBER (JUDICIAL)

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