



తెలంగాణ తెలంగాణ TELANGANA

9077 22-11-19

Sl. No. Dt. Rs.

Sold To: Sanjay Kumar Sharda

No. W/o. D/o. Rameshwar Sharda

For Whom: Self

Swathi 21AA 499145
SWATHI MISHRA
LICENCED STAMP VENDOR
L.No. 16-08-018/2016
RL.No. 16-08-016/2019
H.No. 21-7-779, Near High Court
C/o. Weldon Enterprises
Hyderabad-500002
PH - 9440078910



CERTIFIED COPIES OF THE ORDER IN DATED (13-11-2019)
IA NO. 479/2019 IN CP(IB) NO. 620/9/HDB/2018 IN THE MATTER
OF SMARTEC BUILD SYSTEMS PRIVATE LIMITED.

(NO OF PAGES 11.)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**IA No.479/2019
In
CP (IB) No.620/9/HDB/2018**

In the matter of:- M/s. Smartec Build Systems Private Limited

B.Santosh Babu,
Interim Resolution Professional
M/s Smartec Build Systems Private Limited
R/o H.No.12-2-500/7, Sai Gardens,
Gudimalkapur, Mehdipatnam,
Hyderabad – 500028.

...Applicant/
Interim Resolution Professional

Versus

1. Mr.Syed Masih,
Suspended Director,
M/s. Samrtec Build Systems Private Limited,
8-2/1-2, 2nd Floor, Shiv Shivs House,
Road No.10, Banjara Hills, Hyderabad – 500 034.

...Respondent No.1

2. Mrs.Zeenat Hasmatullah,
Suspended Director,
M/s. Samrtec Build Systems Private Limited,
8-2/1-2, 2nd Floor, Shiv Shivs House,
Road No.10, Banjara Hills, Hyderabad – 500 034.

...Respondent No.2

3. Committee of Creditors,
M/s.Smartec Build Systems Private Limited,
Represented by Bank of Baroda, Boinpally Branch,
Manovikas nagar,
Secunderabad – 500 003.

...Respondent No.3

4. Mr.Vivek Bansal
R/o: #11-6-27, Shop No 3,
Sunsip Compound, Balanagar,
Hyderabad – 500037.

...Operational Creditor/
Respondent No.4



[Handwritten signature]
13/11

[Handwritten mark]

IA No.540/2019
In
CP (IB) No.620/9/HDB/2018

In the matter of:- M/s. Smartec Build Systems Private Limited

B.Santosh Babu,
Interim Resolution Professional
M/s Smartec Build Systems Private Limited
R/o H.No.12-2-500/7, Sai Gardens,
Gudimalkapur, Mehdipatnam,
Hyderabad – 500028.

...Applicant/
Interim Resolution Professional

Versus

1. Committee of Creditors,
M/s.Smartec Build Systems Private Limited,
Represented by Bank of Baroda, Boinpally Branch,
Manovikas nagar,
Secunderabad – 500 003.

...Respondent No.1

2. Mr.Syed Masih,
Suspended Director,
M/s. Samrtec Build Systems Private Limited,
8-2/1-2, 2nd Floor, Shiv Shivs House,
Road No.10, Banjara Hills, Hyderabad – 500 034.

...Respondent No.2

3. Mrs.Zeenat Hasmatullah,
Suspended Director,
M/s. Samrtec Build Systems Private Limited,
8-2/1-2, 2nd Floor, Shiv Shivs House,
Road No.10, Banjara Hills, Hyderabad – 500 034.

...Respondent No.3

4. Mr.Vivek Bansal
R/o: #11-6-27, Shop No 3,
Sunsip Compound, Balanagar,
Hyderabad – 500037.

...Operational Creditor/
Respondent No.4


Amrta
13/4

4/

Order pronounced on: 13.11.2019

**Coram: Shri K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL
Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL**

Parties/Counsel Present:-

For the Applicant:

Mr. B. Santosh Babu, IRP along with Mr. K. Ram Murthy, Advocate

For the Committee of Creditors:

Mr. Srinivas Chitturu, Advocate

Per: Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL

COMMON ORDER

1. The present Application bearing IA No.479/2019 & IA No.540/2019 are filed on same set of facts by the Resolution Professional. Therefore, same are disposed by way of this common order.
2. IA No.479/2019 in CP(IB)No.620/9/HDB/2018 is filed by Interim Resolution Professional U/s. 33 of the IB Code, 2016 inter-alia praying to pass an order of Liquidation against the Corporate Debtor herein and appoint him as a Liquidator.
3. IA No.540/2019 in CP(IB)No.620/9/HDB/2019 is filed praying to direct the payment of the fee & expenses to the IRP and issue other such orders/directions as the Adjudicating Authority may deem fit and proper in facts and circumstances of the case.
4. Brief facts as stated in Application bearing IA No.479/2019 are as under:
 - A. This Adjudicating Authority vide its order dated 29.03.2019 admitted the CP(IB)No.620/9/HDB/2018 under Section 9 of the I & B Code, 2016, filed by Shri Vivek Bansal, Prop. Shri Sai



2019

4/

Steel Traders (**Operational Creditor**), for initiating CIRP for Smartec Build System Private Limited (**Corporate Debtor**) under the provisions of I & B Code, 2016 and appointed the Applicant as the Interim Resolution Professional.

- B. That Resolution Professional has received One claim from the Financial Creditor i.e., Bank of Baroda. IRP has received Two claims from the Operational Creditors i.e., Vivek Bansal Prop. Shri Sai Steel Traders and VXL Steels.
- C. On 21.04.2019, the IRP has sent the notice and agenda of the first meeting of the CoC (to be held on 26.04.2019) to the respective members of the CoC.
- D. The CoC in its 1st Meeting did not ratify the agenda put forth in the Notice and deferred the Agenda for appointment of Resolution Professional to Second meeting.
- E. That on 01.05.2019, the IRP has sent the notice and agenda of the 2nd meeting of the CoC (to be held on 06.05.2019) to the respective members of the CoC. In the 2nd meeting of CoC which was held on 06.05.2019, the representative of the Financial Creditor i.e., Bank of Baroda stated that considering the circumstances of the case and due to non-cooperation of the Suspended Directors of the Corporate Debtor, the present position of the fixed assets of the Corporate Debtor are not ascertainable and the Company's Unit being closed, the Financial Creditor is of the view that it is not worthwhile for the Bank to continue CIRP and Financial Creditor prefers liquidation of the Corporate Debtor.
- F. Accordingly the Committee of Creditors:



Abd
13/11

✓

“RESOLVED to recommend to the Adjudicating Authority for liquidation of the Corporate Debtor with 100% voting share. Further RESOLVED that the IRP shall continue and discharge the functions of the Resolution Professional on the terms of appointment made by Operational Creditor, i.e., Fee of Rs.1.50 lakhs per month + Out of pocket expenses shall be payable to the IRP, till the Hon’ble Adjudicating Authority passes appropriate orders on the matter, with 100% voting share.

The IRP further made a submission to the Committee that he is not willing to act as liquidator in the case and he requested that the Financial Creditor may file the Petition with the recommendation for liquidation of the Corporate Debtor before the Adjudicating Authority.

After discussion, the Committee **FURTHER RESOLVED** to authorise the IRP to file the petition intimating the Adjudicating Authority of the decision of CoC for liquidation of the Corporate Debtor, with 100% voting share. The expenses to be incurred in connection with filing and representation shall be re-imbursed by the Bank of Baroda.”

5. It is stated that on 07.05.2019 the IRP received a letter from the Financial Creditor through email reiterating the decision to liquidate the Corporate Debtor.
6. That the instant application is made in pursuance of Section 33(2) of IBC, 2016 whereas the Committee of Creditors with 100% voting rights resolved to liquidate the Corporate Debtor before the confirmation of Resolution Plan as referred to in sub-clause (i), (ii) and (iii) of clause (b) of section 33(1).



[Handwritten signature]

[Handwritten mark]

7. Brief facts as stated in IA No.540/2019 are as under:

- i. The Applicant in IA No.540/2019 reiterated the facts as mentioned in IA No.479/2019 and further stated that the Applicant has been incurring expenses in carrying out the present CIRP since his appointment as the IRP by this Adjudicating Authority and the fee is received only for the first one month from the Operational Creditor.
- ii. The following amount of Fee and expenses incurred by IRP are still to be received:

Expenses Incurred	Amount in Rs.
IRP Fees (including the IPE):	
From 29 th April, 2019 till 28 th May, 2019	1,50,000
From 29 th May, 2019 till 23 rd June, 2019	1,15,000
Reimbursement of conveyance expenses, other assistance in filings before NCLT with help of legal counsel, COC meeting expenses etc.	15,952
Total	2,80,952

iii. Accordingly, a sum of Rs.2,80,952 is payable to the IRP towards fee & expenses till date (up to 23.06.2019), in addition to the fee & Expenses payable till the orders of the Adjudicating Authority on the Application filed for liquidation of CD.

- iv. It is stated that the IRP is apprehensive that the expenses incurred or likely to be incurred in future during this CIRP Process will not be recovered.

8. Bank of Baroda/Financial Creditor filed its counter in IA No. 540/2019 inter-alia stating as under:

- A. That as per Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Applicant





shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies. It is further submitted that amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

- B. That the Respondent CoC has never agreed for the appointment of the Petitioner as RP nor ratified amounts of expenses.
- C. That as per Regulation 33 the expenses are to be paid by the Applicant/Operational Creditor i.e., the Respondent No.4 herein and in the circumstances the Petition seeking for directions against the Financial Creditor this Respondent who is not an Applicant is misconceived.

9. Heard both sides and perused the records.

10. In view of the facts and circumstances recorded by IRP in IA No.479/2019 & 540/2019 filed in CP(IB) No. 620/9/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30. Further Section 33(2) as amended by the IBC Amendment Act, 2019, stipulates as under:



Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 2 [approved by not less than sixty-six percent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and

13/11

4

before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

11. In the instant case, the CoC in their second CoC meeting held on 06.05.2019, unanimously resolved to liquidate the Corporate Debtor and authorized the IRP to intimate this Adjudicating Authority as to their decision to liquidate the Corporate Debtor with 100% voting share. Therefore, in view of provisions of Section 33(2) and in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—

- (i) This Adjudicating Authority hereby order for Liquidation of M/s. Smartec Build Systems Private Limited , which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- (ii) Moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;
- (iii) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- (iv) We make it clear that para (iii) hereinabove shall not apply to legal proceedings in relation to such transactions as



13/11

4

notified by the Central Government in consultation with any financial sector regulator.

- (v) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.
- (vi) All the 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 in the Company Liquidator appointed by this Adjudicating Authority. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (vii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (viii) The Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation Estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fees for conducting the Liquidation proceedings shall be paid



[Handwritten signature]
13/11

[Handwritten mark]

to the Company Liquidator from the proceeds of the Liquidation Estate.

- (ix) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor for information and compliance.
- (x) As the CoC has not resolved to appoint the Resolution Professional as the Liquidator and even the RP has not filed his consent to act as Liquidator, therefore, this Adjudicating Authority, requests the IBBI to suggest the name of a registered Insolvency Professional to be appointed as the Liquidator in this case. The Registry is directed to furnish a copy of this order to IBBI.

12. With regard to the payment of fees of IRP, according to Regulation 33, the Financial Creditor is duty bound to make payment of the IRP's fees and other expenses to the extent ratified by the CoC. It is clear from the unanimous resolution of CoC dated 06.05.2019, that they have not only resolved to continue the IRP as RP but have also resolved that he shall continue and discharge the functions of RP on the terms of appointment made by Operational Creditor i.e., Fees of Rs. 1.50 Lakh per month + out of pocket expenses incurred till the passing of appropriate orders by this Adjudicating Authority. Thus, the CoC has ratified the fees and other expenses payable to the IRP by an unanimous resolution. In these circumstances, this Adjudicating Authority deems it fit to direct the CoC to make payment of fees and expenses of IRP, which shall form part of the CIRP cost.



[Signature]
13/11

[Handwritten mark]

13. Put up the matter on 19.11.2019 for appointment of Liquidator.

Binod
13.11.19

Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL

SKRathi/Alekhya

K. Anantha

K. ANANTHA PADMANABAHA SWAMY
MEMBER JUDICIAL



[Signature]
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

Case No... *CP(IB) No 620/9/HDB/2018*
Date of Application... *28/11/19*
No. of Pages... *11*
Copying Fee Rs... *5/-*
Registration & Postage Fee... *—*
Total Rs... *350/-*
Date of Receipt & Record of Copy... *28/11/19*
Date of Preparation of Copy... *2/12/19*
Date of Delivery of Copy... *2/12/19*