

**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)

Certified True Copy
Copy Issued "free of cost"
On 04/03/2024


Joint Registrar
National Company Law Tribunal Mumbai Bench



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

M.A. No. 3780 of 2019

In

C.P. No. 587/IB/2018

Under Section (60) 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. 3780/2019

M/s. Arth Rural Connect Services Pvt.
Ltd. & Anr. ... Applicants

V/s.
Mr. Santanu Ray & Ors.
... Respondents

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 : Adv. Gautam Singhal, Advocate
For the Respondent : Mr. Rohit Gupta, a/w. Ms. Rubina Khan,
Advocates

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. This is an application filed by the sole Resolution Applicant namely M/s. Arth Rural Connect Services Pvt. Ltd., seeking certain directions to R-1 and 2 to consider and accept the Revised Resolution plan dated 13.11.2019, hence this application under Section 60 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 praying following reliefs:

- a. To set aside all the actions of the respondents taken in the meeting of the CoC dated 13.011.2019 and consequently direct the CoC and the RP to



duly consider and accept the Resolution plan submitted by the Applicants on 13.11.2019;

- b. To set aside the decision of the CoC liquidating the Corporate Debtor;*
- c. To extend the CIRP period by 90 days from 19.11.2019.”*

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 an 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 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 further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 26.09.2019 in "Financial Express" in English all India edition and "Navshakti" in Marathi in Mumbai edition. The last date for submission of Expression of Interest was 11.10.2019.
4. The Applicant submits that in response to the publication in Form G, the Applicant jointly submitted the Expression of Interest expressing their interest in submitting a plan for the revival of the Corporate Debtor. Thereafter, the prospective resolution applicant was provided with the information, evaluation matrix and other necessary documents and given time to submit Resolution plan.
5. The Applicant further submitted that the detailed Resolution plan dated 08.11.2019 was submitted before the member of CoC. The total value of the Resolution plan was INR 12 Crores. However, the Resolution applicant was advised that the plan was below the realisable value and it cannot be accepted unless it is revised, though the Resolution



professional has failed to disclose the fair and the liquidation value to the Resolution Applicant. It was advised to the Resolution Applicant that the plan should include the payment to Respondent No. 3 and in priority to the financial creditors. The Resolution Applicant responded to this issue and explained to the CoC that as the claim of Respondent No. 3 relates to the period of 2016 and her claim fall in the category of the Employees, and as the Resolution Applicant assumes that the realizable value of the Corporate Debtor in liquidation is not enough so she will not get any share under section 53 of Insolvency and Bankruptcy Code, 2016. The CoC requested the Applicant to bring the revised proposal and present the same in the 9th CoC meeting which was held on 13.11.2019.

6. The Resolution Applicant submits that the revised resolution plan proposed to infuse INR. 15 Crores in the corporate Debtor which is expected to be more than the liquidation value of the Corporate Debtor. The Resolution Applicant in their revised resolution plan has modified the repayment mechanism to the Respondent No. 2 and also included the mechanism to repay some amount to the Respondent No. 3 along with other operational creditors. The Resolution Applicant also proposed to settle the liabilities of the Corporate Debtor which has remained outstanding as on the Insolvency commencement date.
7. The Resolution applicant submits that the Resolution plan which was submitted by them was not considered by the CoC in the 9th CoC meeting held on 13.11.2019, having no other alternative and efficacious remedy, hence this application.
8. The Respondent CoC (Axis Bank) sole member of CoC has filed Affidavit in reply to this Application stating therein that the Respondent CoC Axis Bank Ltd. is major shareholder of the corporate debtor holding 96.31% share in the CoC. The Applicant by virtue of the present application are adopting the modus operandi to pressurise the respondents to accept the Resolution plan proposed by the Applicants. The outstanding liability/ debt of the Corporate Debtor as on initiation of CIRP process is approximately Rs. 27.19 crores and the total net worth of the Applicants is approximately Rs. 17.77 Crores. Therefore, the plan proposed by the Resolution Applicant was not accepted by the CoC



9. The Respondents further states in their reply that the Applicant has proposed to infuse a total sum of Rs. 15 Crores, of which, the instant payment is only for a meagre sum of Rs. 60 Lakhs and the balance outstanding amount shall be paid in four instalments within a period of 18 months, with 7% p.a. interest and 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) 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.
10. The Respondent CoC also submits that the Applicant has no locus standi to seek the said relief as the decision for extension of CIRP period beyond the period of 270 days lies solely with the CoC. Thereafter in the 9th CoC meeting the financial offer was increased from Rs. 12 Crores to RS. 15 Crores, however the Resolution Applicant propose to infuse the Rs. 15 Crores (of which Rs. 6 Crores by way of issue of Equity Share to unsecured creditors), with this revised modified financial offer, the members of CoC opined that the Resolution Applicant has not met their expectation. The Resolution Professional had already pointed out that as per Section 53(1)(c) of the code, wages and any unpaid dues owed to employees rank higher than other creditors and will have to be paid after the sole secured creditor Axis Bank is paid, however the revised financial offer made by the Resolution Applicant does not provide the amount which is equivalent to one year's salary dues of the Employee and is not in compliance to the provisions of the Code.
11. In the light of Judgement of the Hon'ble Supreme Court, in Committee of Creditors of **Essar Steel Ltd. V/s. Satish Kumar Gupta and others**, the Hon'ble Supreme Court disagreed and ruled on the jurisdiction of the NCLT and NCLAT to decide resolution plan approved by the CoC. Relying on Section 30(4) of the code and regulation 39(3) of the Insolvency Resolution process Regulations, 2016 the court held that the code accorded supremacy to the CoC's commercial wisdom.



12. In **K. Shashidhar case**, the Hon'ble Supreme Court upheld the supremacy of the commercial wisdom of CoC, free from judicial intervention. The decision of CoC would be based on the "feasibility and viability" of a Resolution plan which would take into account all aspects including the manner of distribution of funds to various class of creditor. It will be assumed that the financial creditor as member of CoC were fully informed about the viability of the Corporate Debtor and the feasibility of the proposed Resolution Plan. The CoC would show its commercial wisdom through its majority vote to approve or reject the plan. The court further held that the NCLT does not have the authority to analyse or evaluate the commercial decisions of the CoC and cannot enquire into the fairness of the decision. The enquiry by the NCLT is primarily limited by section 30(2) of the code to ensure priority in payment of the insolvency resolution process costs, payment to operational creditor. Further, the NCLT cannot decide, whether the CoC was correct to reject a resolution plan.
13. Basing on the above two judgments and the documents placed on record for perusal, we are of the considered view that the present Miscellaneous Application No. 3780 of 2019 filed by Resolution Applicant is misconceived and does not bear any merit and hence the same deserves to be rejected.
14. Accordingly, the above MA No. 3780/2019 is dismissed.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

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

Certified True Copy
Copy Issued "free of cost"
On 04/03/2024

Joint Registrar
National Company Law Tribunal Mumbai Bench

