

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

IA No. 2712/2020 is filed by Mr. Parivartan Singh (hereinafter referred as 'Applicant') against Ms. Deepika Bhugra Prasad, the Resolution Professional of the Corporate Debtor i.e., Parivartan Buildtech Pvt. Ltd. (hereinafter referred as 'Respondent').

2. The aforesaid Application No. IA 2712 of 2020 is filed as an objection to the Liquidation Application. The prayers made in the IA 2712 are reproduced below :

- "A. Stay the present and future sale proceedings of any asset of the Corporate Debtor by the Resolution Professional.*
- B. Direct the Resolution Professional to correctly calculate the Liquidation Value of the Corporate Debtor & Resolution Plan to be put to re-voting."*

3. Facts of the case, in nutshell, are that the Financial Creditor, M/s Banyan Tree Developers Pvt. Ltd. has filed an Application bearing No. (IB)-299(ND)/2019 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Parivartan Buildtech Pvt. Ltd. The said Application was admitted by this Tribunal vide its Order dated 14.05.2019 and Ms. Anjali Sharma was appointed as IRP.

4. That subsequently, the CoC had preferred an application for replacement of IRP Ms. Anjali Sharma with Ms. Deepika Bhurga Prasad as RP. That this Tribunal vide Order dated 12.07.2019 had confirmed the appointment of Ms. Deepika Bhurga Prasad as Resolution Professional.

5. Reportedly, the CIR Process has already expired on 09.01.2020 and the Resolution Plan, which was put to vote before the CoC, was rejected by 61.3 % Votes.

6. That the Applicant has filed an Additional Affidavit dated 27.07.2020 for bringing additional facts to the knowledge of this Bench. It is submitted by the Applicant that Ms. Deepika Bhurga Prasad of M/s AAA Insolvency Professional LLP (hereinafter referred as the AAAIP) was appointed as Interim Resolution Professional on 12.07.2019. As a result of this, the third meeting of COC held on 13.08.2019 was convened by the AAAIP and attended by several of its members. Vide Resolution No. 2 of the third COC meeting dated 13.08.2019, it was decided that out of the fee of Rs. 10 Lakhs of the Resolution Professional, 60% will be paid to the AAAIP.

7. It is further submitted by the Applicant that that despite the fact that liquidation orders of the corporate Debtor are yet to be passed, the AAAIP have already started liquidating assets of the Corporate Debtor.

8. It is added by the Applicant that the AAAIP has already put up an advertisement for a property of the Corporate Debtor for sale on the 99Acers.com for a value of Rs. 3.25 Crore.

9. It is further added by the Applicant that the AAAIP has been selling the assets of the Corporate Debtor through its sister concern namely M/s AAA Capital Services Pvt. Ltd. (hereinafter referred as the AAACS). The Applicant further submitted that a closer scrutiny of the AAAIP and the AAACS depicts that both the companies have the same management and are being operated from the same address.

10. That the Respondent RP has filed his reply to the Affidavit filed by the Applicant and submitted that that the "AAAIP" is an Insolvency Professional Entity, in which the RP is a Partner.

11. It is further submitted by the Respondent that that the AAAIP has been providing support services to the RP, while conducting the CIRP of the Corporate Debtor, which has been duly approved by the CoC as per the applicable regulations prescribed by the IBBI.

12. It is stated by the Respondent that the AAACS is a sister concern of the AAAIP. It is further stated by him that the advertisement put up by the RP on 99acres.com was only for the purpose of lead generation and it was done through AAAIP.

13. It is further submitted by the Respondent that the AAACS has taken the paid membership in 99acres.com. He added the AAAIP utilized the same membership for advertisement in order to save on costs and avoid unnecessary burden of such marketing expenses on the Corporate Debtor. It is further submitted that the charges paid by the AAACS for the advertisement has not been included in the CIRP cost.



14. That during the Course of hearing it was submitted by the Ld. Counsel appearing for the Respondent that no assets of the corporate Debtor has been sold and such an advertisement was put up to check the market response and gauge an idea of the expected value of the asset of the Corporate Debtor.

15. Since no sale of any of the assets of the corporate Debtor has taken place as confirmed by the Respondent, there is no question of putting stay on the sale proceedings of any asset of the Corporate Debtor by the Resolution Professional as prayed by the Applicant in Clause A.

16. As regards the prayer made by the Applicant at Clause B it is noted that the CIR Process has already expired on 09.01.2020 and no resolution plan has been placed before this Adjudicating Authority. That Section 33 of IBC 2016 makes it mandatory for this Adjudicating Authority to pass an order of Liquidation in case the Resolution Plan is not received in terms of Section 30(6) of IBC 2016. The contents of Section 33 of IBC 2016 are reproduced below :

“33. Initiation of liquidation :

(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;”

17. Hence, prayer at Clause B is not maintainable at this stage.

18. However, taking note of the objections made by the Applicant, this Bench directs the Respondent to not to take any assistance of the AAACS or any other firm related to Respondent for either disposal or any other transaction of any of the assets of the Corporate Debtor.

19. The I.A. 2712/2020 is accordingly disposed of.



(L. N. Gupta)
Member (T)



(Ch. Mohd Sharief Tariq)
Member (J)

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This is an application filed by Ms. Deepika Bhugra Prasad, the Resolution Professional of M/s Parivartan Buildtech Pvt. Ltd. under Sections 33(1)(b) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for seeking the following main reliefs:

- "i. Order requiring the Parivartan Buildtech Private Limited, having CIN: U45204DL2013PTC260321 to be liquidated in the manner as laid down in Chapter III of the Insolvency & Bankruptcy Code, 2016.*
- ii. Appoint the Applicant Deepika Bhugra Prasad may be appointed as the Liquidator in the liquidation of M/s Parivartan Buildtech Private Limited."*

2. Succinctly put, facts of the case are that the Financial Creditor, M/s Banyan Tree Developers Pvt. Ltd. has filed an Application bearing No. (IB)-299(ND)/2019 under Section 9 of the Code for Initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Parivartan Buildtech Pvt. Ltd. The said Application was admitted by this Tribunal vide its Order dated 14.05.2019 and Ms. Anjali Sharma was appointed as the Interim Resolution Professional (IRP).



3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a Public Announcement in Form-A, which was published in the newspapers namely, the Financial Express (English), Raj Express Jabalpur, Raj Express Bhopal and Jansatta (Hindi) on 24.05.2019. The Public Announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted a Committee of Creditors (CoC), which comprised of the ICICI Bank Ltd., Kotak Mahindra Bank Ltd., Tata Capital Financial Services Ltd., Bank of Maharashtra, Oxyzo Financial Services, Small Finance Bank and Tomar Construction Company.

5. That on an application filed by the CoC for replacement of IRP Ms. Anjali Sharma with Ms. Deepika Bhugra Prasad as Resolution Professional, this Tribunal vide Order dated 12.07.2019 confirmed the appointment of Ms. Deepika Bhugra Prasad as the Resolution Professional.

6. It is submitted by the Ld. RP in his application that :

“8 That the Applicant invited EOI from the prospective Resolution Applicants for submission of the Resolution Plan on August 27th, 2019, wherein three expression of interests namely M/s Gawar Construction Limited (PRA), Mr. Parivartan Singh (promoter of the Corporate Debtor) and M/s

LibGem Solutions were received. The detailed EOI was shared with the Prospective Resolution Applicant on September 10, 2019. Subsequently M/s Gawar Construction Limited deposited the prescribed Earnest Money Deposit of Rupees 2 Lakhs to the account of Corporate Debtor on September 11, 2019 along with an undertaking under Section 29A of Insolvency and Bankruptcy Code, 2016.”

7. It is submitted by the RP that M/s Gawar Construction Limited had submitted a Resolution Plan on 02.01.2020, which was presented before the COC in its 8th Meeting held on 03.01.2020 for deliberation by the Members. The following Resolution vide Agenda Item-D (Resolution 1) was put to vote before the COC :

“RESOLVE THAT *the Resolution Plan submitted by M/s Gawar Construction Limited dated 06.01.2020 (attached with this minutes) be and is hereby approved in the matter of Parivartan Buildtech Private Limited.”*

“RESOLVE FURTHER THAT *the Resolution Professional is authorised to submit the application to Hon’ble NCLT, Delhi for submission of resolution plan submitted by M/s Gawar Construction Limited under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 read with regulations 39(4) of the Insolvency and Bankruptcy board of India (Insolvency Resolution Process of Corporate Debtor) Regulations, 2016 for approval of resolution plan by adjudicating authority as approved by committee of creditors to Hon’ble NCLT, Delhi.”*



8. It is stated by the RP that the Resolution Plan was rejected in the 8th Meeting of COC through E-voting held on Jan 7-8, 2020 with 61.3% of voting against the Resolution. The offer of the Resolution Applicant was not considered by the CoC as the 'offer' valuing Rs.1147.50 Lakhs was lower than the Liquidation value of the Corporate Debtor which is Rs.1273.09 Lakhs. Further, the offer was not compliant with the requirements set out in the Code. Therefore, the CoC in its meeting held on 13.11.2019 followed by E-voting on 29.11.2019 decided to liquidate the Corporate Debtor and appoint the Applicant as the Liquidator.

9. That the RP has also filed his written consent on 15.01.2020 to act as Liquidator as required under Section 34(1) of IBC 2016.

10. In the circumstances and in the absence of any other alternative, this Bench is inclined to Order Liquidation of the Corporate Debtor.

11. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s Parivartan Buildtech Pvt. Ltd. in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a. Ms. Deepika Bhugra Prasad, having IBBI Registration No. IBBI/IPA-003/IP-N000110/2017-18/11186, is appointed as Liquidator, who has given her written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016.



- b. The Liquidator, is directed to issue public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect from the date of pronouncement of this order and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- f. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- g. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and



Liquidator Ms. Deepika Bhugra Prasad at the earliest but not later than seven days from today.

- h. A copy of this Order be also sent to the ROC concerned. On receiving the copy of this Order, the ROC concerned will update the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days.
- i. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

12. I.A. 638/CII/ND/2020 filed in IB-299(ND)/2019 is disposed of in the aforesaid terms.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Ch. Mohd. Sharief Tariq)
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT-II

Item No. 101
(IB)- 299(ND)2019
C.A No.638/CII/ND/2020 C.A No.2712/CII/ND/2020

IN THE MATTER OF:

M/s. Banyan Tree Developers Pvt. Ltd.

... Applicant/Petitioner

Vs.

M/s. Parivartan Buildtech Pvt. Ltd.

... Respondent

Under Section: 9 of IBC, 2016

Order delivered on 17.08.2020

CORAM:

**SHRI. CH. MOHD.SHARIEF TARIQ,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT: Counsel for the applicant

ORDER

Counsel for the applicant is present. Order is pronounced.

— Sd —

**(L. N. GUPTA)
MEMBER (T)**

— Sd —

**(CH. MOHD.SHARIEF TARIQ)
MEMBER (J)**