

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.598 of 2019 in
C.P. (IB)No.48/BB/2018
U/s 33(2) of the IBC, 2016
R/w Regulation 32(e) or 32(f) of the IBBI
(Liquidation Process) Regulations, 2016

In the matter of:

Shri Vinod Sunder Raman

*Interim Resolution Professional of
M/s. Pranee Infrastructures Private Limited*

No.318, 19th Main, 41st Cross,
5th Block, HBR Layout,
Bengaluru – 560 043

- Applicant/IRP

Date of Order: 20th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

Interim Resolution Professional : Shri Vinod Sunder Raman

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.598 of 2019 in C.P.(IB)No.48/BB/2018 is filed by Shri Vinod Sunder Raman, Interim Resolution Professional of M/s. Pranee Infrastructures Private Limited (hereinafter referred to as 'Applicant') U/s 33(2) of the IBC, 2016, R/w Regulation 32 (e) or 32 (f) of the IBBI (Liquidation Process) Regulations, 2016, by inter-alia seeking to appoint Interim Resolution Professional to act as Liquidator to liquidate the Corporate Debtor i.e. M/s. Pranee Infrastructures Private Limited as recommended by the CoC.


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2. Brief facts of the case as mentioned in the Application, which are relevant to the issue in question, are as follows:

- (1) The main Company Petition was filed by M/s. Vishwas Concrete Private Limited (Petitioner/Operational Creditor) U/s. 9 of the IBC, 2016 R/w Rule 6 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate CIRP in respect of M/s. Prance Infrastructure Private Limited (Respondent/Corporate Debtor) on ground that it has committed default for an amount of Rs.17,56,500/-. After considering the issue, the Adjudicating Authority has admitted the Company Petition vide order dated 16.07.2019, by initiating CIRP in respect of the Respondent/Corporate Debtor, appointing Shri Vinod Sunder Raman as IRP, imposing moratorium etc.
- (2) Pursuant to the above Order, claims were invited by the IRP by way of issue of a Public Announcement in the Financial Express and the Vijaya Vani newspapers both published on 26th July, 2019. The IRP received two claims in the prescribed Form C as mandated under Regulation 8 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 from two Financial Creditors viz., City Union Bank Limited and UCO Bank respectively and the same upon scrutiny by the IRP were admitted for amounts of Rs.9,74,25,466/- (in the case of City Union Bank Limited) and Rs.4,81,54,848/- (in the case of UCO Bank) respectively.
- (3) It is stated that the CoC was also duly constituted after collation of all claims received by the IRP. The constituent members of the CoC comprise of Financial Creditors as defined in Section 5(7) of the Code. The names of the members of the CoC and their respective voting shares are as specified hereinafter:

Sl. No.	Name of the member of the CoC	% Voting

1.	City Union Bank Limited, through their authorized representative	66.92%
2.	UCO Bank, through their authorized representative	33.08%
	Total	100%

- (4) It is submitted that in addition to the claims from the aforementioned Financial Creditors and Operational Creditors as specified in the List of Creditors as filed under cover of a Memo dated August 8, 2019 before this Tribunal, the IRP also received claims after the last date appointed for submission of claims as specified in the aforementioned Public Announcement i.e. August 06, 2019 and the date subsequent to filing of the aforesaid list of Creditors also has received separate claims from other Operational Creditors including the Applicant of CIRP in addition to those as specified in the aforementioned List of Creditors.
- (5) It is submitted that the IRP has inspected the Registered Office of the Corporate Debtor situated at Property No.235/1, J.K.R.Towers, 3rd Floor, Above Manipal Nursing Home, Ramamurthy Nagar Main Road, Bangalore – 560 016 on July 29, 2019. During the inspection of the Registered Office premises the IRP also met and apprised Mr. Kalla Venkateswaralu, a Promoter and Director of the suspended Board of Directors of the Corporate Debtor on the institution of the CIRP and instructed him to take available all the records with regard to the business and affairs of the Corporate Debtor to the IRP for examination.
- (6) As per the information made available to the IRP by the Corporate Debtor and the Financial Creditors, currently the revenue of the Corporate Debtor is only garnered from the execution of works awarded to the Corporate Debtor by the Department of Space, Indian Space Research Organisation



vide its Work Order bearing reference number CMG/ISRO-HQ/C/237/Barrack/Qrts/17 to construct Family Accommodation (G+8) for CISF at DOS Housing Colony, Jalahalli, Bangalore.

- (7) It is further submitted that on conducting a public inspection of the public electronic records of the Corporate Debtor vis-à-vis statutory filings as warranted under the erstwhile Companies Act, 1956 or the now prevailing Companies Act, 2013 from the online portal viz. MCA21 of the Ministry of Corporate Affairs, Government of India, it is evident that the records of the Corporate Debtor, financial or otherwise relating to the period commencing after 2016 to till date are not available since the Corporate Debtor has defaulted in complying with the provisions of the Companies Act in so far as filing of the mandated e-forms under the relevant provisions of the Companies Act. It is noted that the Promoter/Directors of the Corporate Debtor have not maintained proper books of account or fixed asset register or other records for the period commencing after 2016. In the absence of partial records available pertaining to the recent periods as enunciated in the foregoing for examination the task of ascertaining the financial position and the state of affairs of the business of the Corporate Debtor as on a latest practicable date was rendered improbable.
- (8) It is stated that the first meeting of the CoC, held on August 21, 2018 the CoC initiated preliminary discussions on commencing liquidation of the Corporate Debtor pursuant to Section 33(2) of the Code. The CoC was informed by the IRP that the books of accounts of the Corporate Debtor were not yet made available and the assets and liability position of the Corporate Debtor could not be discerned by reason of



absence of any supporting documentation. Further, the CoC members informed the IRP that the Corporate Debtor's assets were limited to the two immovable properties (villas) under construction each such immovable property being subject to mortgage in favour of the committee members viz. City Union Bank Ltd., and UCO Bank respectively, and also receivables etc. of the project being implemented for ISRO. At the first meeting of the CoC held on August 21, 2019, the CoC did not ratify any expenses incurred by the Applicant of CIRP on the IRP fees or the newspaper advertisement cost; the CoC did not appoint any Resolution Professional and decided to liquidate the Corporate Debtor under Section 33(2) of the Code and passed a resolution for the same unanimously.

- (9) It is submitted that since no prior notice of the intent of the CoC members proposing liquidation of the Corporate Debtor was provided to the IRP prior to the first meeting of the CoC as specified in the foregoing, the IRP convened the 2nd meeting of the Committee of Creditors on August 28, 2019 to enable the CoC to consider and decide on various material items to be considered by the CoC pursuant to the CIRP Regulations, in view of its decision to liquidate the Corporate Debtor as approved at its first meeting.
- (10) The Committee of Creditors at its second meeting discussed and unanimously accorded its approval on the following items consequent upon its approval to liquidate the Corporate Debtor:
- i. To appoint Mr. Vinod Sunder Raman bearing Reg. No. IBBI/IPA-002/IP-N00075/2017-2018/10206 as the liquidator and fixed his remuneration.
 - ii. Pursuant to Regulation 39B (1) of the CIRP Regulations the CoC in consultation with the IRP determined that the



'best estimate' of amount required to meet liquidation cost, in the event an order for liquidation is passed under Section 33 of the Code is Rs.1,30,000/- including the liquidator's remuneration.

iii. Pursuant to Regulation 39C(1) of the CIRP Regulations, the CoC also arrived at an assessment that the Corporate Debtor cannot be sold as a going concern since the Corporate Debtor has no assets and the other assets are mortgaged and hypothecated to the respective Financial Creditors.

- (11) Mr. Kalla Venkateswarlu, at the 2nd meeting of the CoC held on August 28, 2018 submitted a letter stating that the Corporate Debtor was an MSME and as promoter, he intends to submit a resolution/revival plan. The IRP replied to this letter on September 3, 2019 stating that in view of the decision of the CoC at its first meeting, question of submitting revival plan does not arise, since the CoC has already decided to liquidate the Corporate Debtor.
- (12) Thereafter, another letter stating that the vendor of the Corporate Debtor had deployed labour for completing the ISRO project and asking funds to be arranged for payments. The IRP replied to this letter on September 3, 2019 stating that in view of the decision of the CoC at its first meeting, question of releasing payments did not arise, since the CoC has already decided to liquidate the Corporate Debtor. It is also noted that complete books of account of the Corporate Debtor are yet to be made available to the IRP. Vide email dated October 21, 2019 Mr. K. Venkateswarlu provided back up of 'Tally' which has books of account from April 1, 2018. No books of account or other records for period prior to that have been provided yet to the IRP.



- (13) It is further submitted that the resolution passed by the CoC at its meeting held on October 14, 2019 is reproduced verbatim below for immediate reference.

*"In supersession of the Resolution passed by the Committee of Creditors on August 21, 2019 and August 28, 2019, **RESOLVED** that, pursuant to Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions, if any, approval of the Committee of Creditors be and is hereby accorded for the liquidation of the Corporate Debtor, Pranee Infrastructure Private Limited, as a going concern.*

*Further **RESOLVED** that in terms of Regulation 39C(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the CIRP Regulations), the Committee hereby recommends that the liquidator first explore the sale of the Corporate Debtor as a going concern under clause (e) of Regulation 32 or under clause (f) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the 'Liquidation Regulations') if an order for liquidation is passed under Section 33.*

*Further, **RESOLVED** that in terms of Regulation 39C(2) of the CIRP Regulations, the Committee of Creditors hereby identifies the following assets and liabilities, which according to the Committee's commercial considerations ought to be sold as a going concern:*

Assets: All assets of the Company, except the two villas – i.e. all those assets attributable to the ISRO project currently in progress.

(Currently City Union Bank has exclusive charge on the receivables from the ISRO Project)



Liabilities: All liabilities of the Company (except the housing loan outstanding to UCO Bank and City Union Bank) i.e., all those liabilities attributable to the ISRO project.

*Further **RESOLVED** that the Committee hereby authorise Mr. Vinod Sunder Raman, Interim Resolution Professional to make necessary applications to the Tribunal for approval of the liquidation of the Corporate Debtor as a going concern, and hereby directs him to submit the recommendation of the Committee as above while filing for such approval with the NCLT and hereby authorizes Mr. Vinod Sunder Raman to do all acts, deeds, matters and things that may be required to be done, in this regard."*

(14) It is submitted that the aforementioned resolution was passed unanimously by the CoC at its 3rd meeting held on October 23, 2019. The consent of the IRP to act as the Liquidator the CoC at its meeting held on November 12, 2019 unanimously approved the resolution appointing the IRP as the liquidator and also approved a monthly remuneration of Rs.1,25,000/- exclusive of GST as the liquidator fee.

3. Heard Shri Vinod Sunder Raman, learned Interim Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code and the Rules made there under.
4. As narrated supra, the Interim Resolution Professional has made his best efforts to revive the Company by exploring the possibility to find a suitable Resolution Plan of the Corporate Debtor. There would no purpose served to keep the case pending without passing liquidation since COC in its meeting held on 21st August, 2019 decided to liquidate the Company. Therefore, there is no

alternative for the Interim Resolution Professional except to seek the order to liquidate the Corporate Debtor as per the provisions of the Code. The Resolution to initiate liquidation was also approved by the CoC with a majority of 100% votes and the instant Application is filed strictly in accordance with law.

The CoC has also directed to continue the existing IRP as a Liquidator for liquidating the Corporate Debtor, who is eligible to be appointed as Liquidator. He has also filed a written consent dated 14th November, 2019 to act as Liquidator of the Corporate Debtor i.e. M/s. Pranee Infrastructure Private Limited, U/s. 34 of the IBC, 2016, by inter alia declaring that he is registered with the Board as an Insolvency Professional; he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency; he do not suffer from any disability to act as Liquidator etc. Therefore, it is a fit case to initiate Liquidation in respect of the Corporate Debtor.

5. As per provisions of the Section 33 of the Code, the Adjudicating Authority has to pass an order for liquidating the Corporate Debtor in the manner as laid down in the Code, to issue public announcement that Corporate Debtor is in liquidation process etc., provided the Adjudicating Authority, do not receive any Resolution Plan during the time granted by the Adjudicating Authority (180 days + 90 days as the case may be). In the result Application is allowed. Liquidation order passed against the Corporate Debtor Company.
6. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred under Section 33 of the IBC, 2016, I.A.No.598/2019 in C.P.(IB)No.48/BB/2018 is hereby allowed with following directions:



- (1) We hereby order that M/s. Pranee Infrastructure Private Limited, Respondent/Corporate Debtor to be liquidated in the matter as laid down in Chapter III Liquidation process of the Code.
- (2) We hereby appointed Shri Vinod Sunder Raman, Regs. No. IBBI/IPA-002/IP-N00075/2017-18/10206 as Liquidator subject to the terms and conditions to be agreed upon by the parties in the light of the extant provisions of the IBBI.
- (3) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation.
- (4) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.
- (5) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made there under framed by the IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- (6) Post the case on **30.12.2019** for report of the Liquidator.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**