

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

I.A. No.245 of 2019 in
C.P. (IB) No.66/BB/2017
U/s 33(1)(a) of the IBC, 2016

Shri Sanjay Kumar Mishra
Resolution Professional
16th Floor, Tower II,
Indiabulls Finance Centre,
S B Marg, El. phinstone (W),
Mumbai – 400 013.

- Applicant/RP

In the matter of:

M/s. Axis Bank Limited
Corporate Banking Branch
2nd Floor, Express Building,
No.1, Queens Road,
Bangalore – 560 001.

- Petitioner/ Financial Creditor

Versus

M/s.Lotus Shopping Centres Pvt. Ltd.
Door No. 15-8-441/50, Shop No.46,
1st Floor, Yenepoya Mall,
Kadri Road, Mangalore,
Bengaluru –575 003.

- Respondent/Corporate Debtor

Date of Order: 18th June, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Sindhu S. Rao along with
Ms. Tanvi Kishore, Advocates
For the Respondent : Shri Manik B.T., Advocate
For the R.P. : Shri Milind Dange, Advocate

ORDER

Per: Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

1. I.A. No.245 of 2019 in C.P. (IB) No.66/BB/2017 is filed by Shri Sanjay Kumar Mishra, ('Applicant') Resolution Professional for M/s. Lotus Shopping Centres Private Limited under Section 33(1)(a) of the IBC, 2016, by inter alia seeking the following reliefs:

- (1) to direct that the Corporate Debtor namely M/s. Lotus Shopping Centres Private Limited be liquidated in terms of Section 33(1) of the Code;
- (2) to issue a public announcement stating that the Corporate Debtor is in liquidation, as provided at Section 33(1) of the Code; this Tribunal be pleased to appoint, Mr. Sanjay Kumar Mishra, the RP appointed for the CIRP as the liquidator of the Corporate Debtor for the purpose of liquidation pursuant of Section 34(1) of the Code;
- (3) to issue a copy of its order, as prayed for herein, to the Registrar of Companies, Karnataka and other appropriate government authorities, etc.

2. Brief facts of the case, as mentioned in the Application, are as follows:

- (1) C.P. (IB) No.66/BB/2017 is filed by M/s.Axis Bank Limited (Petitioner/Financial Creditor) u/s 7 of the IBC, 2016 r/w Rule 7(1) of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s.Lotus Shopping Centres Private Limited.
- (2) It is stated that the Corporate Debtor had availed certain term loan facilities from Axis Bank. The Corporate Debtor defaulted in repaying the loans availed by it. Due to default in repayment of the loans, Axis Bank had filed the captioned Company Petition before this

Tribunal to initiate CIRP against the Corporate Debtor on the ground that, as on July 20, 2017, i.e. the date of filing of the Company Petition, the Corporate Debtor had failed to repay the outstanding balance of Rs.201,53,65,869/- (Rupees Two Hundred One Crore Fifty Three Lakhs Sixty Five Thousand Eight Hundred Sixty Nine Only) to Axis Bank.

- (3) It is also stated the Company Petition was admitted by this Hon'ble Tribunal vide its order dated August 30, 2018 (hereafter, the 'Admission Order'). Pursuant to the said Admission Order, a moratorium was declared for the purposes mentioned in Section 14 of the Code which was to have effect from the date of the Admission Order i.e. August 30, 2018 till the completion of the CIRP or until this Tribunal approves a resolution plan under Section 31(1) of the Code (hereinafter, the 'Resolution Plan') or passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, as the case may be. This Tribunal by the said Admission Order appointed Mr.Sundaresh Bhatt as the Interim Resolution Professional ('IRP') to carry out the functions mentioned under the Code.
- (4) It is further stated that pursuant to his appointment, the IRP made a public announcement on September 6, 2018, in 'Udayavani', (Kannada), Manipal edition and 'The New Indian Express', Mangaluru edition (hereafter, the 'Public Announcements') to invite proof of claims from the creditors of the Corporate Debtor. In terms of Regulation 6(2)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 (herein after, the 'CIRP Regulations'), the last date for submission of proof of claim was specified as September 13, 2018.

- (5) It is stated that after collating the claims received and determining the financial position of the Corporate Debtor, the IRP constituted the CoC, in accordance with Section 21 of the Code and submitted a report dated September 24, 2018 to this Tribunal certifying the constitution of the CoC. At the first meeting of the CoC held on September 28, 2018, the CoC resolved to appoint the Applicant as the RP for the Corporate Debtor and authorised Axis Bank to move a suitable application before the Tribunal seeking approval for the same
- (6) It is also stated that the IRP appointed two registered valuers viz. Rakesh Narula & Company and CBRE South Asia Private Limited, with effect from October 15, 2018 to determine the fair value and liquidation value of the Corporate Debtor in accordance with the CIRP Regulations. Axis Bank filed and moved the aforementioned application for confirmation of the Applicant as the RP of the Corporate Debtor before this Tribunal, pursuant to which this Tribunal passed an order dated October 24, 2018 confirming the appointment of Shri Sanjay Kumar Mishra, Applicant herein, as the Resolution Professional (RP) of the Corporate Debtor to carry out the functions prescribed under the Code. The Applicant was intimated of such order dated October 24, 2018 vide an email dated November 2, 2018 issued to him by Axis Bank on behalf of the CoC, pursuant to which he assumed his duties as the RP in respect of the Corporate Debtor, on and from such date, i.e. November 2, 2018.
- (7) It is further stated that under Regulation 13(1) of the CIRP Regulations, the IRP or the RP as the case may be, is required to collate and verify all claims received and maintain a list of creditors in the prescribed manner. The Applicant, besides receiving a list of creditors verified by the IRP, also received new and revised claims

from the creditors of the Corporate Debtor, which have been collated and verified from time to time. The Applicant filed the updated lists of creditors before this Tribunal, as and when necessary, in terms of Regulation 13(2)(d) of the CIRP Regulations. As of May 3, 2019, the claim of Axis Bank (one of the financial creditors of the Corporate Debtor) as provided in the 8th progress report is Rs.2,337,026,450/- (Rupees Two Hundred Thirty Three Crore Seventy Lakhs Twenty Six Thousand Four Hundred Fifty Only).

- (8) It is also stated that a further updated and final list of creditors, following verification of claims is also being separately filed before the Tribunal and forms a part of the 9th progress being separately filed before this Tribunal on May 27, 2019. Thereafter, on November 1, 2018, as required by Section 29 of the Code, the IRP prepared an information memorandum and circulated the same to the Members of the CoC. Subsequently, the Applicant prepared a revised information memorandum dated January 31, 2019 ('IM') with regard to the Corporate Debtor which was shared with the CoC.
- (9) It is also stated that in its 3rd meeting dated November 13, 2018, the CoC approved the criteria for inviting the Expressions of Interest ('EOIs') from Prospective Resolution Applicants 'PRAs', the last date of submission for such EOIs and other terms and conditions in connection with the same. Accordingly, the Applicant, on November 15, 2018, invited EOIs from PRAs, investors and other persons to put forward a Resolution Plan for the Corporate Debtor. The Applicant uploaded the documents pertaining to the invitation for EOI with details and particulars of eligibility criteria and other terms and conditions on the website of the Corporate Debtor. The last date for submission of the EOI was November 30, 2018. The Applicant published advertisements incorporating brief particulars of the

invitation for EOIs from interested persons in Form G which was published in 'The New Indian Express' in Mangaluru edition, Business Standard in Mumbai edition and 'Udayavani' in Manipal edition on November 15, 2018. The EOI in Form-G was also published on the website of the Corporate Debtor.

- (10) It is also stated that in its meeting dated December 3, 2018, the CoC resolved to extend the deadline for submission of EOI from November 30, 2018 to December 10, 2018. Subsequently on December 6, 2018, the Applicant issued an addendum to the invitation for EOI extending the last date for submission of EOI to December 10, 2018. In December 2018 the Applicant also published an advertisement in Business Standard in Mumbai edition, incorporating the revised timeline for submission of the EOI. In the meanwhile, the Applicant arranged for creation of a virtual data room ('VDR') to the Prospective Resolution Applicants (PRAs) to make information about the Corporate Debtor available to them and enable them to prepare a Resolution Plan was provided to the PRAs from December 26, 2018, till May 12, 2019, subject to execution of Non-Disclosure Agreement ('NDA'). Thereafter, the legal/financial due diligence and site visits were organized as requested by the PRAs.
- (11) It is further stated that it is pertinent to note that despite all efforts, as on December 10, 2018 only 5 (five) EOIs were received by the Applicant in the instant matter. A brief summary of facts in respect of such PRAs is provided herein below:

(a) BREP Asia II Indian Holding Co V (NQ) Pte. Ltd.:

BREP Asia II Indian Holding Co V (NQ) Pte. Ltd. (hereinafter, 'Blackstone') is owned directly by BREP Asia II India Super Holding I (NQ) Pte. Ltd. (a Singapore private company), which in

turn is owned by BREP Asia II Holding I (NQ) L.P. (a Cayman Islands exempted limited partnership). The Blackstone Real Estate Partners (BREP) funds target broad range of opportunistic real estate and real estate related investments. It has made significant investments in hotels, office buildings, and shopping centres, residential and industrial assets across multiple geographies. Since its first investment in 2011 in India, Blackstone has deployed over \$ 2.5 billion and is one of the largest investors in Indian real estate sector. Today, it is the largest office space landlord and second largest mall space owner in the Country. Blackstone India's retail portfolio currently compromise 9 (nine) operational malls spread across the country. The said PRA had accessed the VDR. However, the said PRA had certain reservations in submitting a Resolution Plan for the Corporate Debtor and ultimately did not file one.

(b) AshtaVinayak Reality Private Limited:

AshtaVinayak Reality Private Limited ('AVRPL') is a company promoted by the Agrawal Group of Ahmedabad, Gujarat. The group has decades of experience and expertise in real estate, entertainment and leasing. Though AVRPL submitted an EOI, it did not access the VDR and did not submit a Resolution Plan. The Applicant had on various occasions undertaken best efforts to understand the reason for AVRPL's lack of interest in the process, but it was to no avail.

(c) Citrus Ventures Private Limited:

Citrus Ventures Private Limited ('CVPL') was incorporated in 2011 with the main objective of, inter alia, engaging in the business of builders, developers, landscapers etc. CVPL informed the

Applicant on 16.02.2019 that CVPL is not interested in continuing in the process.

(d) Dhanlaxmi Infrastructure Private Limited:

Dhanlaxmi Infrastructure Private Limited is wholly owned by Mobious Holding Pte. Ltd. (Virtuous Retail Limited). Virtuous Retail South Asia is a leading institutionally owned developer-owner-operator of a premium, community oriented lifestyle destinations with large portfolios of across five cities. The said Company was actively accessing the VDR. However, it did not file a resolution plan. The Applicant and his team held various calls and meetings with the representatives of the Company so as to understand the reasons for their non-submission of the resolution plan, to which it was verbally communicated to the Applicant that its Board of Directors did not approve the submission of a resolution plan due to various issues.

(e) Phoenix Infratech (India) Private Limited:

Phoenix Infratech (India) Private Limited (PIPL) is engaged in the business of construction and development of townships, housing, built-in infrastructure and provides project management services. Phoenix group is a diversified business conglomerate with experience of over four decades. Core businesses of the Phoenix group include automobiles, property and infrastructure development for IT/ITes, retail, residential enclaves, commercial complexes, townships, industrial parks and special economic zones. Though PIPL submitted an EOI, it did not show any keen interest, did not access the VDR and did not submit a resolution plan.

- (12) It is stated that the Applicant, in accordance with Regulation 36A (10) of the CIRP Regulations had issued the provisional list of PRAs

- to the CoC and having received no objections on the list, finalized and issued the said list on 27.12.2018.
- (13) In its 6th meeting held on 27.12.2018, the CoC approved the Request for Resolution Plan document ('RFRP'). On 29.12.2018, the Applicant issued the IM and the RFRP to the PRAs. In its 7th meeting held on 10.01.2019, the CoC approved the evaluation matrix which was issued to the PRAs on 14.01.2019. Subsequently, on 31.01.2019, the Applicant issued a revised RFRP ('Restated RFRP') to all the PRAs.
- (14) The CIRP period was originally due to expire on 26.02.2019. Three PRAs had indicated their interest in the Corporate Debtor to the CoC and further sought an extension for the last date for submission of Resolution Plans.
- (15) Accordingly, during the 8th meeting of the CoC held on 30.01.2019, the last date for submission of Resolution Plan was extended to 11.02.2019. In the said meeting, the CoC also authorised the Applicant to move a suitable application before this Hon'ble Tribunal seeking approval for extension of the CIRP period for a further period of 90 (ninety) days as provided in Section 12 of the Code.
- (16) Thereafter, the Applicant filed and moved the aforementioned application before this Hon'ble Tribunal, pursuant to which this Hon'ble Tribunal was pleased to extend the CIRP period by another 90 (ninety) days, vide an order dated 20.02.2019. Accordingly, the CIRP period was extended to 27.05.2019.
- (17) Upon the extension of the CIRP period, in view of, inter alia 2 (two) PRAs being BREP Asia II Indian Holding Co V (NQ) Pte. Ltd. and Dhanlaxmi Infrastructure Private Limited, continuing to display active interest in submitting Resolution Plans for the Corporate Debtor, the CoC in its 10th meeting held on 21.02.2019 resolved to

further extend the date of submission of Resolution Plans till 11.03.2019. On 22.02.2019, the Applicant duly announced the said extension of timeline by issuing the revised Form-G on the website of the Corporate Debtor and the IBBI.

- (18) Despite repeated extensions in the timeline for the submission of Resolution Plans, no Resolution Plans had been submitted in respect of the Corporate Debtor. Therefore, in its 11th meeting held on 11.03.2019, the CoC resolved to further extend the date of submission of Resolution Plans till 19.03.2019. On 12.03.2019, the Applicant duly announced the said extension of timeline by issuing the revised Form-G on the website of the Corporate Debtor and the IBBI.
- (19) As the existing PRAs had still not submitted any Resolution Plans, in its 14th meeting held on 28.03.2019, the CoC resolved to make a fresh invitation for EOI and to also extend the deadline for submission of Resolution Plans. The revised deadline for submission of the fresh EOIs was 13.04.2019 at 6.00 pm IST and for submission of Resolution Plans was 21.05.2019. The Applicant duly published an advertisement dated 29.03.2019 in 'The New Indian Express' in Mangaluru edition, 'Business Standard' in Mumbai edition and 'Udayavani' in Manipal edition, incorporating the extension of such timelines for submission of EOIs and Resolution Plans in respect of the Corporate Debtor.
- (20) Further, post re-invitation for EOI, the Applicant had not received any fresh EOI till the last date for submission of EOI i.e. 13.04.2019. However, 2 (Two) of the existing PRAs i.e. Asia II Indian Holding Co V (NQ) Pte. Ltd. and Dhanlaxmi Infrastructure Private Limited (Virtuous Retail), confirmed their willingness to continue in the process. Accordingly, the CoC in its 15th meeting held on 25.04.2019

resolved to provide a final opportunity to the existing PRAs to submit a resolution plan by 07.05.2019. Accordingly, the Applicant revised the Form-G, incorporating the abovementioned contraction in the timeline for submission for Resolution Plans and uploaded the same on the Corporate Debtor's website.

- (21) It is stated that no Resolution Plans have been received in the instant matter, despite the best efforts undertaken by the Applicant in this regard. The reasons for such non-submission are completely beyond the control of the Applicant. The Applicant craves leave to refer to and rely upon the relevant updates circulated to the CoC and discussions conducted in the meetings of the CoC from time to time in this regard, at the time of hearing, if necessary.
- (22) It is further stated that 17 (seventeen) meetings of the CoC have been held from the commencement of the CIRP period of the Corporate Debtor till date. The notice, agenda, the minutes and the voting results of such meetings have been circulated to all CoC Members in compliance of the provisions of the Code. The Applicant has also submitted 7 (Seven) Progress Reports dated 29.11.2018, 17.12.2018, 09.01.2019, 07.02.2019, 19.03.2019, 12.04.2019, 06.05.2019 and 24.05.2019 before this Hon'ble Tribunal in compliance of the orders passed by the Tribunal. The Applicant is separately submitting the 9th and Final Progress Report to this Hon'ble Tribunal on 25.05.2019. The Applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said minutes of meetings of the CoC, if necessary, at the time of hearing of the instant application.
- (23) It is also stated that the Corporate Debtor currently has no sources of income/revenue. The Corporate Debtor was incorporated to engage in the business of development and operations of commercial

leasing spaces. During the CIRP period, the Corporate Debtor has borne and continues to bear considerable costs and has incurred substantial overruns in respect of the estimated project costs, thereby resulting in the deterioration of the financial position of the Corporate Debtor.

- (24) It is stated that the members of the CoC in their meetings have duly discussed the present scenario in view of the fact that no Resolution Plans have been received by the Applicant. The Applicant craves leave to refer to and rely upon the minutes of the CoC as and when produced. Since no Resolution Plan has been received under Section 30(6) of the Code within the maximum period permitted for completion of CIRP, the Applicant is constrained to file the instant application before this Hon'ble Tribunal praying for a direction of liquidation upon the Corporate Debtor in terms of Section 33(1) of the Code.
- (25) It is further stated that in view of the expiry of the 270 (two hundred seventy) day period for CIRP of the Corporate Debtor on 27.05.2019 it has no option but to file the instant application. The Applicant also attached with the instant Application, his written consent to act as the Liquidator, for the purposes of liquidation of the Corporate Debtor herein.
3. Heard Shri Milind Dange, learned Counsel for the Resolution Professional, Ms. Sindhu S. Rao along with Ms. Tanvi Kishore, learned Counsels for the Petitioner and Shri Manik B.T., learned Counsel for the Respondent and perused the application and documents placed on record by the Resolution Professional evidencing that he has not received any resolution plan. Learned Resolution Professional has also given consent dated May 27th, 2019 to act as Liquidator as appearing in Exhibit-U attached to the I.A No. 245 of 2019, and he has affirmed

that he is eligible to act as liquidator in accordance with Section 34(1) of the I&B Code, 2016 and Regulation 3 of IBBI (Liquidation Process) Regulations, 2016. The CoC in its 17th meeting dated 24th May, 2019 has proposed the Applicant as a liquidator and agreed to the initiation of liquidation process under Section 33 of the I&B Code.

4. Therefore, the Adjudicating Authority, by exercising powers conferred under Section 33 of the I&B Code, 2016 has to pass order of liquidation. In view of the above facts and circumstances of the case, we hereby dispose of I.A. No. 245 of 2019 in C.P. (IB) No.66/BB/2017 with the following directions:

- (1) We have reached the conclusion that there is a need for an order requiring the Corporate Debtor i.e. M/s. Lotus Shopping Centres Private Limited to be liquidated in the manner as laid down in the I&B Code, 2016 and related Regulations;
- (2) That Mr. Sanjay Kumar Mishra holding IBBI Regn.No.IBBI/IPA-001/IP-P01047/2017-18/11730, the Resolution Professional appointed for Corporate Insolvency Resolution Process is appointed as Liquidator for the purpose of liquidation pursuant to Section 34(1) of Insolvency and Bankruptcy Code, 2016;
- (3) Mr.Sanjay Kumar Mishra is directed to issue public announcement stating that the Corporate Debtor is in liquidation one in English language and one in Vernacular language, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (4) The order of moratorium 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;

- (5) That 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 Liquidator;
- (6) That the Personnel of Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor;
- (7) Liquidator is also directed to send a copy of this order to the concerned authority whoever is the regulator of the Corporate Debtor by RPAD;
- (8) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor;
- Provided that a suit or other legal proceeding may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority in accordance with Section 33(5) of the Insolvency and Bankruptcy Code, 2016;
- (9) The provisions of sub-section (5) of Section 33 shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator in accordance with Section 33(6) of the Insolvency and Bankruptcy Code, 2016;
- (10) The Liquidator appointed shall discharge his functions pursuant to powers and duties conferred under Section 35 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016;
- (11) 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 and in accordance with relevant regulations;

- (12) The fee of the liquidator shall be proportionate to the liquidation estate assets as specified by the Board, and it shall be paid from the proceeds of the liquidation estate u/s 53 of the Code;
- (13) Liquidator is directed to follow all extant provisions of IBC, 2016 and rules framed by IBBI from time to time;
- (14) The order for liquidation under this Section 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 in accordance with Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- (15) Committee of Creditors is directed to review the expenditure incurred by the Resolution Professional up until the date of this Order and verify the same through perusal of relevant documents;
- (16) The Liquidator shall submit a preliminary report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- (17) The Registry is directed to communicate this Order to the Registrar of Companies, Karnataka and to the Insolvency and Bankruptcy Board of India.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Krishna