

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

Item No. 22
(IB)-16(PB)/2017

IN THE MATTER OF:

Anil Mahindroo & Anr.

.... **APPLICANT / PETITIONER**

Vs

Earth Iconoic Infrastructures Pvt. Ltd.

....

RESPONDENT

SECTION:

Under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 10.01.2020

Coram:

SHRI B.S.V. PRAKASH KUMAR

HON'BLE ACTG. PRESIDENT

SH. S. K. MOHAPATRA

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the applicant

Mr. Rakesh Kumar, Mr. Rohit Bohra, Mr.
Akshit, Advs. for RP

ORDER

It is an application moved by RP under Section 33(2) of the Code for liquidation of the corporate debtor based on the resolution passed by the CoC with 71.39 % voting share in its 11th meeting held on 30.07.2019.

2. On perusal of the application, it appears that CP was admitted on 20.04.2018, by appointing Mr. Yogesh Gupta as IRP in furtherance it, the IRP issued public announcement inviting claims of the creditors, in pursuance thereof, after receipt of 732 claims, when they were collated, and the aggregated value of the claim has come to 172 crores. Thereafter, upon constitution of the CoC on 22.05.2018, the IRP was confirmed as RP and, in pursuance thereof, the then RP appointed two valuers for valuing the liquidation of the company, on receipt of the two valuation reports from them, taking the average of the value given by two valuers the



liquidation value of the company is determined as Rs. 57.67 crores.

3. During the CIRP period, the earlier RP Mr. Yogesh Gupta was replaced by the present RP Mr. Harish Chander Manchanda. Soon after preparation of memorandum information, when the resolution professional invited for EOIs on 12.10.2018, since nobody came forward, again the RP invited for further expression of interest on 11.11.2018, then also when nobody came forward with EOI, the resolution professional again on 11.01.2019, given another invitation for EOI, responding to the same one resolution applicant namely Migsum Group came forward, but whereas as the said EOI was rejected by the CoC on 11.04.2019. On rejection of EOI given by Migsum, again the RP issued another invitation for EOI on 05.06.2019, since nobody came forward with EOI to the invitation given on 05.06.2019, the CoC passed a resolution on 30.07.2019 for liquidation of the Corporate Debtor.

4. While the application for an order for liquidation was pending before this bench, a resolution applicant namely Unicorn Buildtech & associates filed CA-1553(PB)/2019 saying that if opportunity was given, it would file a resolution plan before the CoC. Considering the same, this bench on 25.09.2019, allowed the said applicant to file its plan before the CoC, but that was rejected in 14th meeting of the CoC on 08.11.2019 by 91 % voting share. When another opportunity was given to Unicorn, on 22.11.2019, Unicorn again filed another resolution plan before the CoC, but that



was also rejected on 04.12.2019 in 16th CoC meeting. Despite several chances given to Unicorn, as it failed to submit a viable plan, the CoC, passed a resolution reconsidering for liquidation of the corporate debtor. Now, this Unicorn, despite having failed to submit any viable plan to the satisfaction of the CoC, this applicant has now sought liberty to intervene in this liquidation application, It is pertinent to mention that this CIRP period continued for about 690 days with various extensions and exclusions. It is also pertinent to mention that, as to approval of the resolution plan and recommendation for liquidation, it is purely within the ambit of the CoC, as per law the CoC has a right to take its apply its commercial wisdom to the plans come before it, therefore, this application will not have any say before this bench asking for another opportunity to place another plan. By seeing several efforts made by the CoC, it is evident that the CoC considered the resolution plans in the past and decided those resolution plans are not viable for maximization of the assets of the corporate debtor. On view of the above facts, we are of the view that the CoC has rightly decided in recommending for liquidation of the company, therefore, we hereby ordered for liquidation of the company with the directions as follows:-

- a) This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the chapter by issuing a public notice stating that the Corporate Debtor is in liquidation with a direction to the



liquidator to send this order to ROC with which this company has been registered.

- b) The Resolution Professional viz. Mr. Harish Chander Manchanda is hereby appointed to act as Liquidator for the purpose of liquidation of the corporate debtor, therefore, all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the liquidation as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- c) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
- d) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to extent of the business



of the Corporate Debtor is continued during the liquidation process by the Liquidator.

- e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The Registry is hereby directed to immediately communicate this order to the Liquidator, the Corporate Debtor and the IBBI & concern ROC by way of E-Mail.

Accordingly, this application stands disposed of.

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(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

—sd—

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)