

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

I.A.No.145/2020 in
C.P. (IB)No.101/BB/2018
U/s. 33(2), 34(8) & 34(9) of the IBC, 2016

In the matter of:

Mr. Srikantiah Shivaswamy
Resolution Professional of
GCL Pvt. Ltd.

Office at: RF 4, Santara Magan Place,
Doddakammanahalli, Hulimavu,
Off. Bannerghatta Road,
Bengaluru – 560 076

- Applicant

Date of Order: 15th June, 2020

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

Parties/Counsels Present, through Video Conference:

For the Applicant : Shri Vishnu Vinayak along with
Mr. Srikantiah Shivaswamy, RP

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.145/2020 in C.P.(IB)No.101/BB/2018 is filed by Mr. Srikantiah Shivaswamy, Resolution Professional of GCL Pvt. Ltd. ('Applicant'), U/s. 33(2), 34(8) & 34(9) of the IBC, 2016, and other relevant Rules, by inter-alia seeking to initiate Liquidation process of Corporate Debtor leading to its dissolution; to direct the Secured



Creditor to participate in the liquidation process of the Corporate Debtor by paying scheduled fee as per provisions of Code.

2. Mr. Srikantiah Shivaswamy, Resolution Professional/Applicant, has filed an Affidavit dated NIL, in support of the instant Application, by inter-alia stating as follows:

- (1) Initially, Mr. R. N. Manoharan (Petitioner) has filed C.P. (IB)No.101/BB/2018, U/s. 9 of IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter-alia, seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. GCL Pvt. Ltd. (Respondent/Corporate Debtor) on the ground that it has committed default for an amount of Rs.20,70,807/-. Accordingly, the case was admitted by the Adjudicating Authority by an Order dated 01.05.2019 by initiating CIRP in respect of the Corporate Debtor, appointing Shri Shivadutt Bannanje, as IRP, imposing moratorium etc.
- (2) Shri Shivadutt Bannanje, after causing Public Announcement in Form A published on 02.05.2019, in the Financial Express and Vishwavani of Bengaluru edition, constituted CoC with Canara Bank as the Sole Financial Creditor member with 100% voting share. The 1st CoC meeting was held on 31.05.2019 wherein it voted against retaining said IRP as RP. During 2nd CoC meeting held on 08.07.2019, it was decided to appoint the Applicant herein as Resolution Professional in place of the said IRP. Accordingly, the Adjudicating Authority, vide its order dated 22nd July, 2019 allowed I.A.No.345 of 2019 filed by Canara Bank by replacing the existing IRP and appointed the Applicant as Resolution Professional, as prayed for.
- (3) It is stated that the GCL Pvt. Ltd., has over 150 vendors/

suppliers besides 30 Financial Creditors, 10 other creditors having given substantial advance and over 150 workers/employees. The detailed verification of claims received up to the date of inviting Expression of Interest was completed and admitted albeit received beyond the stipulated period of 90 days. A few more claims received after EOI have been kept in abeyance for the new management to take call on their status. The CoC again met on 17th October, for 4th meeting and took decision to invite EOI from Resolution Applicants. Accordingly, a notification was issued and published in Financial Express/Kannada Prabha of Bengaluru edition dated 23.10.2019. The original statutory period of 180 days period was over on 28.10.2019 which was further extended for further period of 90 days beyond 180 days by an order dated 05.11.2019, ie till 28.01.2020.

- (4) In response to the invitation to express interest, the following three Resolution Applicants have submitted their Expression of Interest.
- i. Lohia Corp Kanpur
 - ii. ANA ARC Pvt. Limited, Bengaluru
 - iii. Sadanand Sadguru Baba Trading Pvt. Ltd., Bengaluru

After verifying the eligibility of the Applicants based on the documents submitted and undertaking given as per Section 29A of the IBC, a draft copy of the Non-Disclosure Agreement was sent for execution to share sensitive information about the CD.

- (5) Fifth meeting of the CoC was convened on 28.11.2019 to discuss and approve the names of Resolution Applicants and to request them to submit Resolution Plans. The CoC unanimously approved the names of the above mentioned RAs



besides giving approval to Information Memorandum, Evaluation Matrix and Process Memorandum prepared by RP. The response of the Resolution Applicants more particularly the request of M/s. Lohia Corp was considered in the 6th CoC meeting held on 02.01.2020. The other 2 Resolution Applicants viz., ANA ARC Ltd., & Sai Sadguru Baba Trading Co. Pvt. Ltd., have not submitted any proposal nor have requested for additional time. The CoC with an overwhelming majority of 92.97% approved grant of additional time to RA in order to avoid slippage of the Company into liquidation. Further extension of 60 days was granted i.e. of time by 60 days till 29.03.2020.

- (6) Only one of three proposed Resolution Applicants, Lohia Corp, Kanpur showed interest followed by a personal visit of their Chief Executive, Mr. K. G. Gupta to Bengaluru and later on withdraw from the process. In the 7th CoC meeting held on 22nd January, 2020, the Members were informed about the status of CIRP and failure to attract any successful bidders. All the Members present in the meeting representing 84% of voting share agreed to go for liquidation and to pass necessary Resolution for the same. Canara Bank, the sole secured Financial Creditor, wanted to stay out of liquidation process and have insisted on passing Resolution inter-alia as under:

".... that they are the sole secured creditors and hence would stand out of the liquidation process in terms of Section 52 clause 6(5) and the securities mortgaged to the Bank will not be available to the liquidation pool (estate)."

Accordingly, they have also refused to meet the usual liquidation expenses and offered to pay a token sum of Rs.1 lakh for the entire liquidation process.



3. Heard Shri Vishnu Vinayak, learned Counsel for the Resolution Professional along with Mr. S.Shivaswamy, Resolution Professional, **through Video Conference**. We have carefully perused the pleadings of the parties and also extant provisions of the Code and Rules made thereunder.
4. At the initial, it is relevant to point out that the prayer in the affidavit filed by the Applicant, is seeking to initiate Liquidation process in respect of the Corporate Debtor and, to direct the Secured Creditor to participate in the liquidation process of the Corporate Debtor, by paying scheduled fee as per provisions of IBC, 2016. However, the covering Petition, which is enclosed to the Affidavit, has further prayed to appoint him as liquidator. As per law, the prayer in covering Petition should be in consonance prayer in supporting Affidavit. However, for the reasons known to the Applicant, prayers in both differs.
5. There are two main points arise for consideration in the instant as mentioned below:
 - (1) Whether any viable/acceptable Resolution was received during the period of initial statutory period of CIRP and, further extended period or not, and if not, whether due process for recommending the Corporate Debtor to put it under liquidation process, is followed or not, in terms of Section 33 of Code, and the extant rules made thereunder.
 - (2) Whether the Applicant is entitled for his appointment as Liquidator, as a matter of right, without recommending his name for the same by the COC, and wanted to replace him even for continuation of *Resolution Professional*.
6. In the instant case, admittedly, there is no acceptable Resolution Plan



received, in spite of best efforts made by the Resolution Professional and the Committee of Creditors. The narration of facts, as detailed supra, clearly established that it is a fit case to initiate liquidation proceedings, in respect of the Corporate Debtor, in terms of Section 33 of Code.

7. So far as second issue of appoint the Applicant as Liquidator is concerned, as stated supra, the Adjudicating Authority, has appointed Shivadutt Bananje as IRP, who was replaced with the Applicant herein at the recommendation of very same COC Member (Canara Bank). The Committee of Creditors of GCL Private Limited, is represented by Canara Bank, who is Sole/majority Secured Financial Creditor with majority voting share. Now, Canara Bank, being sole Member of the Committee of Creditors, has filed I.A.No.185 of 2020, by inter alia seeking to replace the Applicant herein even to continue him as RP for his alleged failure to follow extant provisions of Code and the Rules made thereunder and seeking to appoint Mr. Madhugiri Venkatarayappa Sudarshan, Regn. No. IBBI/IPA-002/IP-N00561/2017-2018/11707 as Resolution Professional. And this I.A. is disposed of by separate order today. Therefore, the power and authority of COC to choose and nominate any qualified Resolution Professional as RP/RP/Liquidator, fixing terms and conditions for such appointment including Liquidation fee etc can hardly in question in judicial proceedings, unless serious marriage of justice takes place in a given case. In the instant case, the first stage efforts to revive operations of Corporate Debtor have failed, and the next stage, as per Provisions of Code, is to put the Company under Liquidation process by appointing suitable Liquidator. Therefore, it is for the COC to choose a suitable Liquidator to take up liquidation process.



It is premature to discuss the process involved in liquidation proceedings, and the issues raised by the Applicant in the Application are not relevant now and those issues will be considered during Liquidation process by the Liquidator appointed in the case. Since the COC is not even willing to continue him as Resolution Professional and chosen another qualified Resolution Professional to appoint him as Liquidator, the Applicant cannot be appointed as such. Therefore, various allegations and contentions raised by the Applicant in the instant Application for his appointment as Liquidator, are misconceived and not tenable and they are liable to be rejected. They are hereby rejected.

8. For the aforesaid reasons and circumstances, we are of the considered opinion that it is a fit case to initiate Liquidation proceedings, in terms of Provisions of Section 33 of Code, as the instant Application is filed duly following extant provisions of Law. However, the Applicant is not entitled either to continue as RP or to appoint him as Liquidator. Mr. Madhugiri Venkatarayappa Sudarshan, with Regn. No. IBBI/IPA-002/IP-N00561/2017-2018/11707, who is chosen by COC, is found to be eligible to be appointed as RP/Liquidator, in terms of decision taken by the COC.
9. In the result, I.A.No.145/2020 in C.P.(IB)No.101/BB/2018 is hereby disposed of with the following directions:
 - (1) We hereby ordered that M/s. GCL Private Limited, Respondent/Corporate Debtor, to be liquidated in the manner as laid down in Chapter III (Liquidation Process) of Part II of the Code.
 - (2) Hereby appointed Mr. Madhugiri Venkatarayappa Sudarshan, Registration No. IBBI/IPA-002/IP-N00561/2017-2018/11707 as



Liquidator in respect of M/s. GCL Private Limited, Corporate Debtor, with a direction to take necessary steps as per law.

- (3) The Applicant Mr. Srikantiah Shivaswamy, Resolution Professional is hereby directed to handover the records in respect of Corporate Debtor immediately to said Liquidator, after receipt of a Copy of this order and also directed him to extend full co-operation to him in discharge of his statutory functions.
- (4) The COC is also directed to follow prescribed procedure under the extant Provisions of Code and the Rules made thereunder and extend full co-operation to the Liquidator so as to discharge his statutory functions.
- (5) Other prayers as sought by the Applicant are hereby rejected.
- (6) No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruhti

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

I.A. No.185/2020 in
C.P. (IB)No.101/BB/2018
U/S. 27(1) R/w. Section 60 (5) of the IBC, 2016
R/w. Rule 11 of the NCLT Rules, 2016

Between:

The Committee of Creditors
of *GCL Pvt. Ltd.*
Rep. by *Canara Bank*
A Nationalized Bank incorporated
under the Banking Companies
(Acquisition and Transfer of Undertakings)
Act, 1970
R/o. at No.112, J. C. Road,
Bengaluru – 560 002.

Having its Branch office at:

SME Peenya Branch,
Reptd., by its Manager & PA Holder,
Mr. Krishna Raj

- Applicant

AND

Mr. S. Shivaswamy
Resolution Professional of
GCL Pvt. Ltd.
R/o. at RF 4, Santara Magan Place,
Doddakammanahalli, Hulimavu,
Off Bannerghatta Road,
Bengaluru – 560 076

- Respondent

Date of Order: 15th June, 2020

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

Parties/Counsels Present, through Video Conference:

For the Applicant : Shri H. S. Rukkoji Rao



Page 1 of 8

For the Respondent : Shri Vishnu Vinayak along with
Shri. R Shivaswamy, RP.

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. I.A.No.185/2020 in C.P.(IB)No.101/BB/2018 is filed by The Committee of Creditors of GCL Pvt. Ltd., Rep by Canara Bank ('Applicant'), U/s. 27(1) R/w. Section 60 (5) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016, by inter alia, seeking to replace Mr. S. Shivaswamy, Regn. No. IBBI/IPA-001/IP-P00411/2017-18/10727 and appoint Mr. Madhugiri Venkatarayappa Sudarshan, Regn. No. IBBI/IPA-002/IP-N00561/2017-2018/11707 as a Resolution Professional of the Corporate Debtor, in the interest of justice and equity.
2. Brief facts of the case, as mentioned in the instant Application, are as follows:
 - (1) Initially, C.P. (IB)No.101/BB/2018 filed by R. N. Manoharan (Petitioner) filed U/s. 9 of Code R/w Rule 6 of I&B (AAA) Rules, 2016, was admitted by an Order dated 01.05.2019 by initiating CIRP in respect of the Corporate Debtor, appointing Shri Shivadutt Bannanje, as IRP, imposing moratorium etc. Accordingly, IRP, after causing Public Announcement in Form A published on 02.05.2019, in the Financial Express and Vishwavani of Bengaluru edition, constituted CoC with Canara Bank as the Sole Financial Creditor Member with 100% voting share. The 1st CoC meeting was held on 31.05.2019 but voted against retaining IRP as RP. The 2nd CoC meeting was held on 08.07.2019, at the behest of Canara Bank, voted to appoint


Page 2 of 8

Mr. Srikantiah Shivaswamy as Resolution Professional in place of IRP, which was approved by the Adjudicating Authority, vide its order dated 22nd July, 2019 passed in I.A.No.345 of 2019 filed by Canara Bank.

(2) It is alleged that the Respondent failed to revive the Company or bring any Resolution Plans. Nevertheless, the Respondent got extension of another 45 days from 26.01.2020. The Respondent conducted CoC meeting on 22.01.2020, with the following agendas:

- i. To consider the Resolution Plans, if any, received and vote;
- ii. To pass resolution for liquidation and appointment of liquidator, CoC to vote for Liquidation of Corporate Debtor U/s. 33(2) of IBC, 2016 as a natural consequence upon expiry of CIRP.

Thereafter, Canara Bank sent an email dated 27.01.2020 approving the minutes of the CoC meeting which included discussions with respect to liquidation, fees of the liquidator and the probable course of action of Canara Bank to stand out of liquidation. Instead of finalizing the minutes of the meeting the Respondent sent an Email stating that no resolution is required for liquidation and refused to record the minutes in respect of fees of the liquidator.

(3) It is stated that the Respondent and the officials of Canara Bank exchanged a series of emails regarding fixing the fees of the liquidator and crucial CIRP time was wasted in this logjam created by the Respondent regarding the liquidator's fees. Since the Respondent refused to finalize the minutes of the CoC meeting or take any further steps in respect of the CIRP process



of the Corporate Debtor, the Canara Bank sent an email dated 24.02.2020 requesting the Respondent to:

“a. forward the minutes/voting sheet of CoC meeting held on 22.01.2020 for the signature of CoC at the earliest.

b. File an Application under Section 33(2) of the IBC for liquidation of the Corporate Debtor as per CoC’s approval and to take all requisite steps for filing the said Application.

c. if you are agreeable to the fees offered by the Bank, you may file the Application for liquidation with your written consent to act as a liquidator or if you are disagreeable to the fees, you are requested to file the Application without your written consent to act as a liquidator.”

- (4) It is stated that the CoC had categorically requested the Respondent to take necessary steps within the next 3 days. However, instead of taking of any of the aforementioned steps, the Respondent sent an untenable email dated 25.02.2020 stating that he does not *“wish to go on arguing with you and prolong unnecessary correspondent.”* Thus, the Respondent has refused to perform his duties as a Resolution Professional and abdicated from his responsibilities as a Resolution Professional. An alleged disagreement with respect to the fee of the liquidator, the Respondent is refusing to carry out his functions as a Resolution Professional. Irrespective of the Resolution Professional’s disagreement with the liquidation fee, he cannot abdicate from performing his duties as a Resolution Professional for which he is being paid by the CoC.
- (5) It is contended that the Respondent can either refuse to act as a liquidator or agitate his grievance before the Adjudicating Authority by filing appropriate Application but he cannot refuse



to discharge his duties as a RP. In the instant case, the Resolution Professional:

- i. Is refusing to hold CoC meetings or confirm the minutes of the previous CoC meeting;
 - ii. Is refusing to file Application under Section 33(2) of the IBC for liquidation of the Corporate Debtor as per CoC's approval.
- (6) In view of the foregoing crucial time has been lost by the CoC and the entire purpose of initiating CIRP process has been rendered nugatory because of the Respondent's lackadaisical attitude and refusal to cooperate. Thus, the Committee of Creditors have no option but to change the Resolution Professional as the Respondent has failed to discharge his duties as Resolution Professional. Hence this Application is filed to allow the accompanying Application to meet the ends of justice and equity.
3. The Respondent has filed his Statement of Objections dated Nil, by denying the averments/allegations made in the instant Application, and made several counter allegations, which are not at all relevant to decide the issue in question in the instant Application.
 4. Heard Shri H. S. Rukkoji Rao, learned Counsel for the Applicant and Shri Vishnu Vinayak, and learned Counsel for the Resolution Professional with Shri. R Shivaswamy, Resolution Professional, **through Video Conference**. We have carefully perused the pleadings of both the Parties and also extant provisions of Code, and Rules made thereunder.
 5. It is a settled position of law, the Committee of Creditors (CoC) is empowered, to choose IRP/confirm IRP/choose Liquidator and fix terms and conditions, which includes fixation of fees for such



appointment. It is for concerned party either to accept those terms and conditions or to reject such offer, if those conditions are not acceptable for them. It is not the case of Respondent that he was offered higher amount of fee and thereafter it was rejected by COC.

6. In the instant case, as stated supra, the Respondent was chosen as Resolution Professional by replacing the IRP appointed by the Adjudicating Authority by the same COC represented by Canara Bank. Therefore, the Respondent is estopped from questioning the authority of COC to choose a Liquidator and fix a fee and other terms of such appointment. It is not the case of the Respondent that his fee was not settled for the work done by him during the Corporate Insolvency Resolution Process (CIRP). Since the liquidation proceedings are separate one and second stage of process under the provisions of Code, COC can choose any eligible Resolution Professional as Liquidator, and can also fix fees also basing on the quantum of work involved. Therefore, the selection of the Applicant to change the Resolution Professional cannot be find fault.
7. In the instant case, the COC with requisite majority, chose a qualified Resolution Professional namely, Shri Madhugiri Venkatarayappa Sudarshan, with Reg. No. IBBI/IPA-002/IP-N00561/2017-2018/11707, as RP, who has given written consent dated 10.03.2020, by interalia 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 Resolution Professional; he is eligible to be appointed as Resolution Professional of the Corporate Debtor under Regulation 3 and other applicable



provisions of the Code and Regulations; he shall make the disclosures in accordance with the Code of conduct for Insolvency Professional as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 etc. Therefore, the said Shri Madhugiri Venkatarayappa Sudarshan, is eligible to be appointed as RP/Liquidator for the Corporate Debtor.

8. Since the Respondent has already filed I.A.No.145/2020 in the case, seeking to initiate Liquidation proceedings in respect of Corporate Debtor and the Adjudicating Authority disposed the same vide separate order today, various allegations made in the un-dated reply are not all relevant to the issue and thus they are hereby rejected as not tenable and misconceived. Since Liquidation proceedings already initiated in respect of Corporate Debtor in the said I.A.No.145 of 2020, there is no necessity to appoint any Resolution Professional replacing the Respondent. Therefore, in order to avoid further delay in the matter to file another Application by COC/proposed RP, we are inclined to appoint said Sudarshan, as Liquidator for the Corporate Debtor.
9. For the aforesaid reasons and circumstances and the reasons stated in the Order dated 15th June, 2020 passed in I.A. No.145 of 2020 in the case, we are inclined to appoint said M.V.Sudarshan as Liquidator instead of as RP, in order to avoid further delay to file separate Application for appoint of Liquidator, in the interest of justice, and duly following principle of ease of doing business.
10. In the result, I.A.No.185/2020 in C.P.(IB)No.101/BB/2018 is hereby disposed of with the following directions:



- (1) Shri Madhugiri Venkatarayappa Sudarshan, holding IBBI Registration No. IBBI/IPA-002/IP-N00561/2017-2018/11707 having official address: No.984/13, 8th Main, Girinagar II Phase, Bangalore – 560 085, Karnataka, is hereby appointed as Liquidator in respect of GCL Private Limited (Corporate Debtor).
- (2) He is directed to take immediate steps to complete the Liquidation process in question, in accordance with extant provisions of Code and the Rules made thereunder and complete the process.
- (3) The Respondent is hereby directed to handover the records in respect of Corporate Debtor immediately to said Liquidator, after receipt of a Copy of this order and also directed him to extend full co-operation to him in discharge of his statutory functions.
- (4) The COC is also directed to follow prescribed procedure under the extant Provisions of Code and the Rules made thereunder and extend full co-operation to the Liquidator so as to discharge his statutory functions.
- (5) No order to as costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL