

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH**

(IB)-40(PB)/2017

IN THE MATTER OF:

Vedikat Nut Crafts Pvt. Ltd.

.... **APPLICANT / PETITIONER**

SECTION:

Under Section 10 of Insolvency & Bankruptcy Code

Order delivered on 12.01.2018

Coram:

**CHIEF JUSTICE M. M. KUMAR
Hon'ble President**

**S. K. MOHAPATR
HON'BLE MEMBER (TECHNICAL)**

PRESENTS:

**For the RESOLUTION PROFESSIONAL :- Mr. Hemant Sharma, RP
Mr. Karan Kanwal, Advocate**

ORDER

This is an Application (No. 04(PB)/2017) which is taken up with the status report. Both have been filed on 22.12.2017. The prayer made in the application is that the Resolution Professional be permitted to continue as a liquidator by referring the matter to the IBBI in terms section 64(4) of IBC 2016 after approving the resolution plan as proposed by the Committees of Creditors.

A perusal of the status report shows that petition under section 10 of IBC was admitted on 31.06.2017 and Resolution Professional obtained a copy of the order on 04.07.2017. Thereafter on 07.07.2017 the Resolution Professional issued public notice inviting claims. On 10.07.2017 he appointed two registered valuer M/s Raj Gupta & Co.

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and M/s S. Saluja & Co. It is also appropriate to mention that corrigendum with regard to public notice was issued on 28.07.2017. The list of creditor was prepared on 26.07.2017 and the meeting of Committee of Creditor was called on 03.08.2017 in which the IRP Mr. Hemant Sharma was confirmed to continue as Resolution Professional. According to the valuation report submitted by M/s Raj Gupta, a firm of Chartered Accountant, the valuation of current assets have been evaluated at Rs. 6.87 crores and M/s S. Saluja & co. have assessed the valuation at Rs. 7.35 crores. According to the provision of section 25(2)(h) of IBC, it is duty of the Resolution Professional to invite prospective lenders, investors and any other professional to put forward the resolution plan and the procedure for inviting the Resolution Plan is to float the expression of interest after the valuation has been received. But no step has been taken to float expression of interest. In the present case the Corporate Insolvency Resolution Process (CIRP) was triggered under section 10 of the IBC. The reason for not floating the expression of interest have been given by the Committee of Creditors which are evident from the minutes of meeting held on 29.11.2017 and the same are as under: (Page 32)

Further, the Resolution Professional also informed that there



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may be a possibility to receive Resolution Plan from the invest or bidder for the revival of the corporate debtor, if the CIRP period may extend by them for further 90 days. However, all the member categorically refused to extend by them for further 90 days. However, all the members categorically refused to extend the period of CIRP for further 90 days and decided to initiate the liquidation proceedings against the corporate debtor. Further, the members of the COC discussed that after getting the final valuation reports from the Registered Valuers, the Chairperson may hold the next COC meeting in the next 10-15 days for final discussions. Thereafter, taking note of the physical presence of all the eligible participating financial creditors of the committee of creditors, Chairperson requested the members of the CoC to place their vote for the aforesaid agenda.

RESULT: The members of Committee of Creditors (COC) representing 100% of the voting shares in the COC voted against the extension of the time for completion of CIRP.

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2. Mr. Anurag Garg, member of the suspended board informed



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to the members of the CoC that he would like to submit One-Time Settlement (OTS) proposal. The members of the CoC noted the same. However, the members of the CoC stated that the date for closure of the CIRP proceedings is approaching, so liquidation proceedings should be initiated against the corporate debtor. Therefore, the members of the CoC took a unanimous decision for initiation of the liquidation proceedings against the corporate debtor.

A perusal of the aforesaid paras extracted from the minutes of meeting of the Committee of Creditors would show that no reason have been given for not inviting Resolution Plan despite the fact that even a period of one month as balance period of 180 days was still available. The aforesaid reason given by the Committee of Creditor to jump to the conclusion of seeking liquidation of the company without seeking extension of time of 90 days, without inviting expression of interest by the prospective resolution plan applicant falls foul of legal provisions and fair play. It presents a tell tale story of the irregularity committed. To say the least such a decision is arbitrary and cannot be sustained.

At the time of argument it was suggested that there is only one car as an asset of the debtor company and therefore, the recommendation

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of the Committee of Creditors for liquidation may be accepted. When we probed the matter deeper it was found that the valuation of the company shows that it is worth about 7 crores. We further found that there are current asset and that is why two valuers has assessed the value either at 6.87 crores or 7.35 crores. The next step which Resolution Professional should have taken was to disclose to the Committee of Creditor that inviting of expression of interest was mandatory and that he would be seen violating his duty as contemplated by section 25(2)(h) of IBC if the same was not acted upon. The Resolution Professional made an attempt which was the Resolution Professional are required to develop best practices and inculcate the same in the Committee of Creditors especially in cases under section 10 of IBC. In the absence of expression of interest there was no possibility of any resolution plan applicant to come forward and make offer. Such a procedure followed by the Committee of Creditor cannot receive stamp of approval from the Adjudicating Authority.

We wish to pointout another aspect. In the present case the Resolution Professional is an advocate practicing for many years. He engaged a counsel and on the last date of hearing. However, we needed the assistance of the Resolution Professional, when he appeared today

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we found that there was hardly any necessity to engage another counsel. It was avoidable. Therefore, the Resolution Professional engages themselves in developing best practices.

As a sequel to the above discussion, we decline to approve the Resolution proposed by the Committee of Creditor for liquidation of the company and direct the Resolution Professional to float expression of interest as per the provision of section 25(2)(h) of IBC. After floating of expression of interest the resolution plans if any received in response should be placed before the Committee of Creditor. A report of all the Resolution Plan shall be placed before us being the Adjudicatory Authority. The period of 180 days is to expire on 27.12.2017 and we are extending the period by 90 days which would now expire on 27.03.2018. The same Resolution Professional shall continue discharge his duties.

With the aforesaid observation the application is disposed off. We expect the Resolution Professional to expedite the process.

Sd-

**CHIEF JUSTICE M. M. KUMAR
PRESIDENT**

Sd-

**(S. K. MOHAPATRA)
MEMBER (TECHNICAL)**