

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-185(PB)/2017

IN THE MATTER OF:

Inder Preet Singh

.....**Petitioner**

v.

Mariners Buildcon India Ltd.

.....**Respondent**

SECTION : UNDER SECTION 7 of IBC, 2016

Order delivered on 29.01.2018

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

For the Petitioner(s):

Mr. Rakesh Kumar, Ms. Preeti Kashyap, Mr. P.K. Sachdeva and Ms. Chetna Bisht, Advocates
Mr. P.S. Soni, Resolution Professional

For the Respondent(s) :

ORDER

Diary No. 397

This is an application with a prayer for acceptance of the final status report. According to the resolution passed by the Committee of Creditors on 07.12.2017 there was no possibility of approving any resolution plan and the recommendation was made for the liquidation of the company known as Mariners Buildcon India Limited-Corporate Debtor. The present application has been filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') and in para 16 & 17 of the application it has been stated that all financial creditors have consented for liquidation process under Section 33(2) of the Code as no resolution plan was acceptable to the Committee of Creditors. The aforesaid paras 16 and 17 read as under:-

"16. As per the consent of all the financial creditors liquidation process under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 since no resolution plan was acceptable to committee of creditors and even stakeholders and all have favored for LIQUIDATION OF THE CORPORATE DEBTOR under regulation 35 and section 33(2) and allowed Resolution Professional to go ahead with LIQUIDATION.

17. Since all the creditors of the Mariners Buildcons India Limited are in favor of liquidation of the company, the present Resolution Professional Mr. Prabhjit Singh Soni was appointed as LIQUIDATOR of the Corporate Debtor subject to approval by Hon'ble NCLT, Principal Bench, New Delhi as per section 34 of the IBC, 2016 at a remuneration specified in the regulation 4 of the


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During the course of hearing we asked learned counsel for the Resolution Professional about the resolution plan which came up for consideration of the Committee of Creditors. The answer given was that no expression of interest was floated inviting any resolution plan and therefore there was no resolution plan placed before the Committee of Creditors. The Committee of Creditors recommended liquidation of the company namely Mariners Buildcon India Limited-Corporate Debtor.

We are aghast at the apathy of the Resolution Professional. On repeated queries we were told that he has not apprised the Committee of Creditors that he was duty bound in terms of Section 25 (2) (h) of the Code to invite *inter alia* any person to put forward resolution plan. It is pertinent to reproduce the provisions of Section 25 of the Code for the ready reference of the Resolution Professional which are as under:-

“Duties of Resolution professional.

25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:— (a)

(b)

(c)

(d)

(e)

(f)

(h) invite prospective lenders, investors, and any other persons to put forward resolution plans;”

The aforesaid provision establishes beyond any doubt that the Resolution Professional was under a sacred duty to put forward before the Committee of Creditors that the ‘Code’ by virtue of Section 25 (2) (h) binds them to permit floating of expression of interest. Alas that was not done! Why we shudder to think about any extraneous consideration. We are further of the view that the basic object of the ‘Code’ is resolution and liquidation has to be a measure of last resort.

The aforesaid duty could only be performed by inviting the expression of interest from the whole world and the process has to be started by inserting public notices in the two widely circulated newspapers (one in vernacular and the other one in English). The Resolution Professional completely failed in intimating the Committee of Creditors that the resolution plan has to be invited by floating expression of interest. The terms of such prospective applicants were required to be finalized by the Committee of

Creditors with the assistance of the Resolution Professional which include the minimum deposits for a prospective Resolution Plan Applicant and the base price, if so advised, by the Committee of Creditors. The final date for the receipt of the resolution plan and other modalities were also required to be finalized. We do not understand how the Committee of Creditors can take upon itself the idea of saying that no resolution plan was acceptable to them when there was no resolution plan presented to them. This leads us to infer some suspicions.

In view of the above, we are unable to accept the continuation of the present Resolution Professional namely Mr. Prabhjit Singh Soni, IBBI Registration No. IBBI/IPA-002/IP-N00065/2017-2018/10143. In his place and in the larger interest of justice we appoint Mr. Dinesh Sood, IBBI Registration No. IBBI/IPA-002/IP-N00046/2016-2017/10091, email id dk.sood@yahoo.com, Mobile No. 9650485731 to act as Resolution Professional to carry on the further process of Corporate Insolvency Resolution Process. We also extend the time by 90 days beyond 180 days which is to expire on 20.01.2018. Liberty is also granted to the newly appointed Resolution Professional to scrutinize the valuation report collected by the earlier Resolution Professional and if he feels the necessity of obtaining fresh valuation report he shall be free to do so because it appears to us that there is huge difference in two valuation report.

Consequently, the final status report of Resolution Professional is rejected and let the newly appointed Resolution Professional present the final report.

29.01.2018

Sd/-

(M. M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)