

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

MA 701 in C.P. 1055/I&BP/2017

Under section 33 & 60(5) of the IBC, 2016

In the matter of
Roofit Industries Limited

Jitender Kumar Jain
Resolution Professional

....Applicant

Order delivered on 22.01.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Applicant : Jitender Kumar Jain
Resolution Professional

Per V. Nallasenapathy, Member (Technical)

ORDER

1. Mr. Jitender Kumar, the Resolution Professional of Roofit Industries Ltd. filed this Application under sections 33 and under section 60(5) of the Insolvency & Bankruptcy Code (the Code), praying for the following reliefs :

- (a) *Pending disposal of this application, the Applicant be allowed to continue to act as the Resolution Professional of the Corporate Debtor from 26th December, 2017 till final disposal of this application.*
- (b) *The Corporate Debtor be liquidated in terms of the provisions of the Chapter - III of the Insolvency Code.*
- (c) *To appoint some other insolvency professional as the liquidator of the Corporate Debtor (in place of the Resolution Professional because the Resolution Professional is unwilling to act liquidator of the*

Corporate Debtor) as per the provisions of section 34 of the Insolvency Code.

- (d) To allow the payment of remuneration to the Applicant / Resolution Professional for the period starting from 26th December, 2017 till final disposal of this application for acting as the Resolution Professional of the Corporate Debtor at a rate equal to the remuneration paid during the CIRP period as part of Corporate insolvency resolution process cost or liquidation case, as the case may be.*
- (e) Any other relief or reliefs in favour of the Applicant/ Corporate Debtor as this Hon'ble Tribunal deems fit and proper.*

2. The Corporate Debtor M/s. Roofit Industries Ltd. was put on in Insolvency Resolution process, on its own Petition under section 10 of the Code, by an Order of this Adjudicating Authority dated 28.6.2017. The Applicant herein was appointed as Interim Resolution Professional, he has made a public announcement of insolvency resolution process in two newspapers and on the website of Insolvency and Bankruptcy Board of India (IBBI).
3. In the first meeting of the Committee of Creditors (CoC) held on 27.7.2017, the Applicant was confirmed as Resolution Professional as per Section 22 of the Code. The Corporate Insolvency resolution period expired on 26.12.2017 and no extension of the Corporate Insolvency Resolution period was sought. The Applicant states that no resolution plan has been received and hence this Application is filed under section 33 of the Code seeking Liquidation Order.
4. The Petition reveals that the following are the immoveable properties of the Corporate Debtor :

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No.	Particulars	Type of Property
1.	B-15, MIDC Mirjole, Ratnagiri - 415 639, Cement Sheet Factory	Land, Building & Plant & Machinery
2.	Plot No.379, Village Abitghar, Taluka Wada, Dist. Thane 421 363 Gat No.379-B (part)	Land, Building & Plant & Machinery
3.	B-42, SIPCOT Industrial Complex, Gummidipoondi - 601 201, Chennai Survey No.12 part, 13 part, 14 part & 19 part land	Land, Building & Plant & Machinery
4.	Survey No.206-207, District- Trivellore, Taluka Gummidipoondi, Chennai.	Land & Building
5.	Shop No.11, 5 th floor, Topaz Building, Panjagutta, Hyderabad.	Shop
6.	A-91/92, MIDC Daund, Pune-Solapur Road, Kurkhumbh 413801 Plot No.A-91 and A-92	Plant & Machinery, Land and Building
7.	E-25, MIDC, Chikalthana, Aurangabad - 431210 Plot No.E-25	Land & Building
8.	2 nd floor, South Square Building, Near Manorama Junction, Ernakulam	Office
9.	Plot No.39, B-Nanji Industrial Estate, S. No.200/1/2, Village Kharadpada, Silvasa - 396203	Land & Building.

5. The Petition further reveals that previously the assets of the Corporate Debtor were attached under the provisions of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 by the competent authority under the said Act and subsequently the said attachment was released by the MPID Court by its Order dated 18.8.2017 made in an Application filed by the Resolution Professional, which is inclusive of a sum of ₹40,00,000 in cash plus interest accrued. However, the said sum of ₹40,00,000 is not yet received by the Resolution Professional.

6. The Petition also reveals that the valuation of properties was undertaken by the Resolution Professional by appointing two Valuers and the Report is also enclosed. After the receipt of liquidation value of the Corporate Debtor, two advertisements

inviting expression of interest in terms of Section 25 of the Code was given. The Petition further reveals that the following expressions of interest was received by the Applicant:

- (a) *Robuster Constructware LLP in respect of Kurkumbh property.*
- (b) *PR Developers in respect of all the properties.*
- (c) *Gummidipoondi Roofit Employees' Welfare Foundation for B-42 Gummidipoondi factory.*
- (d) *Phoenix ARC Private Limited as resolution applicant.*
- (e) *Madras Building Products Private Limited for B-42 Gummidipoondi Factory.*
- (f) *Mr. E.C. John in respect of Wada property.*

7. The Applicant further submits that the following two proposals were received in respect of B-42 Gummidipoondi Factory:

- (a) *Gummidipoondi Roofit Employees' Welfare Foundation on 17 December, 2017.*
- (b) *Madras Building Products Private Limited on 18 December, 2017.*

The above proposals were laid before the fourth meeting of the CoC held on 21 December, 2017.

8. The Applicant further states that Resolution Plan from Gummidipoondi Roofit Employees' Welfare Association, which is only in respect of B-42 Gummidipoondi Factory(excluding other units), was received on the night of 20th December, 2017 i.e. less than one day prior to the CoC meeting scheduled at 11 a.m. on 21.12.2017 the said Resolution Plan was not presented before the CoC because of the reason that the Resolution Professional did not have enough time to examine the Resolution Plan. However, the same was informed to the CoC.

9. Since the CIRP period of 180 days ended on 26.12.2017 and no Resolution Plan for the Corporate Debtor is received by the

Resolution Professional, except for B-42 Gummidipoondi Factory only, submitted by the Gummidipoondi Roofit Employees' Welfare Association, the Resolution Professional filed this Application for liquidation under section 33 of the Code. Considering the fact that the Resolution Plan submitted by the above said Employees' Association is only in respect of Gummjidipoondi Factory excluding other units, this Bench is of the view that the Resolution Plan cannot be considered for a particular unit excluding others and hence, the same cannot be considered as a Resolution at all under the Code.

10. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code r/w Regulations of CIRP, for the valuation report filed by the valuer has not been disputed by the CoC, on verification, we are of the view that this case is fit to pass liquidation order as mentioned under sub-section 2 of section 33 of the Code and accordingly, the Corporate Debtor is ordered to be liquidated.

11. The Resolution Professional/Applicant herein has stated that he is not willing to act as a Liquidator of the Corporate Debtor. However, section 34(1) of the Code provides that where the Adjudicating Authority passes an order for Liquidation of the Corporate Debtor under section 33, the Resolution Professional appointed for the Corporate Insolvency resolution process under Chapter – II shall act as a Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4). In view of this provision, this Adjudicating Authority cannot concede the request of the Applicant. Apart from this, the Resolution Professional having dealt with the Corporate Debtor during the last six months it is not advisable to make somebody else as Liquidator because of the mere reason that no funds are available with the Corporate Debtor to pay the remuneration for RP.

12. Consequently, the Applicant Resolution Professional is appointed as the Liquidator as provided under section 34(1) of the Code. All 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;

13. This Bench hereby directs the personnel of the corporate debtor to extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.

14. Since Liquidation order has been passed no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, save and except as mentioned in section 52 of the Code, as to institution of legal proceedings by the Liquidator, he is at liberty to initiate suit or legal proceedings with prior approval of this Adjudicating Authority, but this direction 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.

15. This order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of business the Corporate Debtor carrying.

16. We hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation Process) Regulations, which forms part of the liquidation cost.

17. The Liquidator appointed herein is directed to issue public announcement stating that the Corporate Debtor is in liquidation and also required to send the copy of this Order to the concerned Registrar of Companies as required under section 33(1) of the Code.

18. Accordingly, this Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as

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envisaged under Chapter-III of Insolvency and Bankruptcy Code 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations 2016.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASH KUMAR
Member (Judicial)