

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

IA NO.224/2017

(UNDER SECTION 33 OF
THE INSOLVENCY & BANKRUPTCY CODE, 2016)

IN

CP NO.25/ALD/2017

IN THE MATTER OF

JODPL PRIVATE LIMITED,

Plot No.15, Knowledge Park II,
Greater Noida -201 306, Gautam Budh Nagar,
Uttar Pradesh.

THROUGH ITS RESOLUTION PROFESSIONAL

.....**CORPORATE APPLICANT**

JUDGMENT/ORDER DELIVERED ON 18.12.2017

CORAM: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

For the Corporate Applicant: Ms. Misha, Advocate.

Alongwith,

Mr. Siddhant Kant , Advocate.

Ms. Gunjan Jadwani, Advocate.

PER:SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

JUDGMENT/ORDER



1. The present Application is filed by the Resolution Professional of JODPL Private Limited ("the Corporate Debtor") under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking an order for liquidation of the Corporate Debtor Company. The Committee of Creditors has approved the same within prescribed period for liquidation of 270 days of

corporate insolvency resolution process because the resolution plan for the Corporate Debtor could not be materialized.

2. This Tribunal vide its order dated 17th March, 2017 admitted the Petition under Section 10 of the Insolvency and Bankruptcy Code had appointed Mr. Dinkar T. Venkatasubramanian as an Interim Resolution Professional in respect of Corporate Applicant Company, later on he was confirmed as the resolution professional by the Committee of Creditor.
3. The facts which are necessary for disposal of the present petition are that the learned Resolution Professional initiated necessary process through the COC for preparation of the resolution plan for the company. During such process as per the Regulation 35 of the Insolvency and Bankruptcy Board of India (CIR Regulations) 2016, the Resolution Professional appointed two registered valuers, namely Duff & Phelps India Private Limited; and RBSA Valuation Advisors LLP who have submitted their report on valuation dated 24th April, 2017 and 16 May, 2017 respectively.
4. The liquidation value computed by RBSA Valuation Advisors LLP is Rs. 514,45,10,000 (without cash call liability) and Rs.52,61,80,000 (with cash call liability). The reason for two valuations are explained in the valuation report stating as under.



"As per the annual report of JODPL for February 28th, 2017, there is a cash call liability on account of expenditure in KG Bloch which has been disputed by the Company. Since the outcome of this dispute is uncertain, the value of Participating Interest in KG Block has been computed with and without cash call liability".

5. The liquidation value computed by Duff & Phelps India Private Limited was in range of Rs.581,00,00,000 to Rs.710,00,00,000. In the information memorandum prepared by the Resolution Professional, the liquidation value is specified as an average of the two valuations as **Rs.579,50,00,000**, with a remark that, "**The valuation is before considering the outstanding cash call liability from GSPC**". In arriving at the average valuation, the Resolution Professional has considered the median of the valuation range determined by Duff & Phelps India Private Limited.
6. It is further contended in the present Application although the proposed Resolution Plan was discussed with the Committee of Creditors of the Corporate Applicant/Corporate Debtor in several meetings yet it could not be materialized and was finally put to vote on in its 16th meeting held on 7th December, 2017, **wherein the voting was carried out on such Resolution Plan but was unanimously rejected by the Committee of Creditors.**
7. By perusal ^{of record} and averments of Resolution Professional made in the present application and documents annexed therewith, it may be seen that the proposed Resolution plan *has been unanimously rejected by the Committee of Creditors*. Further, this court being an Adjudicating Authority is not expected to substitute its view with Commercial Wisdom of professional expert i.e. RP and COC nor it should deal with technical complexity and merits of Resolution Plan or otherwise unless it found contrary to express provision of law and goes against the public interest.



8. Therefore, the reasons stated as above we feel that, there are sufficient grounds ~~to~~ and convincing reasons to initiate liquidation process under Section 33 of the Insolvency and Bankruptcy Code, 2016.

The relevant Provision of the I& B Code, 2016; Section 33 of the Insolvency Code, 2016 reads as under:

33. (1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall— (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter; (ii) issue a public announcement stating that the corporate debtor is in liquidation; and (iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the



provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority. Appeal. Initiation of liquidation.

(6) The provisions of sub-section (5) 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.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

9. Hence, the present Petition is allowed in terms of its prayer clause as stated in Para 14 of the present application and with the following directions:

i. That the resolution professional **Mr. Dinkar T. Venkatasubramanian** appointed for the corporate insolvency resolution process under Chapter II of the Code shall act as the liquidator for the purposes of liquidation in pursuant to Section 34(1) of the Insolvency and Bankruptcy Code, 2016.

ii. All the 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 pursuant to Section 34(2) of the Insolvency and Bankruptcy Code, 2016.



[Handwritten signature]

- iii. That the personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.
- iv. Issue a public announcement stating that the Corporate Debtor is in liquidation.
- v. The Liquidator shall discharge his functions pursuant to the powers and duties under Section 35 and other relevant provisions of the Insolvency and bankruptcy Code, 2016.
- vi. Till the disposal of this application, the moratorium imposed in accordance with Section 14 of the Code to continue.
- vii. The Moratorium order passed by this bench vide its order dated *17th March, 2017 in CP No.25/ALD/2017 in the matter of JODPL Private Limited* shall cease to have effect by the provision of Section 14 (4) of the Insolvency and Bankruptcy Code, 2016 from the date of this order.
- viii. A fresh Moratorium will start under subsection (5) Section 33 of the I& b code, 2016, which read as under: -



Section 33(5): Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority

- ix. Till the disposal of this application, the Resolution Professional to continue to act as the RP of the Corporate Debtor.

x. A copy of this order to be sent to Registrar of Companies,
Kanpur.

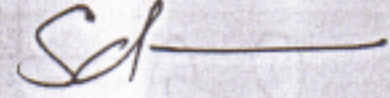
10. The above mentioned application is allowed and stand disposed
of accordingly.

Date: 18.12.2017

Typed by

Aparna Trivedi

Law Research Associate



H.P. Chaturvedi
(Member Judicial)

