

IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD

IA No.712/2019  
In  
CP(IB)No.278/7/HDB/2018

In the matter of:- BS Limited

M/s. BS Limited  
Represented by its RP Dr.K.V.Srinivas  
1-8-3-4 to 307, 4<sup>th</sup> Floor, "Kamala Towers"  
Patigadda Road, Begumpet – 500 003.

...Applicant

Between:

M/s. State Bank of India

...Petitioner/  
Financial Creditor

Versus

BS Limited  
Sy.No.41, Majeedpalli (v),  
TSIIC Indl. Area, Muppireddypally,  
Manoharabad Mandal,  
Medak, Telangana – 502 334

...Respondent/  
Corporate Debtor

Order pronounced on: 17.10.2019

**Coram: MEMBER (JUDICIAL) K. ANANTHA PADMANABHA SWAMY  
MEMBER (TECHNICAL) Dr. BINOD KUMAR SINHA**

Parties/Counsel Present:

Dr. K. V. Srinivas, RP

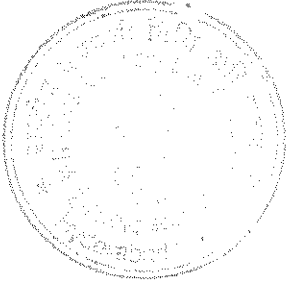
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Per: DR. BINOD KUMAR SINHA, MEMBER TECHNICAL

ORDER

1. The present Application bearing IA No.712/2019 in CP(IB)No.278/7/HDB/2018 is filed by Resolution Professional U/s. 33 of the IB Code, 2016 (The Code) inter-alia praying to pass an order of Liquidation against the Corporate Debtor herein and appoint a Liquidator in accordance with the provisions of Sec.34(4)(c) of IBC, 2016.
2. It is stated that on an Application filed by State Bank of India, the Financial Creditor of the Corporate Debtor, u/s. 7 of IBC, this Adjudicating Authority ordered commencement of CIRP Process vide its order dated 01.11.2018 in CP(IB)No.278/7/HDB/2018, appointing Dr.K.V.Srinivas, as an IRP in terms of provisions of Sec.16 of the Code.
3. It is stated that in the 1<sup>st</sup> CoC meeting, dated 29.11.2018, IRP was appointed as Resolution Professional (RP) in terms of provisions of Sec.22 of the Code.
4. It is further submitted that, the CoC had, in their 3<sup>rd</sup> meeting held on 01.01.2019, approved the publication of Form G inviting Expression of Interest from Prospective Resolution Applicants.
5. It is further submitted that in the 4<sup>th</sup> CoC meeting held on 08.02.2019, the Resolution Professional had intimated the CoC that he had received Expression of Interest (EOI) from 4 potential Resolution Applicants (UV ARC Ltd, New Delhi, Phoenix ARC Pvt Ltd., Mumbai, United Tradeco FZC Sharjah

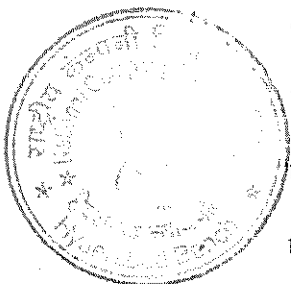


*Binod Kumar Sinha*

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and Elegant Commodities FZC Dubai) in response to the Form G published in the news papers. Considering the poor response to the EOI, the Committee of Creditors had instructed the Resolution Professional to issue fresh invitation for EOI.

6. It is submitted that in the 5<sup>th</sup> CoC meeting held on 05.03.2019, the members had, in compliance to Regulation 36B(1), approved the Evaluation Matrix and the draft Request for Resolution Plan (RFRP) by e-voting. In the said meeting, the CoC also took note of the initial outcome of the Transaction Audit.
7. In the 6<sup>th</sup> CoC meeting held on 15.03.2019, the CoC took note of the Transaction Audit Report and deferred the decision on approval for conducting a Forensic Audit stating that the Banks have already conducted a Forensic Audit on two occasions covering almost the entire period of the transactions and requested the RP to go through the final reports and revert.
8. In the 7<sup>th</sup> CoC meeting held on 10.04.2019, the CoC took note of the status on response to request for Resolution Plan (RFRP) by prospective Resolution Applicants. The COC had also resolved to seek extension of CIRP period from 180 days to 270 days. This Adjudicating Authority vide its order dated 16.05.2019 approved extension of CIRP period by another 90 days thereby extending the same till 28.07.2019.
9. It is stated that the Resolution Professional had, vide I.A.No.323 of 2019, filed an Application before this Adjudicating Authority, reporting the transactions



*(Signature)*

*(Signature)*

attracting provisions of Sec.43, 44, 45 and 66 of IBC, 2016 and the Application is still pending.

10. In the 8<sup>th</sup> CoC meeting held on 21.05.2019, the committee took note that the Resolution Professional had received the Valuation Reports submitted by the Valuers appointed in accordance to the provisions of the Code. In the said meeting, the Resolution Professional informed the CoC that he had received one Resolution Plan on the last date i.e., 16.05.2019 from M/s, United Tradeco FZC (UTC) and placed the same before the CoC.
11. It is stated that in the 9<sup>th</sup> CoC meeting held on 11.06.2019, the Resolution Professional had informed the members that there were no other Resolution Plans except the Resolution Plan received from the only Resolution Applicant namely M/s. United Tradeco FZC.
12. It is stated that the Resolution Professional in the 10<sup>th</sup> CoC meeting held on 06.07.2019 placed before the CoC a revised offer of the Resolution Applicant vide letter dated 02.07.2019 and informed the CoC that the Sub-Committee had met the representatives of the Resolution Applicant, discussed and negotiated further over the revised offer for Resolution and requested the Resolution Applicant to improve further and other broad terms as well.
13. It is stated that in the 11<sup>th</sup> CoC meeting held on 18.07.2019, the Resolution Applicant had come out with a revised offer which was placed before the CoC for discussion. The meeting was adjourned to 20.07.2019.

  
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14. During the meeting held on 20.07.2019, the members of the CoC had discussed the revised plan submitted by the Resolution Applicant vide its letter dated 20.07.2019. The Committee expressed its views on the same to the Resolution Professional and requested him to prevail over the only Resolution applicant to incorporate the CoC's views in the revised plan and submit the same immediately before the CoC for its consideration. The meeting was adjourned to 23.07.2019 for consideration of the revised Resolution Plan to be submitted by the Resolution Applicant.

15. In the above circumstances, the CoC, in their 11<sup>th</sup> meeting, held on 23.07.2019 resolved as under:

*“RESOLVED THAT pursuant to Section 30 of The Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and all other applicable provisions of the Code, rules and regulations thereof including any statutory modification(s) or re-enactment(s) thereof submitted by M/s.United Tradeco FZV, having its office at E-100F-35, Hamriyah Free Zone, Sharjah, UAE be and is hereby approved in entirety.”*

*“FURTHER RESOLVED THAT pursuant to the provisions of Section 30 of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Dr.K.V.Srinivas, Resolution Professional be and is hereby authorised to intimate the decision of the Committee of Creditors and file an Interlocutory Application,*

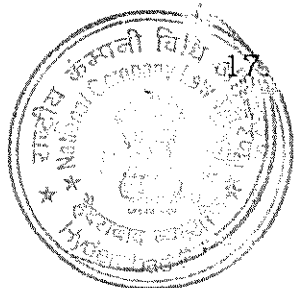


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*along with Resolution Plan, praying the Hon'ble Adjudicating Authority to pass necessary and appropriate orders giving effect to the decision of the Committee of Creditors."*

16. It is stated that all the members of the CoC had exercised their e-voting power except one member during the extended time REJECTING THE RESOLUTION PLAN BY A MAJORITY VOTE OF 84.673% (WITH 14.293% ACCEPTING THE RESOLUTION PLAN AND 1.034% ABSTAINING FROM VOTING) and accordingly the Resolution Professional declared the results and communicated the same to the members in accordance to the provisions of the Code and Regulations thereunder.



17. Since the Resolution Plan was rejected by voting of 84.673% and abstained by 1.034% on CoC votes, in view of the same not meeting the required majority for its approval, the RP has filed the instant IA for Liquidation.

18. Heard both sides and perused the records.
19. In view of the facts and circumstances recorded by RP in IA No.712 of 2019 filed in CP(IB) No. 278/7/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30. Therefore, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—

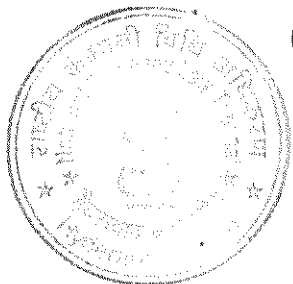
- (i) This Adjudicating Authority hereby order for Liquidation of M/s. BS Limited, which shall be

  
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conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

- (ii) Moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;
- (iii) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- (iv) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- (v) This Order 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.
- (vi) 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 Company Liquidator appointed by this Adjudicating Authority. In addition to this, the Company Liquidator shall exercise the powers and duties as



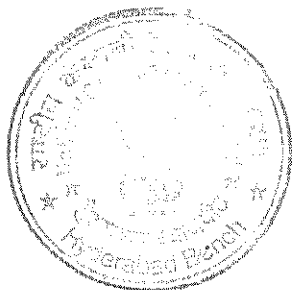
  
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enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(vii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(viii) The Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation Estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation Estate.



(ix) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor for information and compliance.

(x) As the CoC has not resolved to appoint the Resolution Professional as the Liquidator and even the RP has not filed his consent to act as Liquidator, therefore, this Adjudicating Authority, requests the IBBI to suggest the name of a registered Insolvency Professional to be appointed as the Liquidator in this case. The Registry is directed to furnish a copy of this order to IBBI.

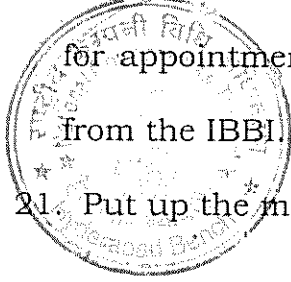
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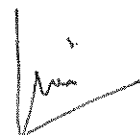
20. In terms of the above, Registry is directed to list the matter for appointment of the Liquidator after receipt of the name from the IBBI.

21. Put up the matter on 24.10.2019.



  
17.10.19  
Dr. BINOD KUMAR SINHA  
MEMBER (TECHNICAL)

Alekhya / SKRathi

  
K. ANANTHA PADMANABHA SWAMY  
MEMBER (JUDICIAL)

  
Dy. Regr./Asst. Regr./Court Officer/  
Registrar of Companies (Mumbai), Mumbai Bench

प्रमाणित प्रति TAND .712/2019.  
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केस संख्या  
CASE NUMBER... GP (IB) NO. - 278/7/HDB 18  
निर्णय का तारीख  
DATE OF JUDGEMENT... 17/10/19  
प्रति सचिव रिजिस्ट्रार कंपनी विधि  
COPY MADE READY ON... 30/10/19.