

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web based video-conferencing platform)

IA No.124/2022
C.P. No.125/2014 (T.P. No.1/2019)
(Admitted Matter)
Under Section 33(1) of the
Insolvency and Bankruptcy Code, 2016

In the matter of:

Bank of Nova Scotia
Branch Office Address:
No.1110, 11th Floor, Raheja Towers,
East Wing, 26-27, MG Road,
Bangalore -560001

...Petitioner / Financial Creditor

VERSUS

M/s Opta Infrastructure Limited
No. S-11, Second Floor,
Gem Plaza, Infantry Road,
Bangalore -560001

...Respondent/Corporate Debtor

And in the matter of IA No.124 /2022:-

Sri. Vedagiri Venkata Krishnamurthy
Resolution Professional,
Of Opto Infrastructure Limited
No.197, 'Saikrupa', 6th A Main
JP Nagar 4th Phase
Bangalore -560078

...Applicant

Order delivered on: 13.03.2024

Coram: 1. Hon'ble Shri K. Biswal Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the RP/Applicant : Shri. Uday Shankar

ORDER

I.A No.124/2022

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application has been filed on 23.02.2022 by Mr Vedagiri Venkata Krishnamurthy, Resolution Professional (“RP”) of M/s. Opta Infrastructure Limited ("Corporate Debtor/CD”) under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s Opta Infrastructure Limited (Corporate Debtor) and to appoint the RP as the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.
2. CP (IB) No. 125/BB/2014 (T.P. No. 1 of 2019) filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by “Bank of Nova Scotia” to initiate Corporate Insolvency Resolution Process (**in short ‘CIRP’**) against the Corporate Debtor was admitted on 25.07.2019. The applicant herein i.e., Mr. Vedagiri Venkata Krishnamurthy was appointed as Interim Resolution Professional (IRP), pursuant to which paper publications inviting claims from creditors of the Corporate Debtor as per Regulation 6(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was made by the IRP on 8.08.2019.
3. On the basis of claims received and admitted from the creditors, the applicant constituted the CoC which held its first meeting on 4.09.2019. In the said meeting of CoC, the interim resolution professional gave consent to act as Resolution Professional. As per section 22(3)(a) of the IBC, 2016 the appointment of RP was communicated to this Tribunal on 11.11.2019.
4. The RP in the 2nd CoC meeting held on 21.11.2019 highlighted that the CD has a land parcel in Hassan allotted to it Karnataka Industrial Area Development Board (KIADB) as per the provisions of the lease cum sale agreement entered between the two parties. The RP stated that as per

the lease deed there exists an option to surrender the land to KIADB seeking return of allotment consideration (with 25% consideration being forfeited along with unpaid rents, interest etc). The RP mentioned that it is the best option for value maximisation considering no development had taken place on the land over the last 9 years. The RP also mentioned that another parcel of land in Nanjangud Taluk, Mysore is under the name of CD however the land agreement pertaining to the land has already been cancelled about three years back. The RP requested the CoC members to provide the status of the same.

5. In the fourth CoC meeting held on 27.01.2020 the CoC members agreed to RPs suggestion of meeting KIADB officials and have a tripartite meeting to get clarity on the status of land and the option to surrender the same as per the lease cum sale agreement. Subsequently on 3.02.2020 RP along with the CoC members met KIADB to discuss the viability of surrendering the land parcels situated in Hassan and Nanjangud respectively. The RP on 10.03.2020 wrote to KIADB after receiving consent from Bank of Nova Scotia seeking details on amount available for refund and expected timelines for the refund on surrender of Hassan Land. In the 7th CoC meeting which was on 13.03.2020 the RP requested that IndusInd Bank also provide confirmation in respect of the surrender of Nanjangud land (which was exclusively mortgaged to IndusInd Bank).

6. In the 11th CoC meeting held on 28.09.2020 it was noted that on 27.06.2020 270 days in the CIRP have already expired and no resolution plan has been received by the RP till date. Additionally, the status on refund of the amount remitted pertaining to the Hassan Land parcel was not definitive due to non-availability of original documents pertaining to the lease agreement by the CD. Pursuant to the above, a resolution was passed by the COC that since no resolution plan is received the CD will go for liquidation as per Section 33(1) of the Code and RP shall act as the liquidator and the same is as under:

“Filing for Liquidation u/s 33 of IBC Code-

After deliberation on the options available, the CoC members unanimously passed the following resolution for liquidation of the corporate debtor:

“RESOLVED THAT the Resolution Professional be and is hereby authorised to take necessary steps for filing application before the Adjudicating Authority for liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016 and for any other proceedings or incidental to the matter”

“RESOLVED THAT subject to the order of the Adjudicating Authority under Section 34 of the Insolvency and Bankruptcy Code, 2016, Mr. Vedagiri Venkata Krishnamurthy, Registration Number: IBBI/IPA-001/IP-P00905/2017-2018/11505 shall act as the liquidator during the liquidation of the corporate debtor.”

However, liquidation fees were not ratified, hence it was resolved by the CoC that the liquidation application should be moved only after ratification of the liquidation costs. By 30.11.2020, KIADB vide a letter confirmed on the eligible refund value on surrender of Hassan land along with further terms and conditions for the refund.

7. In the 12th CoC meeting held on 04.12.2020 IndusInd Bank gave consent to RP to surrender Nanjangud land parcel to KIADB and authorised RP to seek for confirmation on the refund value. On 15.12.2020, RP wrote to KIADB seeking details on amount available for refund and expected timelines for refund on surrender of Nanjangud land to KIADB. Subsequently, on 4.02.2021, RP filed application before the Hon'ble High Court of Karnataka for the withdrawal of WP No.30336-351/2017 and affidavit for withdrawal of WP. 57860/2018 with respect to the Hassan Land (as this was one of the conditions for surrender of Hassan Land as per KIADB letter dt.30.11.2020) which was withdrawn by order dt.24.03.2021 passed by the Hon'ble High Court of Karnataka.
8. Pursuant to the order, KIADB re-verified the original lease cum sale agreement and observed that the original agreement was not handed over on 26.03.2021 due to which RP sought time to place the original lease cum sale agreement. After handing over the original documents of Hassan on 17.09.2021, KIADB refused to accept the same citing the reason that the same is not an original document. Subsequently, RP filed I.A. Nos. 54 and 55 of 2022 for cancellation of Lease Deeds against KIADB on 07.02.2022 wherein this Tribunal allowed the applications directing KIADB to effect cancellation of respective lease deeds and

consequently refund the amounts given as deposit. On 16.06.2023, execution and registration of surrender and cancellation deed in respect of Hassan Land took place with SRO Hassan and on 24.08.2023 with respect to the Nanjangud Land at SRO Nanjangud. Vide order dt.25.09.2023 this Tribunal in I.A. No.6 of 2023 allowed the RP to distribute refund to Bank of Nova Scotia (BNS) net of IRP costs.

9. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records.

10. The provisions of sub-sections (1) and (2) of Section 33 of the Code are as follows:-

“33 Initiation of liquidation-

(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).”

- 11. Prescribed period for filing application-** In the present case, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 25.07.2019. As per the submission of the CoC members, the last date to receive the resolution plans was on 19.07.2020 but no resolution plan was received and the CoC Members in the 11th CoC meeting held on 28.09.2020 decided that the CD should go under liquidation. The CIRP period has been extended from 25.03.2020 to 31.05.2020 by order of this Tribunal dt.16.09.2020. The RP sought additional extension from the period 27.06.2020 till 27.12.2020 but the same was dismissed by the Tribunal on 01.04.2021 in I.A. 529 of 2020 with the direction that “if no resolution plan is received within stipulated period, the CD will automatically go under Liquidation process”...and directed the RP to file the necessary application for liquidation of the CD. Subsequently, the RP filed an appeal in the Hon’ble NCLAT in CA (AT) (Ins) No. 190/2021 on 11.07.2021 which was dismissed as withdrawn on 13.08.2021. The Application for liquidation was filed by the RP on 23.02.2022 under Section 33(2) of the Code on the ground that: (a) 270th day in the CIRP has expired on 27.06.2020 and no resolution plan for the CD has been received; (b) this tribunal directed the RP to file for liquidation if no resolution plan is received. Therefore, it is observed that the requirement of Section 33(1) of the Code is satisfied and the application shall be considered under Section 33(1) of the Code.
- 12. Appointment of Liquidator-** As per Section 34 of the Code, the RP gave consent to act as the liquidator in the CoC meeting on 28.09.2020. However, the AFA issued to the RP expired on 22.12.2023 which was informed to the CoC members on 02.01.2024 in the 20th CoC meeting, much after filing of the instant application. Subsequently, Members of CoC9/* passed the resolution for appointment of Shri Ravi Sankar Devarakonda to act as Liquidator of the CD after which the RP/applicant filed the I.A. No. 07/2024 seeking appointment of the new liquidator which was allowed by this Tribunal on 31.01.2024. In light of the above factual matrix, and in compliance with Section 34 of the Code Shri Ravi Sankar Devarakonda with Registration no. IBBI/IPA-001/IP-P00095/2017-2018/10195 is appointed as the Liquidator.

13. Regulations 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/201920/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.
- a. **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** - The liquidation cost is as per the resolution passed in the 11th CoC meeting dt.28.09.2020 at Page @137 Annexure O. As per the Regulation 39B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the estimated Liquidation costs excluding the Liquidators fee for the CD is 9.78 Lakhs.
 - b. **Assessment of Sale as a going concern [Regulation 39C of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The CoC approved the surrender of land parcel of the Corporate Debtor allotted on a lease cum sale basis which was subsequently as per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 in their 11th meeting held on 28.09.2020. Therefore, the Liquidator shall follow the Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016.
 - c. **Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** - The fee payable to the Liquidator is as per the resolution passed in reference to the Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016.
14. **Pending applications, if any, and its effects** –On 25.09.2023, the Learned Counsel for the RP/Applicant was granted extension of time to file three more minutes of CoC meeting which was complied with by filing Memo/Particulars of events post filing of the Liquidation application vide Diary no.5455 dt.27.10.2023 and the same is taken on record. It is submitted that Writ Petition bearing WP No. 30336-351/2017, WP No. 57860/2018 was pending before the Hon'ble High Court of Karnataka with respect to Hassan Land. However, vide I.A. No. 54 & 55 of 2022 for cancellation of lease deeds and directing KIABD to refund the amounts given as deposit was allowed by this Tribunal vide

order dt.28.03.2023. On 16.06.2023 execution and registration of surrender and cancellation deed in respect of Hassan Land took place with SRO Hassan. Subsequently, I.A. No. 6 of 2023 was filed by Bank of Nova Scotia seeking direction to refund the sum pertaining to the Hassan Land in its favour. This Tribunal vide order dt.25.09.2023 allowed the application in favour of BNS. Therefore, there are no pending applications against the CD.

15. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Opta Infrastructure Limited is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:
- i. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the Corporate Debtor;
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
 - ii. That the provisions of sub-section (5) of Section 33 of the Code 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; and
 - iii. That this order of liquidation under Section 33 of the Code 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; and
 - iv. That 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; and
 - v. 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 and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of

references to the liquidator for references to the Interim Resolution Professional.

- vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.
- vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
- viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 thereafter.
- ix. The Liquidator shall file his written consent within one week from today.

17. Thus **I.A No. 124 of 2022** stands disposed of.

18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

S/d

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

S/d

**(K.BISWAL)
MEMBER (JUDICIAL)**

