

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

I.A. No.498/2019 in
C.P.(IB)No.17/BB/2019
U/s. 33 (2) of the IBC, 2016

Between:

Mr. Velayudham Jayavel

*Resolution Professional for
M/s. IDEB Projects Pvt. Ltd.*

F1, Windsor Meenakshmi,
5th Cross, Pai Layout,
Hulimavu,
Bengaluru – 560 076

- Applicant/RP

In the matter of:

The Oriental Bank of Commerce

- Petitioner/
Financial Creditor

VERSUS

M/s. IDEB Projects Pvt. Ltd.

- Respondent/
Corporate Debtor

Date of Order: 08th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Mr. Velayudham Jayavel with
Shri Pinar Mehta
For the Petitioner : Shri D.M.Dora
For the Respondent No.3/CoC : Shri Francis Xavier
For the SBI : Shri S.R.Tejas



ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.498/2019 in C.P.(IB)No.17/BB/2019 is filed by Mr. Velayudham Jayavel, Resolution Professional for M/s. IDEB Projects Pvt. Ltd. ('Applicant') U/s. 33 (2) of the IBC, 2016, by inter alia seeking to liquidate the Corporate Debtor and pass any other order(s) in the interests of justice and equity.
2. Brief facts of the case as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) The main Company Petition was filed by Oriental Bank of Commerce (Petitioner/Financial Creditor) U/s. 7 of the IBC, 2016 R/w Rule 4 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate CIRP in respect of M/s. IDEB Projects Pvt. Ltd., (Respondent/Corporate Debtor) on ground that it has committed default for an amount of Rs.36,18,52,994/-. After considering the issue, the Adjudicating Authority has admitted the Company Petition vide order dated 29.03.2019, by initiating CIRP in respect of the Respondent/Corporate Debtor, appointing Shri Velayudham Jayavel as IRP, imposing moratorium etc.. Subsequently, he was confirmed as Resolution Professional by the Committee of Creditors in its meeting held on 13.05.2019.
 - (2) In pursuant to the admission of the case, Committee of Creditors (CoC) of the Corporate Debtor were constituted consisting of the following financial creditors:
 - i. State Bank of India;
 - ii. Oriental Bank of Commerce;
 - iii. ICICI Bank Limited; and



iv. L & T Infrastructure Finance Company Limited

The first meeting of the CoC was held on 29.04.2019. The suspended Board Directors of the Corporate Debtor had preferred an appeal against the Order of the Admission of the case before the Hon'ble NCLAT, which was ultimately came to be dismissed its Order dated 08.05.2019. Thereafter, the second meeting of the CoC was held on 13.05.2019, wherein, it was inter-alia decided to appoint IRP as RP. Subsequently, the third meeting of the CoC was held on 11.06.2019, the information memorandum was shared by the Applicant with the CoC. In pursuant to the third meeting of the CoC, the Applicant published the invitation for Expression of Interest (EOI) in Form G on 16.06.2019. Mr. H.S.Bedi, the suspended Director-Promoter of the Corporate Debtor submitted his EOI on 28.06.2019. No other expressions of interest were received by the Applicant.

- (3) It is submitted that upon receipt of the EOI submitted by Mr. Bedi, the Applicant, after conducting the due diligence on Mr. Bedi, found that Mr. Bedi had been declared a wilful defaulter by SBI, State Bank of Travancore and OBC and he continues to be a Wilful Defaulter as per the CIBIL database. Hence, the EOI was rejected as the same could not be considered under the provisions of Section 29A of the IBC. Accordingly, the Applicant notified Mr. Bedi vide email dated 12.07.2019 that his EOI had been rejected as the CIBIL database confirmed that Mr. Bedi was debarred as a Wilful Defaulter. In response to the above email, Mr. Bedi vide letter dated 15.07.2019 stated that he had preferred a Writ Petition before the Hon'ble Karnataka High Court vide W.P.No.64053/2016 challenging his being

declared a wilful defaulter by inter-alia alleging that the proper procedure as laid out by the Reserve Bank of India was not followed by the Banks before declaring him as a wilful defaulter. Thereafter, the Applicant responded to the aforesaid letter vide email dated 26.07.2019, reiterating that Mr. Bedi's name appeared as a wilful defaulter under the "suit filed" category of the CIBIL database as on 30.06.2019 and that no stay was granted by the Hon'ble Karnataka High Court Karnataka in the Writ Petition preferred by him. In response, Mr. Bedi vide email dated 29.07.2019 stated that he was not a wilful defaulter to the best of his knowledge.

- (4) Subsequent to the aforesaid email, the fourth meeting of the CoC was held on 30.07.2019, wherein the Applicant's decision to reject the EOI submitted by Mr. Bedi was ratified by the CoC. The Fifth meeting of the CoC was held on 08.08.2019. In view of the fact that no eligible EOI was received in pursuance of the Form G published on 16.05.2019 and in the interest of finding a resolution for the Corporate Debtor the CoC extended the last date of receipt of EOI to 19.08.2019.
- (5) It is submitted that Mr. Bedi filed another Writ Petition before the Hon'ble High Court of Karnataka vide Writ Petition No.35567/2019 against OBC and SBI. In the said Writ Petition, Mr. Bedi sought for:
- i. Quashing of the letters issued by OBC and SBI declaring him as a wilful defaulter;
 - ii. A declaration that Mr. Bedi is not a wilful defaulter; and
 - iii. An interim prayer for stay of the operation of the aforesaid letters.



Accordingly, the Hon'ble High Court of Karnataka while ordering notice on 23.08.2019, permitted Mr. Bedi(Resolution Applicant) to submit his proposal to the Resolution Professional in view of the fact that Section 29A (b) of the Insolvency and Bankruptcy Code, 2016, prima facie appears to be prospective in nature.”

- (6) It is submitted that the sixth meeting of the CoC was held on 30.08.2019. At this meeting, the Applicant informed the CoC of the said Writ Petition filed by Mr. Bedi and the Orders that were passed in the said Writ Petition. In view of the Order of the Hon'ble High Court of Karnataka, the CoC unanimously agreed that Mr. Bedi may submit the resolution plan. At this meeting, the Applicant tabled request for Resolution Plan and the Evaluation Matrix, as per Regulation 36A and 36B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The CoC has unanimously agreed to allow Mr. Bedi submit the plan and, if found viable, it shall be made complaint by him in terms of the RFRP, including the Earnest Money Deposit and Performance guarantee requirements. The COC was not inclined to file an application seeking extension of time beyond 180 days period, which expired on 25.09.2019. Consequent to the said Order, and as per the decision of the CoC in its sixth meeting, on 30.08.2019, Mr. Bedi submitted a document termed as a “resolution plan” to the Applicant. On the seventh meeting of the CoC was held on 18.09.2019, in this meeting, the Applicant informed the CoC about the proposal submitted by Mr. Bedi and that the same was not in compliance with the IBC and



therefore could not be considered a Resolution plan under the IBC.

- (7) Thereafter, the CoC taking into account that the proposal did not conform to the requirements of the IBC, including the requirements under Regulation 39 of the CIRP Regulations which provides for submission of an Affidavit in relation to eligibility under Section 29A of the IBC, an undertaking that the resolution applicant will provide additional funds for payments to Operational Creditors under Regulation 38, if required, and an undertaking from the resolution applicant that all information it has provided in connection with the resolution plan is true and accurate. However, the COC is of the opinion that the liquidation of the Corporate Debtor is the most viable solution for the Corporate Debtor as best efforts were made for invitation for resolution plans for the revival of the Corporate Debtor. Moreover, no legally compliant plan has been received by the Applicant, including the proposal submitted by Mr. Bedi. No other Resolution Applicant has shown any interest in the submission of a resolution plan. Therefore, the members of the CoC observed that it is in the best interest of all the stakeholders to liquidate the Corporate Debtor.
- (8) Since the efforts of the RP could not get viable Resolution Plan to comply with the statutory provisions of the Code, the 8th meeting of the CoC, in its final meeting held on 23.09.2019, has inter-alia decided to liquidate the Corporate Debtor, as per the provisions of Section 33(2) of the IBC, with 92.63% voting in favour. OBC dissented and also decided not to seek any further action. The 180 days available to the CIR Process is expiring on 25.09.2019.

3. Heard Shri Velayudham Jayawel, learned Resolution Professional along with Shri Pinar Mehta, learned Counsel for the Resolution Professional and Shri Francis Xavier, learned Counsel for the Respondent No.3/CoC and Shri D.M.Dora, learned Counsel for the Petitioner/Financial Creditor and Shri S.R.Tejas, the learned Counsel for the State Bank of India and Shri Ajesh Kumar Shankar, learned Counsel for the Suspended MD of the Corporate Debtor in I.A.Nos.535 and 536 of 2019 and Ms. Anuparna Bordocoi, learned Counsel for the Respondent/CoC. We have carefully perused the pleadings of the parties and extant provisions of the Code and the rules made thereunder.
4. Shri Pinar Mehta, learned Counsel for the Applicant, while reiterating the various averments made in the instant Application, has further submitted that the Resolution Professional along with the CoC, has tried its level best to get viable Resolution Plan to revive the business of Corporate Debtor but only one proposal submitted by Mr. Bedi, was found to be not in compliance with the extant provisions of the Code. Therefore, they could not approve the Resolution Plan submitted by Mr. H.S. Bedi.
5. Shri Ajesh Kumar Shankar, learned Counsel for the Suspended MD of the Corporate Debtor, who has filed I.A.Nos.535 and 536 of 2019 by inter-alia seeking to consider and approve the Resolution Plan submitted by Mr. H. S. Bedi, has inter-alia submitted that the instant Application is contrary to the object of Code and the COC instead of accepting the lone Resolution Plan submitted by Mr. H. S. Bedi, has rejected the Resolution Plan in contravention of the provision of Section 30 of the IBC

Code and contrary to the interim order dated 23.08.2019 passed by the Hon'ble High court. And the Resolution Plan has to accept ignoring the objection in respect of fulfilling Section 29 A (b) of the IBC, 2016, which would not apply to his case and the same is prospective in nature. He has further submitted that the disqualifications as per U/s.29A of the Code is the subject matter before Hon'ble High Court of Karnataka, and thus the Resolution Plan submitted by Mr. H.S.Bedi should be considered by the CoC, and thus refusing to concern the case of Mr. H. S. Bedi is illegal. The CoC instead of filing this Application seeking time to sought and has filed the instant Application in order to deprive the Resolution Applicant to prevent him from approaching the Hon'ble High Court of Karnataka seeking further clarifications.

6. As per provisions of the Section 33 of the Code, the Adjudicating Authority has to pass an order for liquidating the Corporate Debtor in the manner as laid down in the Code, to issue public announcement that Corporate Debtor is in liquidation process etc., provided the Adjudicating Authority, do not receive any Resolution Plan during the time granted by the Adjudicating Authority (180 days + 90 days as the case may be) In the instant case, as stated supra, the Resolution Plan submitted by Mr. H.S.Bedi was rejected, and the statutory time granted under the provisions of the Code is available up to 25.09.2019. Therefore, the instant Application is filed on 24.09.2019 seeking to pass an Order for liquidating the Company U/s. 33(1) of the Code, the Resolution for the same was approved by 8th COC held on 23.09.2019, consisting of representatives of State Bank of India, ICICI Bank Limited and L&T Infrastructure Finance Company Limited with 92.63% voting in favour, while OBC



dissented. The CoC has also further resolved to appoint Mr. Velayudham Jayavel, Resolution Professional to act as Liquidator in respect of the Corporate Debtor, who has also filed written consent in Form AA dated 23.09.2019, by inter-alia declaring that he has registered with the Board as an insolvency professional; he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency; he do not suffer from any disability to act as a Liquidator; he is eligible to be appointed as liquidator of the Corporate Debtor under regulation 3 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and other applicable provisions of the Code and regulations etc. Therefore, he is provisionally eligible to be appointed as Liquidator.

7. The contentions of Mr. Ajesh Kumar Shankar, that Resolution Plan in question cannot be rejected in view of Writ Petition on the issue is still pending with interim orders as stated supra is not tenable. It is not in dispute that Mr. H.S.Bedi (Resolution Applicant) suffers disability as per provisions of Section 29A of the Code, in respect of three (3) Banks namely State Bank of India, State Bank of Travancore and OBC. Moreover, Writ Petition bearing W.P.No.35567/2019 filed by Mr. H.S.Bedi, seeks to quash of the letters dated 14.03.2011 and 18.05.2012 and other letters by which the Mr.Bedi (Petitioner in the Writ Petition) was declared as wilful defaulter. The Hon'ble High Court of Karnataka has only permitted the Resolution Applicant (Mr. H.S.Bedi) to submit his proposal to Resolution Professional by holding prima facie that Section 29 A (b) of the Code to be prospective in nature.

In this regard, it is to be mentioned here that the Resolution Plan submitted by Mr. H.S.Bedi is dated 16.09.2019,



whereas Section 29 A of the Code was inserted by Insolvency and Bankruptcy Code (Amendment) Act, 2018 w.e.f. 23.11.2017, wherein it is inter-alia declared that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949.

Therefore, Section 29A will be applicable to the instant case and thus the rejection of the Resolution Plan of Mr. H.S. Bedi by the COC is not in contravention of the provisions of the Code. However, this order will not preclude Mr. H.S. Bedi to approach the Hon'ble High Court of Karnataka in pending Writ Petition, by seeking appropriate directions in this matter.

8. For the aforesaid reasons and circumstances, we are of the considered opinion that the instant Application deserves to be disposed of with necessary directions.
9. In the result I.A.No.498/2019 in C.P.(IB)No.17/BB/2019 is hereby disposed of with the following directions:
 - (1) We hereby ordered that M/s. IDEB Projects Pvt. Ltd., Respondent/Corporate Debtor, to be liquidated in the manner as laid down in Chapter III (Liquidation Process) of Part II of the Code.
 - (2) We hereby appointed Shri Velayudham Jayavel, Regn. No. IBBI/IPA-001/IP-P01012/2017-18/11663 as Liquidator, subject to the terms and conditions to be agreed upon by the parties in the light of the extant provisions of the IBBI.
 - (3) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation.



- (4) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.
- (5) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made there under framed by IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- (6) This Order will not preclude Mr. H.S.Bedi to approach the Hon'ble High Court of Karnataka, in the pending W.P.No.35567/2019 seeking suitable directions.
- (7) Post the case on **11.12.2019** for report of the Liquidator.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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

I.A. Nos.535 & 536 of 2019 in
C.P.(IB)No.17/BB/2019
U/s. 31 R/w Section
Rule 60 (5) of the IBC, 2016
And Rule 11 of the NCLT Rules, 2016

Between:

Shri H.S.Bedi
Suspended Managing Director of
M/s. IDEB Projects Pvt. Ltd.

R/o. at No.17, 10thFloor,
Delta Block, Sigma Soft Tech Park,
Whitefield Main Road,
VarthurKodi,
Bengaluru – 560 066

- Applicant/
Ex Promoter/
Director of Corporate Debtor

AND

M/s. Oriental Bank of Commerce
Rep. by its Chief Manager
Shri D M Dora,
RRL Cluster, No.92/95
HJS Chamber Richmond Road,
Bengaluru – 560 025 & 4 Ors

- Respondents

Date of Order: 8th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/Respondent : Shri Ajesh Kumar Shankar
For the Petitioner : Shri D.M.Dora
For the Respondent No.3/CoC : Shri Francis Xavier

For the Respondent/CoC : Ms. Anuparna Bordocoi
For the SBI : Shri S.R.Tejas

COMMON ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.535/2019 in C.P.(IB)No.17/BB/2019 is filed by Shri H.S.Bedi, Suspended Managing Director of M/s. IDEB Projects Pvt. Ltd. (Applicant/Respondent)U/s. 31 R/w Section Rule 60 (5) of the IBC, 2016 And R/w Rule 11 of the NCLT Rules, 2016, by inter alia, seeking to declare that the decision taken by Committee of Creditors (CoC) in its 8th meeting held on 23.09.2019 rejecting the Resolution Plan of the Applicant, as contrary to the provision of Section 30 of the Code and consequently declare that the Resolution Plan dated 16.09.2019 is deemed to have been approved by the CoC etc .
2. I.A.No.536/2019 19 is filed by Shri H.S.Bedi, Suspended Managing Director of M/s. IDEB Projects Pvt. Ltd. (Applicant/Respondent) U/s. 31 R/w Section Rule 60 (5) of the IBC, 2016 And R/w Rule 11 of the NCLT Rules, 2016, by inter alia, seeking to pass an order for approving the Resolution Plan dated 16.09.2019 submitted by him well within time of the CIRP proceedings as per Section 12 of the Code etc.
3. Heard Shri Ajesh Kumar Shankar, learned Counsel and Shri D.M.Dora, learned Counsel for the Respondent/Petitioner and Ms. Anuparna Bordocoi for the Respondent/CoC and Shri Francis Xavier, learned Counsel for the Respondent No.3/CoC and Shri S.R.Tejas, learned Counsel for the SBI. We have carefully perused the pleadings of the parties and extant provisions of the Code and the rules made thereunder.



4. In view of the Order dated 08.11.2019 passed in I.A. No.498/2019 in C.P. (IB) No.17/BB/2019, filed U/s. 33 (2) of the IBC, 2016, putting M/s. IDEB Projects Pvt. Ltd., (Respondent/Corporate Debtor), to be liquidated in the manner as laid down in Chapter III (Liquidation Process) of Part II of the Code and appointing Shri Velayudham Jayavel, Regn. No. IBBI/IPA-001/IP-P01012/2017-18/11663 as Liquidator, subject to the terms and conditions to be agreed upon by the parties in the light of the extant provisions of the IBBI, the instant Applications are not maintainable under the extant provisions of Code, Therefore, the instant Applications are not maintainable and thus they are liable to be dismissed.
5. Hence, both Applications bearing I.A.Nos.535 & 536 of 2019 in C.P. (IB)No.17/BB/2019 are hereby dismissed. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL