### IN THE NATIONAL COMPANY LAW TRIBUNAL DIVISION BENCH-I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **18.10.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)

HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

**IN THE MATTER OF** : The India Cements Ltd.

Vs

Call Express Constructions Pvt. Ltd.

MAIN PETITION NUMBER : CP(IB)/17(CHE)/2023

(IA/MA) APPLICATION NUMBERS

IA(Liq)/34(CHE)/2024, IA(IBC)/1963/2024

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#### **ORDER**

Present: Shri. Mathew, Ld. Counsel for the Financial Creditor.

Vide separate order pronounced in the Open Court, liquidation is ordered. Shri. Govindarajula Venkata Narasimha Rao has been appointed as Liquidator.

Sd/-VENKATARAMAN SUBRAMANIAM MEMBER (TECHNICAL) SANJIV JAIN MEMBER (JUDICIAL)

## IN THE NATIONAL COMPANY LAW TRIBUNAL DIVISION BENCH – I, CHENNAI

#### IA(IBC)(LIQ)/34/CHE/2024 in CP(IB)/17/CHE/2023

(Filed under Section 33 of the Insolvency and Bankruptcy Code, 2016)

# Along with IA(IBC)/1963/CHE/2024 in CP(IB)/17/CHE/2023

(Filed under Rule 11 of the National Company Law Tribunal, Rules, 2016)

In the matter of Call Express Constructions (India) Private Limited

#### Aneetha Subramaniam,

Resolution Professional of Call Express Constructions (India) Private Limited A2, Sarada Apartments, 17/6, Sringeri Mutt Road, Mandaveli, Chennai – 600 028

... Applicant

Order Pronounced on 18th October, 2024

#### **CORAM:**

### SANJIV JAIN, MEMBER (JUDICIAL)

#### VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant: Arjun Suresh, Advocate
Arthi Fernandes, Advocate
Dinu Prashanth, Advocate
Pradeep Joy for LIC

A.G.Sathyanarayana for Aerolink Dealers Pvt Ltd Arokiasamy for one of the Resolution Applicants

#### COMMON O R D E R

#### (Heard Through Hybrid Mode)

This application has been filed by Ms. Subramaniam Aneetha, the Resolution Professional of M/s Call Express Constructions (India) Pvt Ltd in CP(IB)/17(CHE)/2023 under Section 33 of the Insolvency and Bankruptcy Code, 2016 seeking to pass an order for liquidation of the Corporate Debtor and to appoint a Liquidator.

2. Along with the application, an application IA/1963/CHE/2024 has been filed under Rule 11 for condonation of delay of 15 days in filing the application for liquidation.

#### FACTUAL MATRIX

3. The Corporate Debtor is a Company which constructs and offers for sale several residential and commercial projects. It planned to develop the project "USERA". On an application filed by an Operational Creditor namely India Cements Limited, the CIRP in respect of the Corporate Debtor was initiated vide an order dated 05.07.2023. The Applicant was appointed as the IRP. The Applicant issued a public advertisement on 08.07.2023 and invited the claims from the stakeholders. She verified the claims and submitted a report

as to the constitution of committee of creditors with the Tribunal on 27.07.2023. On an application filed by her, the Tribunal allowed for appointment of an authorised representative for the home buyers. In the 2<sup>nd</sup> CoC meeting, the IRP was appointed as RP. Six home buyers who were held as related party challenged the decision of the RP. The RP / Applicant also made a publication for invitation of expression of interest in Form-G in two newspapers on 31.08.2023. Pursuant thereto, she received expression of interest from 25 persons, however only 15 persons submitted the required documents. On 03.10.2023, the Tribunal passed an interim order interalia that RP can receive resolution plans but voting on the resolution plans be deferred. The last date for the submission of the plan was 14.11.2023 which date was extended to 27.11.2023 in the 8th CoC meeting held on 16.11.2023. On 27.11.2023, one resolution plan was received from M/s DRA Adithya South City Projects Private Limited, however owing to an interim order passed by the Tribunal no action was taken. The plan was placed before the CoC and it was observed that the plan was not compliant with the tenets of IBC.

4. The RP called for 12<sup>th</sup> CoC meeting on 30.12.2023. Since the last date for competition of CIRP was 02.01.2024 and no voting could take place till 18.01.2024, the CoC resolved to seek extension of 90 days for completion of CIRP. Accordingly an application was filed seeking extension till 01.04.2024 which was allowed by the Tribunal vide order dated 18.01.2024, however interim order was continuing. On 05.03.2024, RP received a proposal under Section 12A which she forwarded to the CoC on 05.03.2024. She convened the meeting of the CoC on the direction of the Tribunal vide order dated 05.03.2024 to vote both on the plan as well as the proposal under Section 12A. No decision could be taken on the plan and the proposal. In the meantime, the Committee resolved to file an application to exclude the period during which the stay on voting on the resolution plan was in force. The Applicant filed an application for exclusion of 79 days which was allowed vide order dated 04.04.2024 and the timeline limit for completion of CIRP was extended till 19.06.2024. The RP placed the plan and the proposal including reissuance of Form-G and liquidation before the CoC in the meeting held on 25.04.2024, but all the resolutions "i.e. (i) The 12A proposal (ii) The Resolution Plan (iii)

Reissue of Form-G and (iv) For Liquidation," failed as the requisite majority could not be mustered.

- 5. Thereafter, the authorised representative of the home buyers filed an application IA/1447/2024 seeking extension for reissuance of Form-G which was allowed by the Tribunal vide order dated 21.06.2024 extending the CIRP period till 19.08.2024.
- 6. The RP issued fresh Form-G on 22.06.2024 and published the list of PRAs on 10.07.2024 and 14.07.2024. She also issued information memorandum on 15.07.2024. Pursuant thereto, she received six responses to the expression of interest. She convened 25th CoC meeting on 16.08.2024. By that time she had received only one resolution plan that too without the EMD and therefore the plan was not considered. She placed a request received from two PRAs for extension of 15 days time to submit the plan before the CoC on which the representative of the secured creditor LICHFL stated that they would convey the position to their management and revert on the extension. Thereafter, the RP convened 26th CoC meeting on 27.08.2024 where LICHFL gave a categorical response that there will be no further extension and

advised the RP to go for the liquidation. By that time, the time period for competition of CIRP had expired.

7. It is stated that since there is no compliant resolution plan received, and no resolution has been passed for extension of time period, only option with the Applicant / RP is to file an application

under Section 33 of IBC for the liquidation of the Corporate Debtor.

- 8. As regards delay, it is stated that it was only on account of the fact that there was no resolution either for extension of time or for liquidation. The request for extension of time remained under consideration with the lead financial creditor from 16.08.2024 till 27.08.2024. Since there was scope for resolution and value maximisation, the application for liquidation was not filed till 27.08.2024. It is stated that delay is neither wilful nor wanton.
- 9. We have heard Ld. Counsel for the Applicant / RP, Ld. Counsel for the LICHFL, Ld. Counsel for an unsecured financial creditor / Aerolink Dealers Pvt Ltd and Ld. Counsel for one of the PRAs and gone through the proceedings and the minutes of the CoC.

**OBSERVATION / CONCLUSION** 

10. Having heard Ld. Counsels for the parties and considered the

submissions made in the application IA/1963/CHE/2024 for

condonation of delay, the delay of 15 days in filing the application for

liquidation of the Corporate Debtor is condoned.

11. The CIRP of the Corporate Debtor in the present case was

initiated on 05.07.2023. During the extended period of CIRP, only one

resolution plan came. Since the plan was below the liquidation value,

the Prospective Resolution Applicant was asked to submit a revised

resolution plan taking care of the observations made by the CoC. The

revised resolution plan received on 08.03.2024 was placed before the

CoC on 25.03.2024 but the revised plan was also found to be

substantially below the liquidation value, not protecting the interest of

the home buyers. In the meantime, the Promoters / Investors submitted

a 12A proposal but it did not get through. The RP placed the

alternatives before the CoC for voting, however none of the resolutions

passed muster of 66%. Thereafter, RP informed the CoC that she has

received an offer from Lancor Holdings Limited who wants to take

IA (IBC)/(LIQ)/34/CHE/2024 & IA(IBC)1963/CHE/2024 in CP(IB)/17/CHE/2023 In the matter of Call Express Constructions (India) Private Limited

over the Corporate Debtor on clean slate basis through the fresh Form-G process, but the LICHFL having 65% voting share voted against it.

12. In the present case, 330 days time period ended on 19.06.2024. Since the home buyers had received an offer from a reputed builder and there was scope for revival of the Corporate Debtor, the authorized representative of the flat buyers filed an application IA/1447/2024 seeking directions to issue fresh Form-G as per clause 4A of Regulation 36A of IBBI Regulation, 2016. This Tribunal vide detailed order dated 21.06.2024 after hearing the Counsels for the parties observing that the Corporate Debtor was engaged in the construction sector, it has a high potential of being successfully resolved, primary focus of the IBC is to ensure revival and continuation of the Corporate Debtor by protecting it from its own management, keeping the interest of the home buyers as of paramount importance, allowed the application and directed the RP to reissue Form-G inviting expression of interest from the Prospective Applicants for submitting the resolution plan extended the time period of the CIRP till 19.08.2024 (total time period of CIRP 330 + 60 days).

13. It is seen that the RP issued fresh Form-G, however only one

resolution plan came that too without EMD. It was therefore not

considered. In the meantime, the RP received request from two PRAs

for an extension of 15 days to submit their plan which she placed

before the CoC but the secured creditor LICHFL in the 26th CoC

meeting held on 27.08.2024 gave a categorical response that there will

be no further extension and advised the RP to proceed in terms of the

IBC to go for liquidation.

14. It is pertinent to mention that the resolution for liquidation of

the Corporate Debtor was not passed in the CoC with 66% requisite

voting.

15. Section 33 of IBC provides that where the Adjudicating

Authority before the expiry of the Insolvency Resolution Process

period or the maximum period permitted for the competition of the

CIRP under Section 12 does not receive a resolution plan under Section

30(6) or rejects the plan under Section 31 for non-compliance of the

requirements specified therein, it shall pass an order requiring the

Corporate Debtor to be liquidated.

16. In the present case, the extended CIRP timeline expired on

19.08.2024. Even the maximum period permitted for completion of

CIRP under Section 12 expired. Till that period, no resolution plan

came under Section 30(6) of IBC. Admittedly, during the CIRP, there

was no voting of the CoC members for the liquidation of the Corporate

Debtor, but as seen from the proceedings / minutes of the 26th CoC

held on 27.08.2024, LICHFL which had majority shareholding i.e. more

than 60% voting conveyed its decision to the RP to go for liquidation.

17. It is seen that the home buyers are the worst affected persons in

these situations where they would be left with without a remedy once

the process under IBC starts, since moratorium under Section 14 of

IBC, 2016 comes into force. A home for the family is a basic human

yearning and it is a part of right to life, which is a fundamental right

guaranteed under Article 21 of Constitution of India.

18. Taking into consideration the facts and circumstances in totality

and the provisions of the IBC, we order for the liquidation of the

Corporate Debtor M/s. Call India Constructions (India) Private

Limited. As per the guidelines laid down by the IBBI, an Insolvency

Professional other than the RP / IRP shall be appointed as Liquidator in

the cases where an order for liquidation has been passed.

19. In the present case, the LICHFL has proposed the name of Shri.

Sripatham Venkatasubramainan Ramkumar having IBBI registration

No. IBBI/IPA-001/IP-P00015/2016-17/10039 as Liquidator stating that he

has over 23 years of experience and has successfully handled 4 CIRP

assignments. It is also stated that he has submitted his consent by

giving AFA as Annexure-B. It is stated that the Liquidator's role is a

fiduciary one requiring a high level of professional competence and

diligence in the realization of assets.

20. A Memo has been filed by the RP enclosing the mails received

from Mr. Goms, a home buyer, financial and operational creditor to the

Corporate Debtor who expressed his concerns over the choice of the

Liquidator by the LICHFL.

21. Having considered the Memo and to give transparency to the

liquidation process, we hereby appoint an independent Liquidator *Dr*.

Govindarajula Venkata Narasimha Rao having IBBI registration No.

raogvn@gmail.com) whose authorization is valid till 31.12.2025 of the
Corporate Debtor M/s. Call Express Constructions (India) Private
Limited to carry out the liquidation process as a going concern subject
to the following terms / directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

- e) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- g) The Liquidator shall protect the interest of the home buyers during the liquidation proceedings. If any of the Home Buyers whether unrelated or related wants to get flat, the Liquidator shall ensure that the Prospective Bidder / Buyer undertakes to complete the flat and hand over the possession to the flat buyer on payment of balance consideration by the Flat Buyer including price escalation if any. The Liquidator shall mention this condition in the process memorandum documents for e-auction.

22. The Registry is directed to communicate this order to the Registrar of Companies, concerned and to the Insolvency and Bankruptcy Board of India;

23. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

24. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

25. With the above said directions, IA(IBC)(LIQ)/14/CHE/2024 and IA(IBC)/1963/CHE/2024 stand allowed and disposed of.

-Sd-

**VENKATARAMAN SUBRAMANIAM**MEMBER (TECHNICAL)

**SANJIV JAIN**MEMBER (JUDICIAL)