

NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

Item No. 8

IA 3218/2024 (NEW IA) in C.P. (IB)/4733(MB)2018

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **24.06.2024**

NAME OF THE PARTIES: **ICICI PRUDENTIAL REAL ESTATE AIF I**
VS SUNSHINE HOUSING AND
INFRASTRUCTURE PRIVATE LIMITED

Section 60(5) & 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 3218/2024 (NEW IA) in C.P. (IB)/4733(MB)2018

- 1) Mr. Yahya Batatawala, Ld. Counsel for the Applicant and Mr. Aditya Udeshi, Ld. Counsel for one of the Unsecured Creditors of the Corporate Debtor are present.
- 2) The present Interlocutory Application has been filed by the Applicant, Nitesh Damani, Chairman of erstwhile Committee of Creditors of the Corporate Debtor seeking appointment of Resolution Professional for the Corporate Debtor.

- 3) It is submitted that the CoC in its 10th meeting declared Nandi Vardhan as the Successful Resolution Applicant ("SRA") and approved the Resolution Plan of Nandi Vardhan with 100 % majority, which was approved by this Bench vide order dt. 11.02.2022, passed in IA 1863 of 2020.
- 4) Pursuant to the approval of the Resolution Plan, a Monitoring Committee was constituted. The Monitoring Committee in its meetings held on 23.06.2022, 09.08.2022, 15.09.2022 and 18.11.2022 observed that the SRA had failed to adhere to the timeline for implementing the Resolution Plan and therefore, filed an Application bearing IA No.53 of 2023 under Section 60(5) and Section 74(3) thereby seeking appropriate directions from the Hon'ble NCLT, Mumbai Bench.
- 5) Thereafter, this Bench *vide* its order dt. 31.08.2023, directed Nandi Vardhan (SRA) to show cause why the offence arising from non-implementation of the plan be not referred to IBBI for filing appropriate proceedings against Nandi Vardhan (SRA) under Section 74 (3) of the Code. Subsequently, this Bench on 12.02.2024, passed in IA no. 53 of 2023, directed the IBBI to take appropriate action and proceeding so as to make Nandi Vardhan (SRA) liable for its failure to implement the Resolution Plan and directed the Monitoring Committee of the Corporate Debtor to conduct a meeting of the erstwhile CoC to propose further course of action.
- 6) Pursuant to above directions, a meeting of erstwhile CoC was convened on 16.03.2024 & 29.04.2024. The erstwhile CoC after deliberations passed a

resolution with 100% majority to re-initiate Corporate Insolvency Resolution Process against the Corporate Debtor and to appoint a Resolution Professional.

- 7) The Applicant submits that he provided with the consent of Mr. Gaurav Adukia having registration No. IBBI/IPA-002/IP-N00457/2017-2018/11293 to the Facilitator who in turn circulated the same alongwith Minutes of the Meeting dated 29.04.2024 to the erstwhile members of the CoC.
- 8) Admittedly, the implementation of the Resolution Plan has failed in the present case, however, the Committee of Creditors has resolved by 100% vote to re-run the process. Section 33(3) provides that, where the Resolution Plan approved under Section 31 is contravened by the Corporate Debtor, Any person whose interest is prejudicial affected by such contravention may make an Application before the Adjudicating Authority for Liquidation. One of the Operational Creditor today and inform this Bench that they have filed an Application for Liquidation of the Corporate Debtor in terms of Section 33(3) of the Code; but, the said Application is not on Board. The Corporate Debtor possesses rights in a SRA Project which are stated to be in jeopardy. In view of CoC resolving for re-run of the process, we consider it appropriate to appoint Mr. Gaurav Adukia having registration No. IBBI/IPA-002/IP-N00457/2017-2018/11293, as the Resolution Professional of the Corporate Debtor, on such a fees to be determined by the CoC in their

First Meeting held after his appointment. Committee of Creditors shall contribute necessary funds for carrying out the CIR Process.

9) In view of the above, the Interlocutory Application bearing IA No. 3218 of 2024, is disposed of as Allowed.

10) There will however, be no order as to costs. Ordered Accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Vedant Kedare

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)