

Through Videoconference

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I,

*** **

M.A. No. 227 of 2018

(Application under Section 33(1) of IBC, 2016)

Alok K. Saksena,

Resolution Professional of Unity Infraprojects Limited

C/o Desai Saksena & Associates,

1st Floor, Laxmi Building,

Sir P. M. Road, Fort, Mumbai – 400 001

... *Applicant*

and

M.A. No. 350 of 2018

(Application on behalf of Employees for
Directions & Appropriate Orders)

1. Maj. (Retd.) G.S. Reddy

2. Bajju Vijay Pupala

3. Prakash Gaitonde

4. Ninad Kelkar

5. Sunil Naik

Employees of Unity Infraprojects Limited,

Having its address at

1252, Pushpanjali Apartment,

Old Prabhadevi Road, Prabhadevi, Mumbai – 400 025

... *Applicants*

In the matter of:

CP (IB) No. 1058/MB/2017

(Petition under Section 10 of IBC, 2016)

Unity Infraprojects Limited

... *Corporate Debtor*

Date of Order: 08.04.2021

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Hon'ble Shri V. Nallasenapathy, Member Technical

Appearance:

For the Applicant(s) : Mr Arif Doctor with Ms Ishita Advani, Advocates i/b Desai Diwanji & Mr Alok K Saksena (Resolution Professional) in **MA 227 of 2018.**

Mr Chirag Mody and Mr Munaf Virjee with Mr Akash Agarwal i/b ABH Law LLP in **MA 350 of 2018.**

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Application in MA No. 227 of 2018 is filed by the Resolution Professional of the Corporate Debtor, under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking orders for liquidation of the Corporate Debtor.
2. The Application in MA No. 350 of 2018 is filed by the Employees of the Corporate Debtor praying for the following reliefs:
 - a. *That this Hon'ble Bench be pleased to allow the Applicants to intervene and be heard in the captioned matter and in Miscellaneous Application being M.A. No. 227 of 2018 filed by the Resolution Professional in the captioned petition;*

- b. *That this Hon'ble Bench be pleased to order and direct the Resolution Professional / Liquidator and the Committee of Creditors to sell the business of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern during the liquidation process.*
- c. *That this Hon'ble Bench as pleased to order and direct that the services of presently serving officers / employees / workers / workmen of the Corporate Debtor i.e. Unity Infraprojects Limited shall not be discharged or terminated under Section 33 (7) of the Code in view of the potential of the Corporate Debtor i.e. Unity Infraprojects Limited being sold as a going concern during the liquidation process;*
- d. *That this Hon'ble Bench be pleased to order and direct the Resolution Professional / Liquidator and the Committee of Creditors not to act on the notice of discharge dated 14th March 2018 issued to all presently serving officers / employees / workers / workmen of the Corporate Debtor i.e. Unity Infraprojects Limited;*
- e. *That this Hon'ble Bench be pleased to order and direct that until the conclusion of the sale of the business of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern during the liquidation process, the Resolution Professional / Liquidator to carry on the business and continue the operations of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern;*
- f. *That this Hon'ble Bench be pleased to order and direct all the stakeholders of the Corporate Debtor i.e. Unity*

Infraprojects Limited to render full support and co-operation to the Resolution Professional / Liquidator and the Committee of Creditors to enable them to sell the business of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern during the liquidation process;

- g. That pending the hearing and final disposal of this application, this Hon'ble Bench be pleased to order and direct that the services of all presently serving officers / employees / workers / workmen of the Corporate Debtor i.e. Unity Infraprojects Limited shall not be discharged or terminated under Section 33 (7) of the Code in view of the potential of the Corporate Debtor i.e. Unity Infraprojects Limited being sold as a going concern during the liquidation process;*
- h. That pending the hearing and final disposal of this application, this Hon'ble Bench be pleased to direct the Resolution Professional / Liquidator and the Committee of Creditors not to act on the notice of discharge dated 14th MRCH 2018 issued to all presently serving officers / employees / workers / workmen of the Corporate Debtor i.e. Unity Infraprojects Limited;*
- i. That pending the hearing and final disposal of this application, this Hon'ble Bench be pleased to direct the Resolution Professional / Liquidator and the Committee of Creditors to carry on the business and continue the operations of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern.*

- j. That pending the hearing and final disposal of this application, this Hon'ble Bench be pleased to order and direct that until the conclusion of the sale of the business of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern, the Resolution Professional / Liquidator be ordered and directed to carry on the business and continue the operations of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern;*
 - k. That pending the hearing and final disposal of this application, this Hon'ble Bench be pleased to order and direct all the stakeholders of the Corporate Debtor i.e. Unity Infraprojects Limited to render full support and co-operation to the Resolution Professional / Liquidator and the Committee of Creditors to enable them to sell the business of the Corporate Debtor i.e. Unity Infraprojects Limited as a going concern during the liquidation process;*
 - l. That ad-interim and interim reliefs in terms of prayers (g) to (k);*
 - m. That costs be granted for this application;*
 - n. That this Hon'ble Bench be pleased to pass any further orders/directions as it may deem fit in the facts and circumstances of the instant case.*
3. Since both the Application are filed for the interconnected reliefs, both are considered together.

4. This Bench by an order dated 20.06.2017 admitted the Petition (CP (IB) No. 1058/MB/2017) under Section 10 of the Code, initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed Mr Arun Kapoor as the Interim Resolution Professional (IRP). On 01.09.2017, Mr Alok Saksena (the Applicant herein) was appointed as the Resolution Professional (RP) for the Corporate Debtor replacing the IRP.
5. On 30.11.2017, the RP filed an Application for extension of CIRP by 90 Days and this Tribunal by order dated 18.12.2017 extended the CIRP period by 90 days.
6. On 25.10.2017, the RP advertised an 'Invitation' seeking Resolution Plans for the Corporate Debtor. The RP received valid responses from three Corporations, expressing their interest to submit a bid for the Corporate Debtor. The last date for submission of expression of interest was extended till 30.11.2017. However, till 05.01.2018 no Resolution Plan was received.
7. On 04.01.2018, the RP received an email from one Phoenix ARC Pvt Ltd (Phoenix ARC) proposing to submit a Resolution Plan for the Corporate Debtor. Accordingly, Phoenix ARC was permitted to submit a Resolution Plan by 12.01.2018. Phoenix ARC submitted their First Resolution Plan on 15.01.2018, a revised Resolution Plan (Second) on 15.02.2018 and another revised Resolution Plan (Third) on 20.02.2018. All these plans were rejected by the CoC. On 27.02.2018, Phoenix ARC submitted Fourth Resolution Plan

which was rejected by the RP as it was beyond the time granted for submission. Besides there was an insignificant increase in the amount from the Third Resolution Plan.

8. Further, in 9th CoC meeting held on 08.03.2018, the CoC approved with 90.91% of voting share the fees payable to the RP on his appointment as liquidator of Corporate Debtor.
9. This Tribunal on 19.12.2018 passed an order in MA No. 227 of 2018, making following observations and directions:

"...

15. In the present case, the RP received fourth resolution plan from the resolution applicant on 27.02.2018 to which he refused to consider vide his e-mail dated 05.03.2018 stating that it "is unsolicited and all timelines given for submission have expired" and that "there is very insignificant increase in the amount now offered vis a vis the plan of 20th February 2018". It is noted that the last date of the extended Moratorium was 16.03.2018 and the resolution plan was submitted on 27.02.2018, i.e. more than 15 days before stipulated date for end of the Moratorium. It is clear from the e-mail of the RP dated 05.03.2018 that the said resolution plan was rejected by the RP himself and was not put before the COC for its consideration.

16. Further, the ninth and the last COC meeting was conducted on 08.03.2018, which is eight days before the last day of the extended Moratorium on 16.03.2018. In this meeting, as reflected from the minutes of the meeting, the remuneration payable to the resolution professional if appointed as liquidator was one of the agenda for discussion and the same was put for e-voting. However, resolution for liquidation of the Corporate Applicant was not on agenda of

the said COC meeting. Also in the last meeting, the RP has expressed his willingness to solicit all support and co-operation from his end if the COC decides to conduct due diligence during liquidation process independently. The RP had also discussed and presented, in length, essential matters of liquidation to the COC on liquidation process. After the rejection of the resolution plan on 27.03.2018 the RP and the COC neither called for fresh EOI nor passed a resolution for the liquidation of the Corporate Applicant while the discussion upon the liquidation process, that is to take place after the order for liquidation is given, were held in detail during the last COC meeting. From the above noting, it can be safely presumed that there was sufficient time with the COC for consideration of the last revised resolution plan submitted by the resolution applicant that was rejected by the RP.

...

18. Considering the facts and circumstances of the case, statutory developments and the Judgement of the Hon'ble Supreme Court referred above, we hereby direct the RP to put before the COC, the last resolution plan so submitted by the resolution applicant within three days from the date of receipt of this order and after that the COC shall take a formal decision, on merits of the resolution plan, either accepting or rejecting the resolution plan and the COC shall give its reason in writing either for rejection or approval of the plan, as the case maybe, within ten days from the date when the plan is put before it."

10. The Applicant submits that in compliance of the order dated 19.12.2018, he placed the last resolution plan before the CoC on 24.12.2018 and the CoC rejected the same on 28.12.2018.

11. The Applicant further submits that as no resolution plan was approved, the CoC in 12th meeting held on 08.02.2019, approved the resolution for liquidation of Corporate Debtor with 88.66% voting share.
12. Now, so far as MA No. 350 of 2018 is concerned, prayer for intervention is redundant at this point as both the Applications were heard together for orders. The other prayers in this Application except the one for going concern sale, could not be considered, they being inconsistent with the provisions of the Code.
13. The Applicant Employees in MA No. 350 of 2018 further submitted that the Corporate Debtor may be sold as a going concern during the liquidation process. This Bench accordingly during the hearing on 14.10.2020 advised the Applicants to try to bring in some investor(s) for the Corporate Debtor and granted liberty to the Applicants to mention the matter in case some investor(s) was interested in the Company. However, nothing materialised in that regard.
14. Further, on 02.02.2021 pronouncement of orders in MA No. 227 of 2018 & MA No. 350 of 2018 was deferred upon request of a prospective Resolution Applicant viz. Mantena Constructions Pvt Ltd, who had filed IA No. 94 of 2021 expressing its interest in putting up a Resolution Plan and requesting certain details from the RP in furtherance thereof. Orders were passed in IA No. 94 of 2021 permitting the Applicant therein to access the details. The RP was

also directed to provide the required information. However, on 23.03.2021 the Applicant (Mantena Constructions Pvt Ltd) submitted that upon verification of the information made available, it was no longer interested in submitting a Resolution Plan. Thereafter, orders in MA No. 227 of 2018 & MA No. 350 of 2018 were reserved and are being passed today. Hence ordered.

ORDER

- A. The Application MA No. 227 of 2018 be and the same is allowed. The Corporate Debtor, Unity Infraprojects Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following directions:
- a) Mr Alok Kailash Saksena having Registration No. IBBI/IPA-001/IP-P00056/2017-18/10134 is appointed as Liquidator. He shall be entitled to fees in terms of Section 34(8) of the Code read with Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016 (the Regulations).
 - b) The Liquidator shall endeavour to sell the Company as a going concern during the liquidation in terms of Regulation 32A of the Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Regulations.
 - c) The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation

- d) The Moratorium declared under section 14 of the Code shall cease to operate here from.
- e) Subject to section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.
- f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- g) The Liquidator shall exercise the powers and perform duties as envisaged under sections 35 to 50 and 52 to 54 of the Code read with the Regulations.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- i) 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.
- j) The Liquidator is directed to send a copy of this Order to Registrar of Companies concerned and Insolvency and Bankruptcy Board of India, New Delhi.

- B. MA No. 350 of 2018 is disposed of in terms of the observations made in para no. 12 of this order.

Sd/-
V. Nallasenapathy
Member Technical

Sd/-
Janab Mohammed Ajmal
Member Judicial