

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/ VC Mode (Hybrid))

IA No.03/2024

in

**C.P. (IB) No.210/BB/2020
(Admitted Matter)**

Application under Section 33 (1) of the Insolvency
and Bankruptcy Code, 2016

In the matter of I.A No.03/2024:-

Shri Amarpal
Resolution Professional of
M/s. Shri Diya Projects Private Limited

...Applicant

In the decided matter of:

Mr. Keshava Gupta and others ...Petitioner /Operational Creditor

VERSUS

M/s. Shri Diya Projects Private Limited ...Respondent/Corporate Debtor

Order delivered on: 31st July, 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 : Shri Amarpal

O R D E R

Per: K. Biswal, Member (Judicial)

1. This Application has been filed by **Shri Amarpal**, Resolution Professional of M/s. Shri Diya Projects Private Limited (Corporate Debtor) under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for passing order of Liquidation in the matter of M/s Diya Projects Private Limited and order appointing Shri Amarpal as the Liquidator of the Corporate Debtor.

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2. C.P(IB) No.210/BB/2020 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "Keshava Gupta and 87 others" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Shri Diya Projects Private Limited was admitted on 21.04.2022 and Shri Amarpal was appointed as Interim Resolution Professional (IRP).
3. After receiving the Order, the IRP made a Public Announcement in the newspapers in Form-A on 01.05.2022 as per Regulation 6 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 (CIRP Regulations). In furtherance of the Public Announcement, the Applicant received claims from the Creditors of the Corporate Debtor and the same was verified by the Applicant. Further as per Regulation 16 of the CIRP Regulations, the Applicant/RP formed a Committee of Creditors (CoC) of the Financial Creditors of the Corporate Debtor and assembled 1st Meeting of the COC on 30.05.2022.
4. As per the CIRP timelines, the Applicant had appointed 4 (four) Registered Valuers for Land and Building and Plant & Machinery Asset Class. It is further stated that no Registered Valuer was appointed for Secured Financial Asset Class since the Books of the Accounts were not available with the Applicant/RP. The Applicant based on the available information circulated the Information Memorandum (IM) to the COC vide email dated 24.06.2022. Further, the Applicant filed an application I.A No.270 of 2022 under Section 19 (2) of the I & B code, 2016 seeking directions to hand over the books of accounts, project details and other requisite information and also filed I.A No.271 of 2022 seeking directions of this Adjudicating Authority seeking assistance of Inspector of Police Sarjapur Police Station. Both the applications were allowed by this Adjudicating Authority vide order dated 14.03.2023.
5. Pursuant to the issuance of the Form-G, the Applicant issued a final list of the Prospective Resolution Applicant, which was placed before the CoC vide email dated 23.08.2022. In accordance with the CIRP timelines the Applicant

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made an opinion on 14.07.2022 and determined the Preferential, Undervalued, Fraudulent transaction, and consequently based on the available information the Applicant filed two applications bearing I.A No. 411/2022 under Section 45 of I & B Code and I.A No. 412/2022 under Section 66 of the I & B Code 2016 and the same are pending before this Tribunal.

6. It is stated that out of the 4 PRAs, the Applicant received one Resolution plan physically on 18.10.2022 at the address of the Applicant and vide email dated 19.10.2022. During the CIRP of the Corporate Debtor, the Applicant became aware that there is a Joint Development Agreement dated 24.04.2013 between the Corporate Debtor and Land Owners for the project 'Shri Diya Ornate'. In pursuant to the same, the Applicant conducted the 4th meeting of the CoC on 24.10.2022.
7. Further, the Applicant filed an application seeking the extension of the CIRP of the Corporate Debtor bearing I.A No.541/2022 and the same was allowed on 30.11.2022. Thereafter, the Applicant made physical meetings and sent letters to the Landowners of the project Shri Diya Ornate seeking cooperation in the present CIRP of the Corporate Debtor. However, the landowners of the project Shri Diya Ornate did not paid any heed to the efforts of the Applicant. In view of the same the Applicant intimated the PRA about the current situation of the landowners. Subsequently, the PRA was reluctant to move ahead with the presentation of the resolution plan and the same was intimated to the Applicant. In pursuance to the same, the 5th CoC meeting was conducted on 15.12.2022.
8. Later, the Applicant convened the 6th CoC meeting on 19.01.2023 wherein the resolution was put before the members of the CoC regarding the extension of the CIRP or to proceed with the liquidation process under Section 33 of the I & B Code 2016 without any recommendation as per regulation 39C of the IBBI (Resolution Process for corporate persons) Regulation 2016. Since no majority votes were passed in meeting, the Applicant filed an application before this

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Adjudicating Authority seeking directions whether to proceed with the extension of the CIRP or to proceed with the liquidation process. The Adjudicating Authority vide order dated 14.03.2023 directed the Applicant as under:

"It is noticed that since no resolution plan came forward for approval and the CIRP period is already expired on 24.01.2023, therefore, the CoC is directed to consider the proposal for the liquidation of the Corporate Debtor in accordance with Code Regulations, and accordingly the RP may file a separate application for the liquidation of the corporate Debtor after taking requisite approval from the CoC."

9. As per the order dated 14.03.2023 the Applicant convened the 7th CoC meeting on 06.04.2023 and both the resolutions i.e, for the extension of the CIRP and for the liquidation of the Corporate Debtor were put to e-voting. The CoC passed both the resolutions with 100% voting. Therefore, the Applicant filed another application bearing I.A No.343 of 2022 seeking directions of this Tribunal whether to proceed with extension of CIRP or with the liquidation process of the Corporate Debtor. Consequently, the Respondent No.1 in I.A No.343 of 2022 i.e., Financial Creditors through Authorised Representative filed the reply dated 11.09.2023 requesting to proceed with the liquidation process of the Corporate Debtor. Therefore, the Applicant has filed the present application under Section 33 of the I & B Code, 2016 for liquidation of the Corporate Debtor.
10. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records.
11. The relevant provisions of Sections 33(1) and 33(2) 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)."

12. **Prescribed period for filing application-** In the present case, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 21.04.2022. Thereafter, the CIRP period was extended for 90 days from 27.10.2022 to 24.01.2023. Since no resolution plan came forward for approval, the Adjudicating Authority directed the COC to consider the proposal for the liquidation of the Corporate Debtor. However, no resolution was passed by the CoC whether to extend the CIRP period or for the liquidation of the Corporate Debtor, the Applicant filed application bearing I.A No.343/2023 seeking directions of this Tribunal whether to proceed with the extension of the CIRP or with the liquidation process. However, the Financial Creditors in their reply to I.A No.343/2023 stated to proceed with the liquidation process of the Corporate Debtor. Therefore, the present Application is filed on 11.01.2024 for liquidation of the Corporate Debtor stating that 270th day in the CIRP has expired on 24.01.2023 and no

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Resolution Plan has been received. Therefore, it is observed that the requirement of Section 33 (1) of the Code is satisfied and the application shall be considered accordingly.

13. **Appointment of Liquidator** – As per Section 34 of the Code, the Resolution Professional has given his consent in Form-AA dated 20.12.2023 to act as the Liquidator of the Corporate Debtor. Subsequently, the Members of CoC has also permitted the RP to act as the Liquidator. Therefore **Shri Amarpal with Registration No. IBBI/IPA-001/IP-P-01584/2018-2019/12411** is appointed as the Liquidator.
14. Relevant aspects under Regulation 39B, 39C and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are examined hereunder:
 - (a) Pursuant to Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, the CoC in its 7th meeting held on 06.04.2023 approved the anticipated Liquidation cost of Rs. 41,21,378/- for first six months and Rs. 43,96,278/- for twelve months.
 - (b) As per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the members of the CoC in its 7th meeting held on 06.04.2023 approved the sale of Corporate Debtor as a going concern. Therefore, the liquidator is directed to follow the Regulation 32 of the IBBI (Liquidation Process) Regulation, 2016 and take necessary action.
 - (c) The fee payable to the Liquidator shall be as per the fee table as per Regulation 4 of the IBBI (Liquidation Process) Regulations 2016.
15. In 7th CoC meeting held on 06.04.2023, the CoC was informed/updated about the various cases filed before the Consumer Forum, Bengaluru and other courts.



16. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Shri Diya Projects Private Limited 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, except 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;
- (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;
- (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;
- (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

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B of Schedule II of the said 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) Regulations, 2016.
- (viii) That the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 thereafter in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016.,

17. Accordingly, **I.A No. 03 of 2024 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.

Sd/-

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

Sd/-

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

