

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/187/2024 In C.P. (IB)/745(MB)2021

IN THE MATTER OF

Mrs. Neeta Navin Nagda

VS

Anusmera Realty and Infra Private Limited

Section 7 of Insolvency and Bankruptcy Code, 2016

Order Delivered on 05.07.2024

CORAM:

SHRI. K. R. SAJI KUMAR
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner

For the Respondent:

ORDER

IA/187/2024:-

Order is pronounced in the open Court. The above IA is allowed and disposed of.

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
K. R. SAJI KUMAR
Member (Judicial)

//Anmol//

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

**I.A.187 OF 2024
IN
C.P.(IB)745/MB/2021**

*[Under Section 33(1)(a) of the
Insolvency and Bankruptcy Code,
2016]*

Mr. Atul Laxmichand Gala
Resolution Professional for:
Renaissance Corporation Limited

... Applicant

In the matter of
Mrs. Neeta Navin Nagda

...Financial Creditor

Versus

Anusmera Realty and Infra Private Limited

...Corporate Debtor

Order Dated: 05.07.2024

Coram:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE Ms. MADHU SINHA, MEMBER (TECHNICAL)

Appearance: Hybrid

For the Applicant: Adv. Yahya batatawala

ORDER

1. The above I.A. No. 187 of 2024 is filed by the Resolution Professional, Mr. Atul Laxmichand Gala (Applicant) seeking liquidation of Anusmera Realty and Infra Private Limited (Corporate Debtor) under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (IBC), praying for the following reliefs:

- a. Pass an order for liquidation of the Corporate Debtor in view of Section 33 of the Code;*
 - b. To appoint any Insolvency Professional from the panel of IBBI as the Liquidator of the corporate Debtor;*
 - c. Pass such order(s) as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.*
2. This Tribunal *vide* order dated 23.03.2023 admitted C.P. No. 745(IB)/MB/2021 under Section 7 of the IBC, filed by Mrs. Neeta Navin Nagda (Financial Creditor) and Corporate Insolvency Resolution Process (CIRP) was initiated in respect of the Corporate Debtor. The Applicant was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor *vide* the said Order.
3. The Applicant further submits that public announcement was made by him wherein claims were invited from the Creditors of the Corporate Debtor in two local newspapers namely, *Financial Express* (English) and *Navakal* (Marathi) on 26.03.2023.
4. On the basis of the claims received and admitted, the Applicant constituted the Committee of Creditors (CoC) on 24.04.2023. The Applicant submits that the first meeting of the CoC was convened on 24.04.2023, wherein it was resolved to appoint the Applicant as the Resolution Professional (RP) of the Corporate Debtor.
5. The second CoC meeting took place on 03.07.2023, wherein the appointments of Registered Valuers, Transaction Auditor and Advocate were approved. However, the CoC recommended not to publish Form G and the said resolution was passed with 57.14% majority.
6. The Applicant submits that he had duly convened the third CoC meeting on 14.09.2023, wherein deliberations took place in respect

of the progress of CIRP, initiation of action under Sections 43, 44 and 66 of the IBC, seeking extension of CIRP period by 90 days, etc.

7. Accordingly, the Applicant filed I.A. 4433 of 2023 under Section 12 of the IBC seeking extension of CIRP by 90 days from 19.09.2023 to 18.12.2023. This Bench *vide* Order dated 09.10.2023, allowed this IA.

8. In the fourth CoC meeting dated 16.12.2023, deliberations took place in respect to the progress of CIRP and taking on record Valuation Report. The CoC also approved resolution to take Corporate Debtor into liquidation by 75.9% majority.

9. The Applicant submitted that he had obtained Valuation Report from (1) CA Sonam Jalan dated 14.12.2023 and (2) CA Anshul Agarwal dated 15.12.2023, in compliance with the law. The minutes of the said meeting of the CoC are annexed to this IA.

10. The Applicant submitted that he had also filed two applications under Sections 43, 44 and 66 of the IBC *vide* Diary Nos. 2709138103622023 and 2709138103632023, both dated 13.12.2023.

11. In the fourth meeting itself, the CoC authorised the Applicant to file application for liquidation of the Corporate Debtor, and, hence, he filed this IA praying for liquidation of the Corporate Debtor under section 33(1)(a) of the IBC in terms of the above stated reliefs.

12. We have heard the submissions made by the Counsel appearing for the Applicant and perused all the material available on record. The minutes of the fourth meeting of the CoC held on 16.12.2023 suggests that it has resolved and approved, with 75.9% voting, to liquidate the Corporate Debtor in view of absence of any substantial assets with the Corporate Debtor. Since there are no substantial assets with the Corporate Debtor,

there is no option except to bring the Corporate Debtor into liquidation in terms of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations), this Tribunal is inclined to allow the above Application for liquidation. In *K. Sashidhar Vs. Indian Overseas Bank & Ors.* [Civil Appeal No. 10673/2018], the Hon'ble Supreme Court in para 33 held that *'The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non justiciable.'*

13. In view of the legal position above, we feel that this is a fit case for ordering liquidation of the Corporate Debtor as prayed for. Since the CoC has not appointed any Liquidator, this Bench appoints Mr. Umesh Chand Goyal having Registration Number IBBI/IPA-001/IP-P-01876/2019-2020/12974, as the Liquidator to carry on the liquidation process of the Corporate Debtor. In the result, we pass the following:

ORDER

- a. The above I.A. 187 of 2024 is **allowed** and the Corporate Debtor Anusmera Realty and Infra Private Limited, is ordered to be liquidated.
- b. **Mr. Umesh Chand Goyal having Registration Number IBBI/IPA-001/IP-P-01876/2019-2020/12974** is hereby appointed as the Liquidator under Section 34(1) of the IBC, subject to the condition that he submits written consent to act as such.
- c. That the Liquidator, for conduct of the liquidation proceedings, shall be entitled to fees as per Regulation 4 of the Liquidation Process Regulations.

- d. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the IBC and in terms of Liquidation Process Regulations.
- e. All powers of the Board of Directors and key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to exist. All such powers shall be vested with the Liquidator forthwith. That the Corporate Debtor shall be liquidated in the manner as laid down in the IBC and the Liquidation Process Regulations by issuing Public Notice stating that the Corporate Debtor is in liquidation.
- f. We direct the Liquidator to send copy of this Order to the ROC under which this Company has been registered. The Liquidator shall also serve a copy of this Order to various authorities such as Income-tax Department, VAT, GST Departments, etc., who are likely to have any claim upon the Corporate Debtor. The Liquidator shall also serve a copy of this Order to the trade unions/employee associations of the Corporate Debtor, if any, so as to enable them to inform the workmen/employee regarding liquidation of the Corporate Debtor.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the Liquidator to institute suit or other legal proceeding, on behalf of the Corporate Debtor, with prior approval of this Adjudicating Authority in terms of proviso to Section 33(5) of the IBC.

- i. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

14. With the above directions, I.A. No. 187 of 2024 is allowed and disposed of.

Sd/-

MADHU SINHA
MEMEBER (TECHNICAL)

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//VLM//