



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA(IBC)(LIQ.)/49(ND)2024

In

CP (IB) – 542(PB)/2022

Order under Section 33(2) of the Insolvency and Bankruptcy Code,
2016.

IN THE MATTER OF:

STATE BANK OF INDIA

... FINANCIAL CREDITOR

VERSUS

SHREE BANKEY BEHARI EXPORTS LIMITED

...CORPORATE DEBTOR

AND

IN THE MATTER OF: IA(IBC)(LIQ.)/49(ND)2024

MR. ROHIT SEHGAL

RESOLUTION PROFESSIONAL

FOR SHREE BANKEY BEHARI EXPORTS LIMITED

..... APPLICANT

Order Pronounced On: 13.05.2025

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the RP : Mr. Shashwat Anand, Mr. Shashwat Parihar, Mr.
Rishabh Kumar, Mr. Deepanshu Badiwal, Advs.



ORDER

1. This is an Application filed on 04.12.2024 by Mr. Rohit Sehgal, the Resolution Professional of Shree Bankey Behari Exports Limited, the Corporate Debtor (CIN: U93000DL1994PLC060087) before this Adjudicating Authority under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**” or “**Code**”) seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor (“**CoC**”) in its 16th Meeting held on 21.10.2024. Prayers made in the Application read as below:

- i. Pass an order for liquidation of the Corporate Debtor under Section 33(2) of the IBC;*
- ii. Appoint the Applicant as the Liquidator of the Corporate Debtor;*
- iii. Direct the imposition of moratorium under Section 33(5) of the IBC;*
- iv. Direct that the Liquidator shall have all powers in terms of Section 35 of the IBC;*
- v. Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case*

Brief Background of the Case

2. An Application was filed by State Bank of India (Financial Creditor) to initiate Corporate Insolvency Resolution Process (**CIRP**) for the Corporate Debtor under Section 7 of the Code read along with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. This Adjudicating Authority vide order dated 13.12.2022 (**Admission Order**) was pleased to admit the application and a moratorium was declared. Mr. Rohit Sehgal was appointed as an Interim Resolution Professional (**IRP**).



3. The IRP made a public announcement in Form-A on 14.12.2022 in Financial Express (English) and Jansatta (Hindi), in New Delhi edition, inviting claims to be filed on or before 27.12.2022.
4. Pursuant to the public announcement, claims were received and verified. Accordingly, the Committee of Creditors was constituted with the following members and voting share: -
 - a) State Bank of India- 60.11%
 - b) Punjab National Bank - 15.92%
 - c) Canara Bank - 12.80%
 - d) Union Bank of India - 6.41%
 - e) Bank of Baroda - 4.76%.
5. The IRP convened 1st Meeting of the Committee of Creditors (**CoC**) on 12.01.2023, wherein in accordance with section 22(2) of the IBC, the IRP, Mr. Rohit Sehgal was confirmed as Resolution Professional (**RP**) and the decision was communicated to this Adjudicating Authority vide IA(I.B.C)/1788(PB)2023.
6. In the 1st meeting the RP/Applicant apprised the Financial Creditors that Banks in the consortium declared the accounts of CD as a Non-performing Asset ("NPA") before the initiation of CIRP and enforced their security interest over the mortgaged and hypothecated assets under the provisions of SARFAESI. The only asset available in the Corporate Debtor is the land and building located at Industrial Plot No. 2253-2257, Sector 38, Phase 11, HSIIDC, Food Park, Rai, Sonipat, Haryana. All other assets including the plant and machinery have already been sold by the lead consortium member, State Bank of India under the aegis of SARFAESI for realization of dues owed to the consortium against the working capital limit. COC was further apprised that the Corporate Debtor is non-operational; has no employees or debtors. Financial Statements have not been filed with the MCA since 2018-2019. All the directors were arrested in August 2022 by Enforcement Directorate and continue to be in the custody of Enforcement Directorate.



7. After detailed deliberations, the COC in its 1st meeting resolved with the requisite majority to liquidate the Corporate Debtor given the attendant facts and circumstances where the Corporate Debtor has no real prospects of revival since the Corporate Debtor is non-operational, neither has any investments nor any assets barring the only land and building located in Sector 38, Phase-II, HSIIDC, Food Park, Rai, Sonipat.
8. Consequently, the Applicant filed an application bearing No. 3289/2023 before this Adjudicating Authority for liquidation of the Corporate Debtor. This Adjudicating Authority vide order dated 06.09.2023 made following observation;
“IA-3289/2023
ORDER
Inevitably, the captioned application has been preferred for ordering the liquidation of CD, even when the exercise provided in Section 25(2)(g) to (i) has not been carried out....”
9. Subsequent to the observation made by this Adjudicating Authority, the Resolution Professional placed the consideration before the CoC and CoC decided to withdraw the Application bearing IA No. 3289/2023. Hence, the IA was dismissed as withdrawn vide order dated 18.12.2023, duly noting the deliberation undertaken by the CoC for resumption of CIRP.
10. The Resolution Professional filed an Application bearing IA(I.B.C)/830(PB)2024 seeking exclusion of 340 days from the date of 1st CoC meeting held on 12.01.2023 until order dated 18.12.2023 from this Adjudicating Authority, which has been consumed in adjudication and withdrawal of Liquidation Application. IA(I.B.C)/830(PB)2024 was allowed by this Adjudicating Authority vide order dated 27.02.2024.



11. Subsequently, the Applicant/Resolution Professional resumed the CIRP and took all the necessary steps for effectively running the CIRP viz. publication of Form-G, the appointment of various service providers, including valuers, forensic auditors, and legal consultants to assist in the CIRP.
12. Form G dated 13.01.2024 was published on website of IBBI inviting expression of interest on or before 03.02.2024 and resolution plans on or before 03.04.2024. The same was also published two newspapers namely Financial Express (English) and Jansatta (Hindi) in NCR Region on 13.01.2024.
13. The RP prepared the Information Memorandum, and shared it with the prospective resolution applicants. As disclosed in the Information Memorandum, the Corporate Debtor has the following assets:
 - a) Land and building located at Industrial Plot No. 2253-2257, Sector-38, phase-II, HSIIDC, Food Park, Rai, Distt. Sonipat, Haryana
 - b) Trade receivables accumulating to Rs. 166.6 Crores
 - c) Potential accruals from avoidance applications filed against Ex-Directors
14. That in accordance with regulation 27 read with regulation 35 of the CIRP regulations, RP appointed two registered valuers. As per the valuation reports submitted by the valuers, the average fair market value of the land and building is assessed to be Rs. 59,55,94,499/-, and the liquidation value is assessed to be Rs. 44,88,19,094/-. Notably, apart from Land and Building, the Corporate Debtors assets include trade receivables and potential avoidance application proceeds, but no valuation is mentioned in the Application.



15. In 10th CoC meeting convened on 30.04.2024, Resolution Plans from following three Prospective Resolution Applicants were presented and deliberated:
- a) M/s Ugraya Foods & Feeds Private Limited
 - b) M/s JBS Alloy & Steel Private Limited
 - c) Consortium of Akshay Kumar Mittal and Virender Kumar Mittal
- Prospective Resolution Applicants participated in competitive bidding conducted through Swiss Challenge Method. However, COC members found the financial proposal under each of the resolution plans to be inadequate. COC held further rounds of negotiations and the Resolution Applicants were allowed time until 15.05.2024 to revise the financial terms of the respective resolution plans.
16. In the meanwhile, since CIRP period was expiring on 16.05.2024, the Resolution Professional filed an application bearing IA(I.B.C)/2610(ND)2024 seeking extension of 60 days with effect from 16.05.2024. Application bearing IA(I.B.C)/2610(ND)2024 was allowed by this Adjudicating Authority vide order dated 03.06.2024 granting an extension of 60 days upto 14.08.2024.
17. The Applicant conducted the 12th meeting on 27.05.2024. Revised resolution plans were evaluated by the COC, and after a few deliberations, the Resolution Plans were put for e-voting. The COC e-voted on the Resolution Plans, and the voting commenced on 30.05.2024 and concluded on 17.10.2024.
18. Resolution Plan of Ugraya foods and Feed Private Limited was rejected with 82.44% votes for rejection. Resolution Plan of Akshay Kumar Mittal and Virender Kumar Mittal was rejected with 87.20% votes for rejection. Resolution Plan of JBS alloy and Steel was rejected with 100% votes for rejection. Hence, none of the Resolution Plans received the requisite approval of 66% voting share of the CoC as mandated under Section 30(4) of the Code.



19. In the meanwhile, Resolution Professional filed an application bearing IA(I.B.C)/4166(PB)2024 seeking extension of 30 days in view of ongoing consideration on resolution plans submitted by three prospective resolution applicants. Application bearing IA(I.B.C)/4166(PB)2024 was allowed by this Adjudicating Authority vide order dated 28.08.2024.
20. Resolution Professional further filed an application bearing IA(I.B.C)/4378(PB)2024 seeking extension of 60 days in view of ongoing consideration on resolution plans submitted by three prospective resolution applicants. Application bearing IA(I.B.C)/4378(PB)2024 was allowed by this Adjudicating Authority vide order dated 04.09.2024 granting an extension of 60 days with effect from 14.08.2024 upto 13.10.2024.
21. Further, since CIRP period was expiring on 13.10.2024, Resolution Professional filed an application bearing IA(I.B.C)/5344(PB)2024 seeking extension of 60 days in view of decision awaited on further course of action. Application bearing IA(I.B.C)/5344(PB)2024 was allowed by this Adjudicating Authority vide order dated 20.01.2025 granting an extension of 60 days. Vide this order it was further directed that the Resolution Professional is to ensure that process is completed within the aforesaid extended period.
22. Meanwhile, In the 16th CoC meeting held on 21.10.2024, after detailed deliberations, the CoC resolved to liquidate the Corporate Debtor under Section 33(2) of the IBC. The relevant passed is as follows:
- To deliberate on next course of action. liquidation of corporate debtor*



'RESOLVED THAT Committee of Creditors hereby approves for Initiation of liquidation of Shree Bankey Bihari Exports Ltd., under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

FURTHER RESOLVED THAT, Mr. Rohit Sehgal, Resolution Professional of the Corporate Debtor Is authorized for submission of appropriate application before Hon'ble National Company Law Tribunal, New Delhi Bench for Initiation of liquidation process of the Corporate Debtor In accordance with section 33(2) of Insolvency and Bankruptcy Code, 2016.

The resolution for liquidation was approved with the requisite majority of more than 66% votes in favor.

23. Hence, the present Application is being filed by the RP for approval of Liquidation on 04.12.2024.

24. Heard Ld. Counsel for the Resolution Professional and perused the submissions made.

25. It is seen that the CoC as discussed in 1st CoC itself convened on 12.01.2023 had made an attempt to liquidate the CD vide IA - 3289 / 2023, which drew a curiosity from the bench as to why even steps have not been taken to invite Resolution Plans in terms of section 25. This is on record (in order dated 18.12.2023) that subsequent to observations and queries made by this Adjudicating Authority, the CoC deliberated upon the matter and passed a resolution approved by majority of more than 66%, to resume the CIRP and consequently withdraw IA - 3289 / 2023.

26. Pursuant to the resumption of CIRP, it is observed that the Resolution Professional and CoC have taken all the requisite steps to invite Resolution Plans. Three Resolution Plans received as mentioned in Paragraph 17 and 18 above, were taken up for consideration in 12th CoC meeting convened on 27.05.2024. While



voting remained for open for around 4-5 months, none of the Resolution Plans submitted were approved by the CoC with requisite majority.

27. It is relevant to note at this stage that liquidation value of the Corporate Debtor stands to the tune of INR 44,88,19,094/-. Three Plans were submitted before CoC, with the highest value to the tune of INR 45.80 crores being offered by M/s Ugraya Foods and Feeds Private limited to secured financial Creditors within 90 days. Thus, it is observed that although the value of the resolution plan submitted by one of three PRAs was higher than the liquidation value, nevertheless CoC in its commercial wisdom, has disapproved all these plans including one with value higher than liquidation value.

28. Further, pursuant to disapproval of all the plans, the CoC in its commercial wisdom, has decided to liquidate the CD in a 16th meeting convened on 21.10.2024.

29. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

30. Further, Section 33(2) of the Insolvency and Bankruptcy Code 2016 permits the CoC to resolve to liquidate CD at any point of time during the CIRP. Section 33(2) reads as follows:

33. Initiation of Liquidation

(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 1 [approved by not less than sixty-six per cent. of the voting share] 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).

2 [Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

31. Furthermore, in the present case we find that at the behest of CoC the CIRP period as extended from time to time, and it has already expired. We gave ample opportunities to enable the process to find a solution but in vain.
32. In view of the above we do not find any reason not to accept the commercial decision of the CoC to liquidate the CD, as the same will only delay the closure of process prescribed under the IBC and erode the value for the CD further, which would not be in conformity with overall object and intent of the IBC.
33. In the light of above facts and circumstances, it is hereby ordered as follows:
- i. IA(IBC)(LIQ.)/49(ND)2024** filed by Mr. Rohit Sehgal, the Resolution Professional of Shree Bankey Behari Exports Limited, the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the IBC;
 - ii.** The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code has recommended that an IP



other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.

iii. The Resolution Professional has filed an affidavit dated 25.02.2025 to bring on record the fact that CoC in its 19th CoC meeting convened on 18.01.2025 has approved the appointment of **Ms. Pooja Bahry**, as the Liquidator with 100% vote in favour.

iv. Therefore, this Adjudicating Authority appoints **Ms. Pooja Bahry**, as the Liquidator of the Corporate Debtor from the available panel of Resolution Professionals/Liquidators as maintained by the IBBI. The details of the named Liquidator are as follows:

IBBI Registration No.: IBBI/IPA-003/IP-N00007/2016-2017/10063

Email address: pujabahry@yahoo.com

Address: 59/27 Prabhat Road, New Rohtak Road, New Delhi, National Capital Territory of Delhi ,110005

The Liquidator has filed Written Consent dated 14.01.2025 in Form-2.

v. Mr. Rohit Sehgal, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.



- vi.** The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in Liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed timely of the Liquidation order.
- viii.** All the powers of the Board of Directors, and of key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- ix.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- x.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but 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 the suit or other legal proceeding on behalf of the Corporate Debtor with prior



approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

- xi.** In accordance with Section 33(7) of the Code, this Liquidation 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.
- xii.** The Liquidator shall manage and govern the affairs of the Corporate Debtor and shall have resort to powers and duties in terms of Section 35(1) of the Code.
- xiii.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- xiv.** The Liquidator shall also follow up the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xv.** The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- xvi.** The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.



- xvii.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xviii.** The Registry is further directed to send a copy of this order to the IBBI for their record.
- xix.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

34. The Application bearing **IA(IBC)(LIQ.)/49(ND)2024** filed in CP (IB) – 542(PB)/2022 is **allowed** and stands **disposed of** in accordance with the above directions.

**Sd/
(RAMALINGAM SUDHAKAR)
PRESIDENT**

**Sd/
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)**