



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 301

(IB)-273(PB)/2021

New IA-2595/2025, New IA-2602/2025

IN THE MATTER OF:

Bhabani Pvt Ltd.

... Petitioner

Versus

Emergent Traders Pvt Ltd.

... Respondent

AND IN THE MATTER OF IA-2595/2025:

(Under Section: 60(5) of the IBC, 2016)

Ajay Gupta

B-7/45, First Floor,

Safdarjung Enclave Extension, New Delhi- 110029

... Applicant

Versus

1. Bhabani Pvt. Ltd.

A-30, Block B-1, 3rd Floor,

Mohan Co-Operative Industrial Estate,

Mathura Road, New Delhi-110044

2. Wel Intertrade Private Limited

E-5, Local Shopping Center,

Greater Kailash 2, Delhi-110048

... Respondents

AND IN THE MATTER OF IA-2602/2025:

(Under Section: 60(5) of the IBC, 2016)

Bhabani Pigments Pvt. Ltd.

A-30 Block B-1, 3rd Floor

Mohan Co-Op Industrial Estate,

Mathura Road, New Delhi – 110044

... Applicant

Versus

Resolution Professional Mr. Ajay Gupta

B-7/45, 1st floor,

Safdarjung Enclave Extn., New Delhi- 110029

... Respondent

Under Section: 7 of IBC, 2016 (CIRP)

Order delivered on 29.05.2025



CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Miran Singh Negi, Adv. Aakriti Gupta in IA-2595/2025,
Adv. Raghav Wadhwa, Adv. Ishita Kheria in IA-2602/2025

For the Respondent : Adv. Miran Singh Negi, Adv. Aakriti Gupta in IA-2602/2025

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER


IA-2595/2025: The prayer made in the captioned application reads thus:-

- "a) Allow the present application;*
- b) Pass directions to the CoC members/ respondents herein to effectively participate in the present CIRP; Or in the alternative:*
- c) Initiate the liquidation process of the corporate debtor in terms of section 33 of IBC;*
- d) Direct the CoC members/ respondents to jointly and severally contribute towards the outstanding insolvency resolution process costs;"*


2. The factual position enumerated in the application is captured in Para Nos. 38 to 46 which reads thus:-

38. The representative of Wel Intertrade Pvt. Ltd. expressed their willingness to liquidate the corporate debtor M/s Emergent Traders Pvt. Ltd., as it was of the view that under current circumstances and after seeing the available assets of the company, further conduct of the CIR process will only result in incurring additional cost and will not lead to the resolution of the corporate debtor. Further, also the corporate debtor viz. M/s Wel Intertrade Pvt Ltd. being the member having 51.27% voting share will not be able to contribute against any Insolvency Resolution Process Cost ('IRP cost') as there are no funds available in the company to fund its own IRP cost as well. Copy of the detailed sheet depicting the outstanding insolvency resolution process cost



39. The representative of the other CoC member viz. Bhabani Pigments Pvt Ltd. informed that he has to seek instructions from the higher authorities, as the higher authorities of the company had already decided to withdraw its claim from CIRP process and the CoC and not to bear any further costs. Accordingly, the CoC requested the applicant to place the agendas of liquidation of the corporate debtor u/s 33(2) of IBC along with all the other proposed agendas of the meeting to vote so that the decision for further course of CIRP shall be taken accordingly. 
40. The voting was conducted upon the agendas of the meeting by way of e-voting wherein only one CoC member viz. Wel Intertrade Pvt Ltd casted its votes. The requisites votes for liquidating the corporate debtor u/s 33(2) could not be garnered and the agendas of the publication of Form-G, fixation of eligibility criteria, approval of RFRP & evaluation matrix and ratification of appointment of transaction auditor were not approved by the CoC.
41. The above have created a situation of complete standstill wherein applicant is not able to publish Form-G nor able to file liquidation since one of the CoC members does not want to participate in the CIRP process at all and the other does not want to conduct CIRP but liquidate the corporate debtor.

Extension of CIRP period by 1001 days granted by this Hon'ble Tribunal:

42. Since, the CIRP process could not be conducted effectively, owing to the pending litigations and non-cooperation from the suspended directors and the CoC members, the applicant also filed an application being IA (I.B.C)/1030/2025 before this Hon'ble Tribunal to seek exclusion of 1,001 days from the 180 days of CIRP period. The Hon'ble Tribunal vide its order dated 05.03.2025 was pleased to extend the CIRP period by 1,001 days, thereby 180 days of CIRP were to expire on 30.06.2025. Copy of the order dated 05.03.2025 passed by this Hon'ble Tribunal is annexed herewith and marked as **ANNEXURE A-15.**
43. It is apparent from the aforesaid that even the extended period of 1001 days are coming to an end on 30.06.2025, however till date the CoC has neither approved the publication of Form G (step towards resolution of CD) nor approved the liquidation of the corporate debtor. 



realization of the assets of CD), creating a peculiar circumstance warranting the consideration of this Hon'ble Tribunal as the applicant being the resolution professional is totally handicapped to even to take any step in the process.

44. Effectively, even after taking charge as the resolution professional in the present case, the applicant herein has made all the efforts to take the present CIRP further but due to the non-cooperative behavior of the CoC as well as the suspended directors in the present case, no effective steps could be taken by the applicant herein for the resolution of the corporate debtor.
45. Therefore, the applicant is constrained to file the instant application before this Hon'ble Tribunal in view of the peculiar facts of the present case, thereby seeking appropriate directions for taking the present CIRP to a logical conclusion either by directing the CoC members to participate in the present process effectively to resolve or direct the liquidation of the corporate debtor, which would be in the interest of all the stakeholders, as timely liquidation ought to be preferred than endless resolution.
46. It is submitted that the applicant has bonafidely performed his duties and obligations in terms of the provisions of the code and the rules and regulations made thereunder and has made all possible efforts towards the resolution of the corporate debtor and the delay if any in the present case is attributable to the peculiar facts and circumstances as stated above.

3. Our attention is drawn to the order dated 09.10.2024 passed in IA-3066/2024, in terms of which we appointed Mr. Ajay Gupta as Resolution Professional qua the CIRP. Subsequently, we passed the order dated 05.03.2025 taking the view that since the CIRP could be prolonged on account of negligent approach of IRP, it could be magnanimous to expand period of process in the interest of spirit of the Code. Today Mr. Negi, Ld. Counsel for the Resolution Professional submitted that there are two Financial Creditors who are members



of CoC whose voting shares is being 48.73% and 51.27% and they are not moving ahead in the direction prescribed in IBC as also IBBI (CIRP) Regulations, 2016 for inviting the expression of interest etc. Though, we are unable to appreciate the stand taken in the application, as for the purpose of invitation of expression of interest by publication of Form-G, the approval of members of CoC is not needed and it is for Resolution Professional to publish the form. Regarding approval of plan also, initially the requirement of 66% vote share is there. However, in the present case, a period much beyond 330 days has already been consumed and despite the indulgence shown by us in terms of the order dated 05.03.2025 the process has not moved ahead. In the wake, having due deference to the judgment of Hon'ble Supreme Court in **State Bank of India & Ors. vs. The Consortium of Mr. Murari Lal Jalan Ors.** (Civil Appeal Nos. 5023-5024 of 2024), as also the provisions of Section 33(1) of the Code, we deem it appropriate to order liquidation of the Corporate Debtor.

4. Accordingly, we appoint Mr. Harish Taneja with Reg. No: [IBBI/IPA-002/IP-N00088/2017-18/10229] (e-mail ID: harishtaneja78@gmail.com) based on the latest list furnished by the Insolvency and Bankruptcy Board of India applicable for the period between January 1 2024-June 30, 2024 as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the extent Rules and Regulations including Insolvency and



Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.

- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority. The financial affairs of the Corporate Debtor shall also be investigated in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and the Insolvency and Bankruptcy Board of India.
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh



Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part 11 of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- i) Copy of this order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps qua the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.
- j) The Liquidator appointed as above may take steps to sell the Corporate Debtor as a Going Concern.

5. With the above directions, this IA(IBC)/**2595/2025** stands **allowed and disposed of.**

IA-2602/2025: The prayer made in the captioned application reads thus:-

“a. Allow the Applicant to withdrawal its claim in C.P. (IB) No. 273(PB)/2021;”



2. The Regulation 30A of the IBBI (CIRP) Regulations, 2016 specifically indicate the stages regarding withdrawal of the CIRP. Besides, the Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 also indicate such process. The present is a situation where the CoC in the application i.e. CP(IB)- 273/PB/2021 could be withdrawn only with 90% vote share of the members of the CoC. The present application has been preferred by the Financial Creditor, whose vote share is only 48.73%. Even otherwise also, after constitution of CoC, application for withdrawal of the application can be preferred only by the CoC and not by any of the individual Creditors. At this stage, Ld. Counsel for the Applicant emphasized that the prayer made in the application is for withdrawal of the claim of the Applicant in CP(IB)- 273/PB/2021 and not for withdrawal of the Company Petition. We cannot be oblivious of the fact that it is the Applicant in the captioned IA namely Bhabani Pigments Pvt. Ltd. which had initiated the CIRP. As has been noted hereinabove, once the process is set in motion, the same is regulated by well knitted process prescribed in IBBI (CIRP) Regulations, 2016 and no deviation from the same is permissible. If the Applicant desire to withdraw his claim, it was for him to approach the erstwhile IRP for the purpose and thus the Resolution Professional could have taken a conscious call in this regard, as it is for the erstwhile IRP/Resolution Professional to constitute CoC in terms of the provisions of Section 21 of IBC, 2016. Obviously, the Applicant before us could send communication to Resolution Professional to permit it to withdraw its claim. However, the Resolution Professional could deny the same. The e-mail sent by the Resolution Professional on February 12, 2025 reads thus:-



Raghav Wadhwa <raghav@wadhwachambers.com>

Withdrawal of Claim – CIRP of Emergent Traders Private Limited

Ajay Gupta <cirp.emergenttraders@gmail.com>

Wed, Feb 12, 2025 at 1:14 PM

To: Raghav Wadhwa <raghav@wadhwachambers.com>

Cc: Rohtash Kumar <rkumar@bhabanipigments.com>, rpwelintertrade@gmail.com, emergent2004@gmail.com

Dear Sir,

I refer to your email dated 06.02.2025 wherein you have intimated about your decision to withdraw your claim from the CIRP of the corporate debtor and to not participate in the CIRP and future CoC meetings.

In this regard, I hereby submit that there is no provision under the Code which permits a Resolution professional to allow any withdrawal of claim of a financial creditor (the applicant itself in the instant matter) and reconstitute CoC thereof.

Therefore, I humbly state that as the RP in the present case, I do not have any authority to allow the withdrawal of claim by a financial creditor, since the same has already been admitted.

You are requested to kindly make the required payment in compliance to the directions of Hon'ble NCLT at the earliest.

Thanks and regards

[Quoted text hidden]

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Thanks & Regards

Ajay Gupta

Resolution Professional

In the matter of Emergent Traders Pvt. Ltd.

IBBI Registration No: IBBI/PA-001/IP-P00140/2017-18/10304

B-7/45, 1st floor, Safdarjung Enclave Extn., New Delhi- 110029

Email: ip.ajaygupta@corpvisory.com; cirp.emergenttraders@gmail.com;

Mob: 09871277445

3. From the contents of the application as well as submission put forth by the Ld. Counsel for the Applicant it writ large that the Applicant wish to wriggle out of the process. Maybe the Applicant has tried to espouse that he does not wish to press its claim, thus, should be allowed to go out of the CoC with its claim itself. However, once the Applicant itself initiated a process, it cannot be permitted to wash its hands off from the same and leave it to the others who are not responsible for initiating the process to carry same. It would also be not out of context to note that in terms of the Regulation 2A, once the liquidation is ordered, it is for Financial Creditor's to contribute towards the liquidation cost. The Regulation 2A reads thus:-

“2A. Contributions to liquidation costs.—(1) Where the committee of creditors did not approve a plan under sub-regulations (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency



Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor.”

4. A reference may also be made to the Regulation 33 of IBBI (CIRP) Regulations, 2016 which provides for cost at interim resolution process. The Regulation 34 talks of resolution professional cost and Regulation 34A contain provisions regarding disclosure of cost. As can be seen from the provisions of Regulation 34B(5), the fee of the erstwhile IRP/Resolution Professional need to be paid from the funds available with the Corporate Debtor or the same should be paid out of contribution by the members of CoC. Regulation 33 to 34B of IBBI (Resolution Process for Corporate Persons) Regulation, 2016 reads thus:-

“33. Costs of the interim resolution professional.—

- (1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.*
- (2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).*
- (3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.*
- (4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.*

Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.

34. Resolution professional costs.



The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.

34A. Disclosure of Costs.

The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board.

34B. Fee to be paid to interim resolution professional and resolution professional.

.....

(5) The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.”

5. In the wake of the aforementioned provisions of the Regulations, we are conscious that the Creditor who decide to initiate the CIRP cannot choose to avoid his/her responsibility in terms of the Code and the Regulations framed thereunder and is bound to remain associated with process. His position has to be different from such claimants, who submit their claims in response to the notice under Regulation 6 of IBBI (CIRP) Regulations, 2016. Taking a holistic view in the matter we are not inclined to allow the application and the **same is accordingly dismissed.**



6. While disposing of the IA-2595/2025, we have not commented on the liquidation cost/fees of Liquidator/Resolution Professional or cost of Liquidation/CIRP in any manner. It would be open to parties to work out their rights independently by initiating separate process of law.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Iqraa/Ruchita