



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

**Item No. 211**  
**IB-753/ND/2023**  
**IA- 28/2024**

**IN THE MATTER OF:**

**Srivenkateshwar Tradex Pvt. Ltd.**

...

**Applicant/  
Corporate Debtor**

**AND IN THE MATTER OF IA-28/2024:**

**Mr. Atul Jindal, Resolution Professional**

M/s Srivenkateshwar Tradex Pvt. Ltd.

110, Deepali Enclave, Pitampura,

New Delhi – 110034

...

**Applicant/  
Resolution Professional**

**Under Section: 10 of IBC, 2016**

**Order delivered on 24.04.2025**

**CORAM:**

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

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

**PRESENT:**

**For the Applicant :**

**For the Respondent :**

**For the RP : Ms. Aishwarya Prasad, Adv**

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORAL ORDER**

**IA- 28/2024:** The prayer made in the captioned application reads thus: -

- a) *"Allow this instant application and pass necessary order for Liquidation of the corporate debtor under Section 33(2) of the Code considering the resolution passed by the CoC with 100% voting share in favour of liquidation;*
- b) *pass order for appointment of Mr. Atul Jindal, bearing IBBI Reg. No. IBBI/IPA-001/IP-P-02537/2021-2022/13883 as the Liquidator under Section 34(1) of the Code; and*



c) *Pass such other further order/ orders as may be deemed fit and proper in the facts and circumstances of the instant case.”*

2. Ld. Counsel for the RP could draw our attention to resolution dated 22.05.2024 passed by the CoC with 100% vote share, deciding to liquidate the Corporate Debtor. The relevant excerpt of the resolution reads thus: -

**"RESOLVED** *that pursuant to section 33 (2) and Regulation 40 D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and other applicable provisions, of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, the decision to liquidate the corporate debtor - Srivenkateshwar Tradex Private Limited and proceed with the liquidation process, be and hereby is approved.*

**RESOLVED FURTHER THAT** *Resolution Professional be and is hereby authorized to file appropriate application incorporating, recorded in view of COC as well as do all such acts, deeds and things as may be required necessary or incidental thereto.*

**RESOLVED FURTHER THAT** *the cost incurred by Resolution Professional while filing appropriate application as well as do all such acts, deeds and things as may be required necessary or incidental thereto will form part of CIRP Cost.*

**RESOLVED FURTHER THAT** *the recommendations of the members of the Committee of Creditors is hereby accorded for appointment of Mr. Atul Jindal as the liquidator in the matter of Srivenkateshwar Tradex Private Limited pursuant to Section 34 of Insolvency and Bankruptcy Board of India.*

**RESOLVED FURTHER THAT** *Resolution Professional be and is hereby authorised to file application for liquidation before National*



*Company Law Tribunal and to initiate/take all actions necessary steps actions in this regard. "*

**3.** As can be seen from the provisions of Section 33(2) of IBC, 2016, where the CoC decides with vote share of 66% to liquidate the Corporate Debtor, this Tribunal may pass such order as may be passed in terms of Section 33(1) of the Code. The provisions of Section 33(1) and (2) of the IBC, 2016 reads thus: -

***“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 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).*

*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.”*

**3.** In the wake of the aforementioned provisions of the Code and the resolution passed by CoC, the Corporate Debtor is ordered to be liquidated.

**4.** Though the application proposed the name of Mr. Atul Jindal i.e. RP qua the CD, to be appointed as the Liquidator, but in the wake of Circular No. Liq-12011/214/2023-IBBI/840 dated 18.07.2023 issued by the IBBI, when the CD goes into liquidation, the IRP/ RP may not be appointed as the Liquidator. The circular dated 18.07.2023 reads thus: -

Liq-12011/214/2023-IBBI / १५०

18<sup>th</sup> July 2023

To  
Secretary,  
National Company Law Tribunal  
Principal Bench  
New Delhi

**Subject: Recommendation for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the IBC, 2016 - regarding**



The Code envisages time bound resolution of the Corporate Debtor (CD) to maximise the value of the assets. In cases where the CD has not been resolved successfully, Adjudicating Authority (AA) orders for initiation of the liquidation process of the CD and appoints a liquidator. In this regard, Section 34 of the Code provides that where AA passes an order for liquidation of the CD, the resolution professional (RP) appointed for the CIRP shall act as the liquidator unless replaced by the AA under the following three circumstances:

(i) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

**(ii) the Board recommends the replacement of a RP to the AA for reasons to be recorded in writing; or**

(iii) the RP fails to submit written consent.

2. Section 34(4)(b) inter-alia provides that the AA shall replace the RP if the Board recommends the replacement for reasons to be recorded. During the review of performance of processes under the Code, it has been found that there is a meagre 4% average realisation against the admitted claims during the liquidation process whereas in Corporate Insolvency Resolution Process (CIRP) the average realisation is 32% against the admitted claims during CIRP. This necessitated for fresh perspective in the liquidation process and replacement of RP to act as liquidator. This subject has been considered by the Board and it is considered that AA may appoint a new IP as liquidator due to the following reasons:

(i) The IBC has been introduced with larger economic goals to revive the distressed viable CDs to convert non-performing assets as performing assets, promote employment, entrepreneurship, and credit by valuing capital invested in the project rather than selling in bits and pieces or recovery mechanism. The prime objective of the Code is resolution. Accordingly, in cases where the CD has not been successfully resolved or resolution plan has been failed, IP who has been assigned to conduct the resolution process of the CD, may not be recommended to continue to act as liquidator.

(ii) The Code creates an ecosystem for maximisation of the value of assets of a CD. Non-revival of the CD through CIRP adversely impacts on its value. Value is usually dependent on the time taken to resolve the insolvency since it erodes over time and rapidly once the insolvency proceedings commence. Therefore, any delay in the insolvency resolution process may make reorganisation of the CD difficult and would induce liquidation, thereby destruction of value for the stakeholders. Thus, an independent IP needs to be entrusted to conduct the Liquidation process of the CD for value maximisation while also ensuring the transparency and complete independence in two separate assignments.

(iii) The Code envisages CIRP and liquidation as two distinct processes with distinct roles and responsibilities. Thus, an IP undertakes the two different assignments as RP and Liquidator, separately. Segregating the dual role of an IP in the same CD as RP and liquidator will foster an inbuilt system of check and balance in the process, thereby enhancing the accountability of each job and strengthening stakeholder's trust in the processes under the Code. Further, it would eliminate any perverse incentives, whatsoever, available with RP in deliberately pushing the CD towards liquidation and secure next assignment on ex-ante basis.

3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b), recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth. The liquidator can be appointed from the panel list of IBBI.





5. Thus, the prayer for appointment of Mr. Atul Jindal, RP as Liquidator cannot be granted. Accordingly, from the panel of IBBI, **Mr. Rajesh Kumar Parakh** [Reg. No: IBBI/IPA-001/IP-P00272/2017-2018/10516; E-mail ID: **parakh.rajesh@gmail.com**] is appointed as the Liquidator qua the Corporate Debtor to carry out the liquidation process, *inter alia*, in terms of the following directions: -

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant 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.
- d) 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.
- e) 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.



- f) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor 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.
- g) 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.
- h) Copy of this order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.
- i) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India

**6.** It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

**The I.A. stands disposed of.**

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

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

*Ashima/ Atul Raj*