



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

Liquidation. A.-36/2024
In
IB-687(ND)/2022

IN THE MATTER OF IB-687(ND)/2022:

Mr. Yatin Jindal

..... Financial Creditor

Versus

Pomergranate Coaters Private Limited

..... Corporate Debtor

AND IN THE MATTER OF Liquidation. A.-36/2024:

Mr. Devendra Umrao,

Resolution Professional of the Corporate Debtor

..... Applicant

Versus

Bank of Baroda & 2 Ors.

..... Respondents

1. Bank of Baroda

..... Respondent No. 1

2. Mr. Sunil Jindal

..... Respondent No. 2

3. Mr. Praveen Kumar

..... Respondent No. 3

Order Pronounced On: 22.05.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant/RP : Mr. Abhishek Anand, Mr. Mohit Kumar Bafna,
Adv.

For the Ex-Director : Mr. Prithu Garg, Mr. Ashutosh Arvind Kumar
Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This Application has been filed by Mr. Devendra Umrao, the Resolution Professional of the Corporate Debtor before this Adjudicating Authority under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") seeking initiation of the Liquidation of the Corporate Debtor. The Applicant seeks the following relief:

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Date of Order: 22.05.2025



“a. allow the present Application under Section 33(1)(a) of the code, and pass appropriate directions of Liquidation of the Corporate Debtor along with appointment of liquidator; and/or
b. pass an order requiring to send liquidation order to the authority with whom the Corporate Debtor is registered; and/or
c. for such other and further relief(s) or order(s) that this Hon'ble Tribunal may deem fit and proper in the peculiar facts and circumstances of the case.”

2. **Brief Background of the Case**

An Application was filed by Mr. Yatin Jindal ("Financial Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against Pomergranate Coaters Private Limited ("Corporate Debtor") under Section 7 of the Code filed before this Adjudicating Authority. This Adjudicating Authority vide order dated 15.09.2023 ("Admission Order") admitted the application and declared a moratorium and appointed Mr. Vinay Kumar Singhal as an Interim Resolution Professional. Subsequently, Mr. Vinay Kumar Singhal, the Applicant, was confirmed as the Resolution Professional by the CoC.

3. It is submitted that after verifying the claims of the Financial Creditors and constitution of the Committee of Creditors ("CoC"), the First CoC meeting was called on 21.10.2023, wherein the said IRP apprised the members of CoC that the CIRP was initiated against the Corporate Debtor and public announcement in accordance with "Form A" of the Rules, inviting claims against the Corporate Debtor, was made in the concerned English and Hindi newspapers. The Claim forms, "Form C" of the Rules, were submitted by the Financial Creditor to the IRP, and the IRP, after due inspection and verification, admitted their claims.
4. In the First CoC meeting, various issues were discussed in terms of the Agenda of the First CoC meeting. A proposal was raised by the Financial Creditor to change the IRP under Section 22(2) of the IBC and name of Mr. Devendra Umrao (IBBI/IPA-003/IP-N00223/2019-



2020/12640), the Applicant herein was proposed by the CoC. In view of the proposal raised in the first CoC meeting, the CoC filed an application under Section 22(3)(b) of the IBC to allow the appointment of Mr. Devendra Umrao (IBBI/IPA-003/IP-N00223/2019-20/12640), as the RP in order to complete the CIRP of the Corporate Debtor.

Accordingly, the Applicant was appointed to act as Resolution Professional ('RP') of the Corporate Debtor vide order dated 08.12.2023 passed by this Adjudicating Authority.

5. The Applicant submitted that he received claims from the following Creditors:

S. No.	Type of Creditor	Number	Claim Amount Admitted (In Rs.)
1.	Financial Creditors (Unsecured)	1	16,26,99,120
2.	Financial Creditors (Related Party)	1	1,36,40,666
3.	Operational Creditors	1	95,000

6. The following is the constitution of CoC as on today with vote percentage:

Sr. No.	Name of Financial Creditor	Voting Share in CoC
1.	Bank of Baroda	100%

7. The Applicant/RP in the second CoC meeting dated 05.02.2024 proposed the resolution to discuss and decide upon the evaluation matrix, eligibility criteria, request for resolution plan ('RFRP') and performance security for the Resolution Applicant. The Applicant/RP further communicated to the CoC that as per provisions of Regulation 2(ha) of CIRP Regulation, CoC shall approve parameters to be applied and the manner of applying such parameters for consideration of the resolution plan. Consequently, an extensive discussion was conducted. Accordingly, the said



resolution was put to vote before the sole CoC member. However, the said resolution was not approved by the CoC.

8. The Applicant/RP in the said second CoC meeting dated 05.02.2024 proposed the resolution to invite Expression of Interest ('EOI') from prospective Resolution Applicants for participating in the resolution plan of the Corporate Debtor and to authorize the resolution professional to release FORM G in newspapers. The Applicant/RP further conveyed that he will be extending invitations to prospective resolution applicants for the submission of viable and feasible resolution plans aimed at resolving the challenges faced by the Corporate Debtor. Consequently, an extensive discussion was conducted. Accordingly, the said resolution was put to a vote before the sole CoC member. However, the said resolution was not approved by the CoC.
9. It is submitted that since the CoC in the second CoC meeting dated 05.02.2024 has voted against the evaluation matrix, eligibility criteria, request for resolution plan, performance security for resolution applicant and Expression of Interest from prospective resolution applicants for participating in resolution plan of the corporate debtor and further the sole member of Committee of Creditors i.e. Bank of Baroda had desired that liquidation be initiated.
10. It is submitted that third CoC meeting which was adjourned on 19.03.2024 and was resumed on 21 .05.2024 and in the said meeting the Applicant/RP informed Bank of Baroda, the Sole Financial Creditor in the matter, that in the previous meeting, Bank of Baroda had decided not to proceed with the publication of FORM G due to the absence of assets belonging to the Corporate Debtor. During the ensuing discussion, the RP again requested the Committee to decide on filing an application with the National Company Law Tribunal, New Delhi Bench under Section 33(1)(a) of the IBC 2016, to initiate the liquidation of Pomegranate Coaters



Private Limited, emphasizing the urgency due to the prolonged delay and the fact that the CIRP period is already over.

11. It is contended that the 5th meeting of the CoC was convened on 11.12.2024 wherein the Sole CoC Member unanimously resolved, with 100% vote to liquidate the Corporate Debtor under the provisions of Section 33(2) of the IBC, 2016 and has authorize the Applicant to file appropriate application before this Adjudicating Authority seeking liquidation of the Corporate Debtor.
12. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona fide in nature.
13. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
14. 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.
15. The above-quoted judgement makes it clear that the "Commercial wisdom of CoC" is to be given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.
16. In the 5th Meeting of the CoC dated 11.12.2024, it was resolved to liquidate the Corporate Debtor, which is as follows:

***"RESOLVED THAT** pursuant to Section 33(2) of the Insolvency & Bankruptcy Code, 2016 and the rules made thereunder, the consent of the members of the CoC be and is hereby accorded to ratify the filing of the application before the Hon'ble*



Adjudicating Authority, regarding initiation of liquidation proceedings of the Corporate Debtor and to appoint Mr. Vivek Bansal, Insolvency Professional bearing registration number IBBI/IPA-001/IP-P-01475/2018-2019/12249, as the liquidator, subject to given consent to act as the liquidator of the Corporate Debtor.

RESOLVED FURTHER THAT *in pursuant to Regulation 4(2) of the IBBI (Liquidation Process) regulations, 2016, the liquidator shall be entitled to a fee of Rs. 35,000 per month plus applicable taxes.*

RESOLVED FURTHER THAT *the RP be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."*

17. We find that the Application satisfies the requirements of Section 33(2) of IBC as there is no confirmed resolution plan of the Corporate Debtor and that the resolution to Liquidate the Corporate Debtor is supported with 100% voting of CoC (the requirement being not less than 66%).

18. In light of the above facts and circumstances, it is hereby ordered as follows:

- i.** The **Liquidation. A.-36/2024** filed by Mr. Devendra Umrao, the Resolution Professional of the Corporate Debtor, is **allowed**, and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
- 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 had 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.** Therefore, this Adjudicating Authority appoints Mr. Santanu Kumar Samanta as the Liquidator of the Corporate Debtor. The Registration number of the Liquidator is IBBI/IPA-001/IP-P-02324/2020-2021/13511. The Contact No. of the Liquidator is +919810031794, and the E-mail id of the Liquidator is santanukumar@yahoo.com.
- iv.** Mr. Devendra Umrao, 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.
- v.** The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the Liquidation estate under Section 53 of the Code.
- 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.** 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 of the Liquidation order timely.
- viii.** All the powers of the Board of Directors and 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.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with the provisions of Section 35(1) of the Code.
- xii.** The Liquidator shall also follow up on 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.
- xiii.** The Liquidator shall keep in view the provisions of Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as a going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from the liquidation commencement date, the Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- xiv.** The Liquidator shall submit a 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;

- xv.** 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.
- xvi.** The Registry is directed to send a copy of this order to the IBBI for their record.
- xvii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)