



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

IA 2409 OF 2021

In

IB-622(ND)/2018

**IN THE MATTER OF IB-622(ND)/2018:**

*Under Section 9 of the Insolvency & Bankruptcy Code, 2016.*

M/s. Sunflag Iron and Steel Company

**...Applicant**

VERSUS

M/s. Rajat Wires Pvt Limited

**...Corporate Debtor**

**AND IN THE MATTER OF:**

Mr. Gulshan Gaba

**...Resolution Professional/Applicant**

**Order Pronounced on 12.02.2025**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the RP : Mr. Abhishek Gupta, Advocate

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application under Section 33 of the Insolvency and Bankruptcy Code, 2016 ("Code") is filed on behalf of the Resolution Professional seeking the following reliefs:

- a. *"Allow the present application and pass an order under Section 33(2) read with Section 33(1) of the Insolvency and Bankruptcy Code, 2016 to liquidate the Corporate Debtor;*

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

- 2.** The averments made by the Applicant in the present Application are as follows:
- i.)** The Adjudicating Authority vide order dated 14.02.2020 passed an order directing CIRP for the Corporate Debtor and declaring the moratorium inter-alia appointed the Applicant i.e. Mr. Kanti Mohan Rustagi as an Interim Resolution Professional.
  - ii.)** It is submitted by the Applicant that in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Applicant made a public announcement in Form- A on 19.02.2020.
  - iii.)** The Applicant further submitted that in terms of Section 18(1)(a) of the Code, the Applicant collated claims submitted by the creditors pursuant to the Public Announcement and after determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors (hereinafter, the "CoC") within the time provided under the Code.
  - iv.)** Thus, The CoC came to be comprised of only two financial creditors of the Corporate Debtor, i.e., Canara Bank and Mrs. Sunita Sachdev. That since Mrs. Sunita Sachdeva was also a financial creditor but was not made part of the CoC being related to Suspended Board of Directors of the Corporate Debtor.
  - v.)** It is submitted that, in the Second Meeting of CoC held on 22.07.2020, in terms of Regulation 27 of the CIRP Regulations, the Applicant appointed two set of registered valuers for each category namely for Plant and Machinery, for Land & Building and for Financial Assets, to determine the Liquidation & Fair value in accordance with Regulation 35 of the CIRP Regulations of the immovable property is as below:-
    - A. 31/6, New Rohtak Road, Anand Parbat Industrial Area, New Delhi, Delhi 110005 (subject to ownership of the said property lies with RWPL) along with any assets kept at the aforesaid premises.



B. Plot No-262-J, Sector 24, Sector 24, Faridabad, Haryana 121001) and other tangible/ intangible assets encompassing the fixed assets as well as current assets:

C. Plot No L-74 Taloja Industrial Estate, MIDC Area, Taloja, 410208 and other tangible/intangible assets encompassing the fixed assets as well as current assets.

**vi.)** It is submitted that the CoC in its second meeting also approved the criteria in terms of Section 25 (2) h for the prospective resolution applicants for submission of the resolution plan and draft Form G for inviting expressions of interest, presented before it by the Applicant in terms of Regulation 36A of CIRP Regulations. The CoC also approved the evaluation matrix, RFRP and process document in the second CoC meeting.

**vii.)** The Adjudicating Authority vide order dated 29.07.2020 appointed Mr. Gulshan Gaba as the Resolution Professional to conduct CIRP.

**viii.)** It is submitted that in the Fourth CoC Meeting, the Resolution Professional also informed the CoC about the publishing of the Form G on 08.10.2020 having last date of receipt of Expression of Interest as per Form G as 23.10.2020. The Resolution professional further informed the CoC about the Date of issue of provisional list of prospective resolution applicants as on 28.10.2020.

**ix.)** In the fifth CoC meeting, the Resolution Professional informed the CoC about the receipt of the expression of interest received in response to the publication of Invitation for Expression of Interest (Form G) on 08.10.2020. The list of the expression of interest received by the Resolution Professional is as below: -

Name	Capacity	Remarks
Harsha Vardhan Reddy	Individual	Earnest money deposit not received. Hence, EOI is held Invalid.
VI Farm Organics Limited	Company	Earnest money deposit not received. Hence, EOI is held Invalid.  The resolution professional vide his mail 23 <sup>rd</sup> October, 2020 requested the



		<p>applicant to clarify whether they have deposited the EMD amount. In response to the same director/authorized signatory of the applicant requested the resolution professional to reduce the amount of EMD as depositing such a huge amount as interest free security deposit does not make any business sense that too at the stage of submitting EOI.</p>
Maktech Auto Limited	Company	<p>Net worth of the applicant is below Rs. 1 Crore as required by the eligibility criteria finalized by the COC.</p> <p>The prospective resolution applicant has considered the net worth of its director to comply with stated conditions. However, the EOI has been submitted by the company in its own name. Hence, ineligible as per the eligibility criteria.</p> <p>The COC may consider to revise the eligibility criteria and re-publish of Form G for maximization of value of corporate debtor.</p>
Alexa Filtration and Cleaning Solutions Private Limited	Company	<p>Net worth of the applicant is below Rs. 1 Crore as required by the eligibility criteria finalized by the COC. Further, the stated company has been incorporated on 30<sup>th</sup> of September, 2020. The prospective resolution applicant has considered the net worth of its holding company to comply with stated conditions. However, the EOI has been submitted by the company in its own name.</p> <p>Further, as per the eligibility criteria for fulfilling the group criteria, the entities shown as part of Group must have either controlling interest over or controlled by</p>
		<p>or under common control with the Prospective Resolution Applicant. The entities being part of the Group for at least 3 years from the last date of submission of EOI, shall be considered.</p> <p>Since, Alexa Filtration and Cleaning Solutions Private Limited is incorporated in September, 2020 and is not part of the group for last three years. Therefore, stated applicant is ineligible as per the eligibility criteria.</p> <p>The COC may consider to revise the eligibility criteria and re-publish of Form G for maximization of value of corporate debtor.</p>



- It is submitted that in the Sixth CoC meeting which was held on 09.12.2020, the Resolution Professional informed the COC that pursuant to what was decided in the fourth CoC meeting of Rajat Wires Private Limited, the Resolution Professional has published invitation of Expression of Interest i.e. Form G in Business standard (Hindi and English Edition on pan India basis) and Navrashtra, Mumbai edition (Marathi Language) on 09.11.2020. In response to the same, the Resolution Professional has received four expressions of interest from the companies who have earlier also showed their interest in the Corporate Debtor.
- xi.)** It was further submitted that the Eight CoC meeting was held on 09.02.2021, wherein the Resolution Professional informed the members of the CoC that RP has received one resolution plan from M/s. Garg Builders on 31.12.2020. The Resolution Professional shared the valuation report with the CoC and thereafter opened the Resolution Plan in front of CoC and before the PRA. The CoC suggested the PRA to revise the bid and to offer the better bid before the CoC within seven days and adjourned the meeting.
- xii.)** It was submitted that on 26.02.2020, the CoC conducted Ninth COC meeting. The Resolution Professional informed the CoC that revised plan has been filed by the PRA. The plan was opened and found to be below expectation and was again advised by CoC to revise the plan. The CoC also informed the representative of the operational creditor that the fair market value of the corporate debtor is much higher as compared to the value offered by PRA. The CoC further decided to approve or disapprove the plan in next COC meeting.
- xiii.)** It was submitted that on 30.03.2021, the Tenth CoC meeting was conducted wherein the draft transaction report was placed before the CoC and certain objections were raised by the suspended director and further CoC advised resolution professional to provide copy of the draft report for their objection. The revised plan was placed before the CoC. Certain conditions were placed by the PRA in the plan and the members of the CoC after going to the point as discussed between the process advisor, resolution professional and PRA decided to vote against the resolution plan submitted by the prospective resolution applicant and decided to file a liquidation application before NCLT, New Delhi.



- ) It was submitted that therefore, the members of the CoC member having 100% voting share decided to liquidate the Corporate Debtor as the CoC received only one resolution plan and same was not viable resolution plan. The RP and CoC have deliberated and considered the real position of facts and circumstances, and the CoC has so decided in its commercial wisdom.
- xv.)** The Applicant submitted that the CoC is of the opinion that in absence of viable resolution plan, it is in the best interest of all the stakeholders that the Corporate Debtor be liquidated and the decision of the CoC be intimated to this Adjudicating Authority and requisite permission sought from this Adjudicating Authority in terms of the provisions of the Code. The RP was duly authorised to file an application for liquidation.
- xvi.)** The 10<sup>th</sup> meeting of CoC was convened on 30.03.2021. The Applicant offered his services to act as Liquidator and gave his consent in Form AA to act as liquidator of the Corporate Debtor for the fee approved by the CoC. The CoC decided not to appoint resolution professional as liquidator of the corporate debtor and decided to appoint **Sh. Kranti Mohan Rustagi** as liquidator of the Corporate Debtor having IBBI/IPA-002/IP-N00097/2017-18/10240 and passed a resolution for such appointment and for fixation of fee of the liquidator.
- xvii.)** It is the case of the Applicant that the present Application is filed under Section 33(2) of the Code to bring to this Adjudicating Authority's attention that since no viable resolution plan was received by the CoC and the CoC rejected the said resolution plan with 100% voting in its 10<sup>th</sup> CoC meeting has resolved for liquidation of the Corporate Debtor keeping in mind the commercial aspects and the ground realities, as resolved by the CoC an order is prayed for under Section 33 of the Code to put the Corporate Debtor in liquidation under the provisions of the Code. This application is made in the interest of all stakeholders.
- xviii.)** Average liquidation value for the Corporate Debtor has been calculated as Rs. 25,19,60,483/- as per average of the value ascertained by registered valuers appointed. The Corporate Debtor owns land in Faridabad and Navi Mumbai as well as building thereon.



It was submitted that the present Application is filed *bona fide* and in the interest of justice and in accordance with the decision of the Committee of Creditors of the Corporate Debtor to seek appropriate orders for liquidation of the Corporate Debtor.

### **3. ANALYSIS AND FINDINGS:**

- i.)** We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
- ii.)** 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.
- iii.)** The above-quoted judgement, makes it amply 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.
- iv.)** In the 10<sup>th</sup> Meeting of the CoC dated 30.03.2021, it was resolved to Liquidate the Corporate Debtor which is as follows:

*"The members of the COC decided to vote against the resolution plan submitted by the prospective resolution applicant and decided to file a liquidation application before Hon'ble NCLT, New Delhi.*

***RESOLVED THAT*** *subject to the provisions of Section 34 of IBC, 2016 and subject to necessary order to be passed by Hon'ble National Company Law Tribunal, Mr. Kanti Mohan Rustagi is hereby accorded to be appointed as liquidator of corporate debtor w.e.f. date of order of Hon'ble NCLT."*

***RESOLVED FURTHER THAT*** *the resolution professional is hereby appointed and authorized to file necessary application for approval of liquidation of company and for appointment of liquidator and cost incurred by the resolution professional in this regards will form part of CIRP cost."*



v.) Based on the resolution of the CoC, the Applicant filed the present Application seeking Liquidation of the Corporate Debtor. 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%).

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

- a.) The **Liquidation. A.-2409/2021** filed by Mr. Gulshan Gaba, 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;
- b.) 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.
- c.) Therefore, this Adjudicating Authority appoints **Mr. Sudhir Kalra** as Liquidator of the Corporate Debtor. The Registration number of the Liquidator is IBBI/IPA-001/IP-P00768/2017-2018/11314.
- d.) Mr. Gulshan Gaba, 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.
- e.) 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 proceed of the Liquidation estate under Section 53 of the Code.



- f.) 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.
- g.) 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.
- h.) 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.
- i.) 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.
- j.) 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.
- k.) 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.
- l.) 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.
- m.) The Liquidator shall keep in view the provisions of Regulation 32A of 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.

- n.) The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- o.) 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.
- p.) The Registry is directed to send a copy of this order to the IBBI for their record.
- q.) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

**-Sd/-**

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**-Sd/-**

**BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**