

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 11<sup>th</sup> DECEMBER, 2023, 10:30 A.M.**

IA (IBC)/86/GB /2022  
CP (IB)/10/GB/2021

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao  
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Vishal Ghisulal Jain, RP In (State Bank of India Vs Nayak Infrastructure Pvt. Ltd.)
Under Section	U/s 33-34 and R/w 60(5) of IBC, 2016

For Petitioner (s) :

For Respondent (s) :

**ORDER**

Order Pronounced through VC *vide* separate sheets.

Sd/-  
**Satya Ranjan Prasad**  
**Member (Technical)**

Sd/-  
**H.V. Subba Rao**  
**Member (Judicial)**

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/86/33-34/GB/2022  
In CP (IB)/10/GB/2021**

***In the Matter of:***

An Application under Section 33 and Section 34 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 for an order of Liquidation of the Corporate Debtor;

**-And-**

***In the Matter of:***

Vishal Ghisulal Jain, Resolution Professional of the Corporate Debtor having address at 1003, Satra Plaza Sector-19D, Vashi, Navi Mumbai- 400703; **... Applicant**

**-And-**

***In the Matter of***

State Bank of India; **... Financial Creditor**

**Versus**

Nayak Infrastructure Private Limited. **...Corporate Debtor**

***Coram:***

Shri H. V. Subba Rao : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

***Appearances (through video conferencing):***

For Petitioner : Mr. G. A. Purshothaman, Adv

**Order reserved on: 28.11.2023  
Order pronounced on: 11.12.2023**

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/86/33-34/GB/2022  
In CP (IB)/10/GB/2021**

---

**ORDER**

1. This Interlocutory Application has been filed under Section 33 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 by the Resolution Professional in the matter of CD- Nayak Infrastructure Private Limited, praying the following:
  - a) *Pass an order directing the initiation of Liquidation of the Corporate Debtor as a Going Concern;*
  - b) *Appoint Mr. Vishal Ghisulal Jain i.e., the Applicant herein, having Regn. No. IBBI/IPA-001/IP-P00419/2017-18/10742 as the Liquidator of the Corporate Debtor.*
  
2. The brief facts are that the main application CP (IB)/10/GB/2021 filed by the Financial Creditor— State Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC' for brevity) was admitted by this Adjudicating Authority on 02.08.2021 and Mr. Vishal Ghisulal Jain was appointed as Interim Resolution Professional (IRP). The IRP, Mr. Vishal Ghisulal Jain had constituted a Committee of Creditors("CoC") and the Committee of the Creditors in the 1<sup>st</sup> CoC Meeting held on 23.09.2021 with 100 % voting, confirmed Mr. Vishal Ghisulal Jain as Resolution Professional (RP).
  
3. The IRP made Public Announcement on 29.08.2021 in prescribed format 'FORM A'[Under Regulation 6 of the Insolvency and Bankruptcy Code] which was published in the *Assam Tribune* and *Dainik Assam* (English and Regional Language Newspapers) having wide circulation in Assam. The Resolution Professional has received claims of different nature and the total claim admitted by Interim Resolution Professional/Resolution Professional till the approval of Resolution plan stands at Rs. 1,95,21,00,000/- in total. Subsequently, in the 2<sup>nd</sup> COC Meeting, the RP appointed two Registered Valuers on 16.11.2021 to determine the fair market and liquidation value of the Corporate Debtor.

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/86/33-34/GB/2022  
In CP (IB)/10/GB/2021**

---

4. It is stated that the RP in the 3<sup>rd</sup> CoC Meeting dated 02.12.2021 informed the CoC of the publication of 'FORM G' inviting Expression of Interest ("EOI") with the last date of the EOI set to 10.12.2021. From the same meeting, it is also confirmed that the CoC unanimously voted to exclude the period of 26.08.2021 to 02.10.2021 from the CIRP period. The RP informed the CoC in the 4<sup>th</sup> CoC Meeting dated 02.02.2022 that neither any Resolution Plan was received nor was there any request for extension of time for the same. In the same meeting, the CoC passed the resolution for the exclusion of lockdown time period from 03.10.2021 to 28.02.2022, however, this Tribunal *vide* an order dated 24.03.2022 only allowed exclusion till 31.12.2021. Subsequently, in the 5<sup>th</sup> CoC Meeting dated 24.03.2022, the CoC unanimously voted in favour of the reissuance of 'FORM G'. Thereafter, EOI was published again on 09.04.2022 and consequently one EOI was received along with EMD. The Binding Plan Due Date or the last day for submission of the plan was fixed for 13.06.2022 by the CoC in its 6<sup>th</sup> Meeting.
  
5. Further, on request of the RA in the context of difficulties faced by them in visiting sites spread across the interiors of North East, and Odisha due to floods and other problems, the CoC decided to extend the Binding Plan Due Date to 05.07.2022. This was confirmed in the 7<sup>th</sup> CoC Meeting dated 23.06.2022. It is stated that the 9<sup>th</sup> CoC Meeting was held on 12.07.2022 wherein, RP informed the COC that he has received the Resolution Plan from the Sole Resolution Applicant in sealed envelope and in a password protected PDF file. The same was placed and opened before the COC in this meeting. In the same meeting, it was informed by the RP to the CoC that another EOI was received for submitting a resolution plan.
  
6. According to the 10<sup>th</sup> CoC Meeting dated 28.09.2022, the CoC voted against and rejected the Resolution Plan of the RA and the e-voting closed on 15.11.2022 after several extensions, and the resolution for liquidation of the Corporate Debtor was approved with

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/86/33-34/GB/2022  
In CP (IB)/10/GB/2021**

---

89.51% votes. The CoC recommended and voted for sale of the Corporate Debtor and its business as a going concern as per the provisions of law in the same meeting. Relevant documents in this regard have been enclosed with the application.

7. Further, in the same above mentioned meeting, the CoC confirmed that Mr. Vishal Ghisulal Jain having IBBI Registration Number IBBI/IPA-001/IP-P00419/2017-18/10742 has been appointed as the Liquidator in the matter. The Consent Letter of the Liquidator has been enclosed with the application.
8. In this respect, it is relevant to reproduce section 33(2) of the Insolvency and Bankruptcy Code, which is as under:

*“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 percent 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).”*
9. From a reading of the above provision, it is clear that when a Resolution Professional at any time during the CIRP but before confirmation of Resolution Plan approaches the Adjudicating Authority with the decision of the CoC approved by not less than sixty six percent of the voting share, the Adjudicating Authority shall pass a liquidation order. In this case, the CoC with 89.51% votes, approved the resolution for liquidation of the Corporate Debtor. Hence, this is a fit case to order liquidation under Section 33(2) of the IBC, 2016.
10. For the aforesaid reasons, **IA (IBC)/86/33-34/GB/2022 is ALLOWED.** However we observe, that RP has given his consent to act as the Liquidator of the CD, which has been approved by CoC. However, in view of directions contained in IBBI Circular dated 18.07.2023 *vide* no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/86/33-34/GB/2022  
In CP (IB)/10/GB/2021**

---

than IRP/RP under Section 34(4)(b) of the IBC, we are appointing Ms. Sudha Sarma having IBBI Registration IBBI/IPA-002/IP-N01251/2022-2023/14266 as the Liquidator.

**11. As aforesaid, IA (IBC)/86/33-34/GB/2022 is ALLOWED with the following directions:**

- i. The Corporate Debtor, Nayak Infrastructure Private Limited, is ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016.
- ii. Ms. Sudha Sarma having IBBI Registration IBBI/IPA-002/IP-N01251/2022-2023/14266, having address at SUDHA and Associates, 18, MRD Road, Bamunimaidam, Guwahati- 781021, e-mail ID- [sudha.sarma@yahoo.com](mailto:sudha.sarma@yahoo.com), as Liquidator of the CD. This appointment is subject to her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit her consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days. The Liquidator's fee shall be paid in accordance with relevant law, and in particular, as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iii. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iv. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The Liquidator is directed to adhere to it.

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/86/33-34/GB/2022  
In CP (IB)/10/GB/2021**

---

- v. Public Notice as contemplated under Section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
  - vi. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with Section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.
  - vii. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by her in the Liquidation process of the Corporate Debtor.
  - viii. 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 a 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.
  - ix. 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.
  - x. In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.
  - xi. The application bearing IA (IBC)/86/33-34/GB/2022 shall stand disposed of in accordance with the above directions.
12. 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.

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/86/33-34/GB/2022  
In CP (IB)/10/GB/2021**

---

13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

14. File be consigned to records.

Sd/-

**Satya Ranjan Prasad  
Member (Technical)**

Sd/-

**H.V. Subba Rao  
Member (Judicial)**

*Signed this on 11<sup>th</sup> day of December 2023*