

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**IA 4482/2022 in
Company Petition No.: IB 161(PB)/2022**

(Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

M/s SHAKUNTAM SECURITIES PRIVATE LIMITED

...Financial Creditor

VERSUS

M/s QUTAB REALCON PRIVATE LIMITED

...Corporate Debtor

AND

IN THE MATTER OF:

MR. DHARM VIR GUPTA

Resolution Professional of Qutab Realcon Private Limited)

...Applicant

Pronounced on: 02.01.2023

CORAM:

SHRI RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

For the Applicant / RP : Mr. Vatsalya Kumar, Advocate.

ORDER

PER- AVINASH K SRIVASTAVA MEMBER (TECHNICAL)

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1. This is an application filed by the Resolution Professional ('**RP**') upon the instructions of the Committee of Creditors ('**CoC**') seeking liquidation of the **Corporate Debtor**, viz., Qutab Realcon Private Limited [CIN: U74899DL1994PTC063193], on the ground that no resolution plan was received. The Applicant has sought for the following reliefs:

- a. Allow the present application for liquidation of the Corporate Debtor,*
- b. Pass an order for Liquidation of the Corporate Debtor under Section 33(2) read with explanation and in terms of sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Insolvency and Bankruptcy Code, 2016.*
- c. Pass an order to appoint the Resolution Professional Mr. Dharm Vir Gupta, IBBI Registration No. IBBI/IPA-001/IP-01492/2018- 2019/12342 as Liquidator of the Corporate Debtor.*
- d. Pass any other order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the interest of justice.*

2. This Adjudicating Authority, vide its order dated 05.05.2022 on a Petition filed by Shakuntlam Securities Private Limited ('**Financial Creditor**') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('**the Code**'), directed initiation of the Corporate Insolvency Resolution Process ('**CIRP**') against the Corporate Debtor and appointed Mr. Dharm Vir Gupta as the Interim Resolution Professional

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(**IRP**) who was confirmed as RP vide an order of this Adjudicating Authority.

3. It is further submitted that the RP has not received any new claims since the constitution of CoC. Thus, as on the date of this application, the CoC of the Corporate Debtor consists of only one Financial Creditor i.e. Shakuntlam Securities Private Limited and no Operational Creditor.
4. Subsequently, the RP issued a public announcement for inviting EOI in prescribed Form G in the newspapers - Financial Express and Jansatta, Delhi on 12.07.2022. The said Form G was also published on the website of the IBBI. The last date for submission of EOI was 26.07.2022. Since, no EOI was received, the 'Request For Resolution Plan' (**RFRP**) was not issued within 51 (Fifty-One) days of the issue of Information Memorandum. Copy of Form-G along with the newspaper publication and proof of uploading Form G on the IBBI website is attached with the application and marked as Annexure-A3 (Colly)'.

5. Subsequently, on 10.08.2022, the RP held the third meeting of CoC and discussions were held about the outcome of Form G. The RP informed the CoC, that they may re-consider publishing the EOI with a revised eligibility criterion. However, the CoC was of the opinion that

the re-publication of EOI would further add to the expenses and would not be commercially feasible and viable.

6. Accordingly, the RP proposed for liquidation of the Corporate Debtor under section 33(2) of the Code before the CoC and the CoC was of the view that it would be best to liquidate the Corporate Debtor for the following reasons:

- a. Form G was published but no EOI was received from any prospective applicant.
- b. Non-availability of physical assets of the Corporate Debtor which can generate future income as a going concern.
- c. The Corporate Debtor is not doing any business for more than four years i.e., since April 2018.
- d. Non-availability of the funds for continuing the CIRP and scarcity of resources with member(s) of the CoC.

7. In view of the above, the agenda for the Liquidation of the Corporate Debtor was put for voting and the same was approved by a majority of 100% members present and voting in favor of the liquidation. The extract of the resolution is reproduced herein for reference:

“RESOLVED that the liquidation of Corporate Debtor u/s 33(2) of I&B Code 2016 be initiated and RP is authorised to make an application to Adjudicating Authority for liquidation of the CD u/s 33(2). Cost of filing application through an advocate, shall form part of CIRP cost.”

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8. Further, the RP informed the members of the CoC that the Liquidator's fees is to be determined by the members, which shall form part of the liquidation cost as per Chapter II, Regulation IV (Appointment and Remuneration of Liquidator) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**LP Regulations**). The Resolution Professional Mr. Dharm Vir Gupta proposed his consent for acting as the Liquidator and a fee of Rs. 20,000/- (Rupees Twenty Thousand Only) per month excluding GST and out-of-pocket expenses or fee payable as per the table in Regulation 4 of LP Regulations, whichever is higher.

9. The CoC passed a resolution (*vide item number 7(2) of the agenda*) with 100% voting rights, to propose the appointment of Mr. Dharm Vir Gupta (Reg. No. IBBI/IPA-001/IP-P01492/2018-2019/12342), as the Liquidator of the Corporate Debtor. The extract of the resolution is reproduced herein for reference:

"RESOLVED that the appointment of Dharm Vir Gupta, IP having registration No IBBI/IPA-001/IP-P01492/2018- 2019/12342 as Liquidator of Qutab Realcon Pvt. Ltd. is proposed. The fee of liquidator shall be as per schedule 4 of IBBI (Liquidation process) Regulation and otherwise in any case shall not be less than Rs. 20,000/- per month+ GST+ out of pocket expenses"

10. The RP also apprised the CoC about the provisions of Sections 39B and 39C of the Code in order to finalize the estimated liquidation cost. The

estimated maximum liquidation cost was discussed by the CoC, who then passed a resolution (*vide item number 7(3) & 7(4) of the agenda*) with 100% voting rights, to approve the estimated liquidation cost of 2,10,000/- (Rupees Two Lakhs and Ten Thousand Only), plus the fee of Liquidator as per schedule in Regulation 4 of LP Regulations and further resolved to meet the liquidation cost (remaining unpaid) in the proportion of claims admitted and to include the estimated liquidation cost of the application to be filed before Adjudicating Authority.

11. The RP also apprised the members of the CoC about the provisions of Regulation 2B of LP Regulations regarding 'compromise or arrangement'.
12. The Resolution Professional further apprised the members about the CIRP expenses and sought ratification of the same from the commencement of the CIRP i.e., 05.05.2022 till 31.08.2022. The members of the CoC took note and passed a resolution to the effect that out of the total CIRP cost, an amount of Rs. 1,67,420/- (Rupees One Lakh Sixty-Seven Thousand Four Hundred and Twenty Only) is already approved by the CoC members with 100% voting rights in earlier CoC meetings. Further, an amount of Rs. 68,050/- (Rupees Sixty-Eight Thousand and Fifty Only) is the estimated CIRP cost till filing of the liquidation application. Copy of the notice for convening

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the third meeting of CoC, minutes of the third meeting of CoC, along with the voting results, are attached with the application and collectively marked as 'Annexure A4 (Colly)'.

13. Hence, the RP has filed the present application under section 33(2) of the Code, before this Adjudicating Authority for liquidation of the Corporate Debtor and appointment of the applicant as liquidator. The applicant has given his consent to act as liquidator in Form AA which is annexed with the application and marked as 'Annexure-A5'.


14. We have perused the application and submissions of the Applicant/RP in the matter. The application is **ALLOWED** by ordering **Liquidation of the Corporate Debtor**, namely **M/s Qutab Realcon Private Limited** with the following directions:


- a. That we also grant permission to the Applicant for taking steps as per provisions of Sec 230 of the Companies Act, 2013 in addition to liquidating the Corporate Debtor as a going concern.
- b. That Mr. Dharm Vir Gupta, Applicant/RP shall be the liquidator.
- c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. 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;
- e. This order shall be deemed to be notice of discharge to all the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
 - f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
 - g. 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.
 - h. The liquidator shall also follow up on the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
 - i. 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;
 - j. Copy of this order be sent to the Financial Creditor, Corporate Debtor and the Liquidator for taking necessary steps;

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15. **I.A. 4482/2022** filed in CP IB- 161(PB)/2022 is **disposed of** in terms of the aforesaid terms.


(RAMALINGAM SUDHAKAR)
PRESIDENT


(AVINASH K SRIVASTAVA)
MEMBER, TECHNICAL