

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 344/JPR/2023
In CP No. (IB)-77/7/JPR/2021

**UNDER SECTIONS 33 & 34 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

IN THE MATTER OF:

Rimura Finlease and Technology Limited

...Financial Creditor/Applicant

VERSUS

Jawan Construction Private Limited

...Corporate Debtor/Respondent

MEMO OF PARTIES

Rimura Finlease and Technology Limited

R/o, 'Ashirwad' Ajmer Road,
Jaipur, Rajasthan-302006

... Financial Creditor/Applicant

VERSUS

Jawan Construction Private Limited

C/O M/s Jawan Automobiles,
Opp. Panchdeo Mandir, Jhunjunu,
Rajasthan-333001

... Corporate Debtor/Respondent

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AND IN THE MATTER OF
IA (IBC) No. 344/JPR/2023

Jawan Construction Private Limited,
 Through its Resolution Professional,
 Prashant Agrawal, Having Office at F-106,
 Sumer Complex, Gautam Marg,
 B/h Bagadia Bhawan, Jaipur.

... Applicant

For the Applicant : Prashant Agarwal, RP

Order Pronounced On: 22.11.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') bearing IA No. 344/JPR/2023 is filed by the Resolution Professional ('Applicant' / 'RP') for M/s Jawan Construction Private Limited ('Corporate Debtor') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') for passing an order of Liquidation.
2. The Adjudicating Authority *vide* Order dated 16.09.2022 had admitted the Application filed by M/s Rimura Finlease & Technology Limited under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Prashant Agrawal as Interim Resolution Professional ('IRP').

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The third meeting of the CoC was held on 23.12.2022, wherein the CoC deliberated on the agenda of appointing 'IRP' as the Resolution Professional of the Corporate Debtor. The CoC exercising its right under Section 22(2) of the Code unanimously appointed Mr. Prashant Agrawal as the Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority *vide* Order dated 17.02.2022. Subsequently in 3rd meeting of COC dated 23.12.2022 the IRP confirmed as Resolution Professional ('RP').

4. Consequently, the RP issued the Expression of Interest ('EOI') of the Resolution Plan in Form G under Regulation 36A of the CIRP Regulations on 30.11.2022. In response to the publication of Form-G, four (4) prospective resolution applicants expressed their interest however no resolution plan was received till the last date of submission of Resolution Plan dated 14.01.2023. In the light of the resolution passed by the CoC the Applicant had moved an application for extension of the CIRP period. In the intervening time in 6th meeting of CoC dated 03.04.2023 considered the matter of the payment of the CIRP cost and decided for a partial alternative where CoC decided to sale or scarp the M Sand Washing Plant in accordance with the regulation 29 of the CIRP Regulations, 2016 through Swiss Mechanism method. The said resolution was approved by the CoC with 83.72% voting right.

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Thereafter the process of E-Auction was organized for the period from 15.04.2023 to 17.04.2023 with the reserve price as Rs. 5,55,000/- (Rupees Five Lakh Fifty-Five Thousand Only). In the mentioned bidding process only one bid was received for Rs. 5,60,000/- (Rupees Five Lakh Sixty Thousand Only) from one Mr. Ramesh Chahar. Accordingly, the Applicant issued letter of intent on behalf of the CoC on 20.04.2023 and declared Mr. Ramesh Chahar as successful bidder.

6. In the meantime, the IA for extension of the CIRP period has been listed and this Adjudicating Authority had extended the period of CIRP up to 90 days i.e., till 13.06.2023. Subsequently upon the extension of the CIRP period the Applicant published the revised Form-G in two leading newspaper, Indian Express (English) and Virat Vaibhav (Hindi) on 30.04.2023 in order to invite the Expression of Interest from the Resolution Applicant.
7. The Applicant submitted that in response to the revised publication of Form-G, two Prospective Resolution Applicants ('PRAs') expressed their interest, namely Mr. Amrit Agarwal and M/s Shanti G. D. Inspat & Power Private Limited.
8. Further it was observed that the period of CIRP is getting over on 13.06.2023 i.e, before the last date of submission EOI i.e., 29.06.2023 therefore the Applicant has discussed the same with the CoC and informed that a firm



decision has to be taken where the CoC either opt for exclusion of the differential time period or to liquidate the Corporate Debtor.

9. The CoC discussed that the company does not have any tangible asset and this makes it non-lucrative deal to any Resolution Applicant. In the view of same the CoC resolved to liquidate the Corporate Debtor. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor. Copy of the E-voting results is annexed as Annexure-3 of the Application. Moreover, the CoC has appointed the RP to act as the liquidator and has been accepted by the RP. A copy of the written consent of the RP to act as the liquidator is annexed as Annexure – A4 of the additional affidavit which was filed *vide* Diary No. 1673/2023 dated 11.07.2023.
10. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows:

“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, if 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 creditor 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-clause (i), (ii) and (iii) of clause (b) of sub-Section (1) ”.

11. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020* observed as under:

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

12. **The prescribed period for filing Application** – In the present case, the Application under Section 7 of the Code was admitted on 16.09.2022 and the date for completion of CIRP was 15.03.2022, within the 180 days of the timeline prescribed under the Code, and an extension of further 90 days was sought. The extension was granted *vide* Order dated 12.04.2023. Accordingly, the RP filed the present Application on 13.06.2023 in accordance with Section 33(2) of the



Code. Hence, the present application is filed within the prescribed period. In the view of above the Application under consideration is taken up under Section 33(2) of the Code.


13. **Appointment of Liquidator and fee to be paid** – Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”

14. The present RP, Mr. Prashant Agrawal, is eligible as Liquidator. It is noted that liquidation proceedings herein, at the instance of the CoC, have given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any reason to replace the existing RP Mr. Prashant Agrawal, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127, who has filed his

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written consent dated 12.06.2023 to act as the Liquidator as Annexure – 4 of the additional affidavit. Thus, Mr. Prashant Agrawal is appointed as the Liquidator.

15. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019* along with Regulation 39BA of the CIRP Regulations, 2016 inserted *vide Notification No. IBBI/2022-23/GN/REG093, dated 16.09.2022*. The relevant aspects in this respect are examined hereunder.

16. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** — The CoC has decided the estimated cost of liquidation of Rs. 12,50,000/- (Rupees Twelve Lakh Fifty Thousand Only) plus GST as per the provisions contained in regulation 39B of IBBI (Insolvency resolution Process for Corporate Persons) Regulations, 2016, details of which was placed before the members of the CoC and the fees of the liquidator as approved by the CoC payable as per sub-regulation 4(2) of IBBI (Liquidation Process) regulations, 2016.

17. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)*** — The CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as referred to under Regulation 2B (1) of the Liquidation Regulations, 2016 and the RP should submit the CoC's recommendation to the Adjudicating Authority while filing an application under section 33.



Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016) — Under Section 32 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lay down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority. The Liquidator is hereby authorized to explore the possibilities of sale of Corporate Debtor as going concern under clause (e) or clause (f) of Regulation 32 of IBBI (Liquidation Process) Regulation, 2016 and in case if the Liquidator is unable to do the same, then he is authorized to sell the assets of the Corporate Debtor on standalone basis/in a slump sale/ sale of assets collectively/ assets in parcels, as he may deem fit and appropriate.

19. **Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)** — It is seen that the CoC, the members of the CoC hereby approved the remuneration payable to the Liquidator shall be Rs. 1,00,000/- (Rupees One Lakh Only) plus GST per month in the liquidation process.






). *Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)* –The

Resolution Professional submitted that there are no tangible or intangible assets of the Corporate Debtor which could maximise the value of the Corporate Debtor as a going concern. Therefore, the sale of assets on a standalone basis will be the best option for an effective and efficient liquidation of the Corporate Debtor as it is not in operation for the last three years.

21. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, M/s Jawan Construction Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code.

The contextual directions inter-alia include:

- (i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

- (ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

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- (iii) This order of liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees, and workmen of the Corporate Debtor;
- (iv) All the powers of the Board of Directors, key managerial personnel, and the partners of the Corporate Debtor, as the case may be, shall cease to have an effect and shall be vested in the Liquidator;
- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor, and provisions of Section 19 of the Code shall apply concerning the liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- (vi) The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date;

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(vii) Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

22. In view of the foregoing, IA No. 344/JPR/2023 is disposed of. A copy of this order is supplied to the counsel for the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,
TECHNICAL MEMBER**