

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

IA-5091/2023

In

C.P(IB) – 439(ND)/2022

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

AMIT VIJAY KARIA

RESOLUTION PROFESSIONAL FOR

M/s Crystal Facilities Management Private Limited

Email ID: amit.karia@yahoo.co.in

.....Applicant

AND IN THE MATTER OF:

M/s Piramal Capital & Housing Finance Limited

Having its Registered Office at:

601, 6th Floor, Amiti Building

Agastya Corporate Park Kamani Junction

Opposite Fire Station, LBS Marg

Kurla (West), Mumbai – 400070

...Financial Creditor

VERSUS

M/s Crystal Facilities Management Private Limited

(A Company under Corporate Insolvency Resolution Process)

Having its Registered Office at:

Flat No.2, F-50 B Madhu Vihar Extension

New Delhi (East) 110092

..... Corporate Debtor

CORAM:

SHRI MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

APPEARANCES:

For the Petitioner/Financial Creditor: Ms. Bihu Sharma, Pratishta Vij, Advs.

For the Respondents: Ms. Honey Satpal, Advocate

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. Amit Vijay Karia, the Resolution Professional of M/s Crystal Management Facilities Private Limited (Corporate Debtor) on 13.09.2023 before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the 5th CoC meeting held on 04.09.2023, for seeking the following relief:

"a) Allow the present Application;

b) Pass an Order directing the Corporate Debtor namely M/s. Crystal Management Facilities Private Limited to be liquidated in the manner as laid down under Chapter III of the Insolvency and Bankruptcy Code, 2016;

c) Pass an Order appointing Mr. Ankit Goel as the Liquidator of the Corporate Debtor under Section 34 of IBC;

d) Pass an Order directing the petitioner and sole financial creditor to make payment for outstanding approved CIRP costs.

f) Pass any other Order as this Hon'ble Tribunal may deem fit.

2. An Application was filed by M/s Piramal Capital and Housing Finance Limited ("Financial Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Crystal Facilities Management Private Limited ("Corporate

Debtor") under Section 7 of the Code before this Adjudicating Authority (Court-VI) in (IB)-439/ND/2022. This Court vide order dated 19.01.2023 ("Admission Order") admitted the application and initiated CIRP against the Corporate Debtor and appointed the Interim Resolution Professional Mr. Amit Vijay Karia who was later confirmed as the Resolution Professional.

3. The IRP made a public announcement for the invitation of claims in Form-A dated 26.01.2023. Accordingly, the IRP received claims from one Financial Creditor and Income Tax Department. The claim of Financial Creditor (M/s Piramal Capital and Housing Finance Limited) was verified and admitted whereas the claim of Income Tax Department was rejected as it was not submitted in the prescribed format stipulated under relevant regulations. Accordingly, the committee of creditors was constituted on 22.02.2023 comprising of sole financial creditor.
4. The 1st Meeting of the Committee of Creditors (CoC) was held on 22.01.2023. Subsequently, the 2nd meeting of the CoC was held on 16.03.2023 followed by the 3rd CoC meeting held on 22.03.2023. Thereafter, the 4th CoC Meeting was held on 10.07.2023 and the final 5th CoC Meeting was held on 04.09.2023.
5. Since the Corporate Debtor was a company struck off by the RoC and had been revived by this Court for the purpose of CIRP to meet its liabilities, however since it was a defunct company hence there was difficulty in obtaining books of accounts, operational activities etc along with relevant data and records coupled with non-cooperation from erstwhile management.
6. Since there is no chance of receiving any resolution plan as Corporate Debtor does not have any assets or property which could be realised to pay off its dues and the fact that it was a defunct company, no scheme of compromise u/s 230 of Companies Act, 2013 was viable as per the commercial wisdom of the CoC. Hence, the CoC vide email dated 07.09.2023 resolved to put the Corporate Debtor under liquidation with thumping majority of 100% votes which satisfies threshold criteria of minimum 66% votes to move an application for liquidation u/s 33(2) of IBC.

7. Regarding Compliance with the applicable Regulations, the following observations are worthwhile: -

In respect of Regulation 39B (Meeting Liquidation Cost): Since, The Fair Value and Liquidation value was only Rs. 3306/- (Three Thousand Three Hundred and Six Only/-); Hence, the estimated value of Liquid Assets of The Corporate Debtor to meet the Liquidation cost of the Corporate Debtor will be NIL. The RP proposed to the CoC in its 5th meeting to approve the plan for contributing difference between estimated liquidation cost and estimated value of liquid assets. The matter was discussed in great length and CoC expressly directed the RP to defer this item until dissolution or liquidation is voted by them.

In respect of Regulation 39C (Assessment of sale as a going concern): It was duly discussed and decided in the 5TH CoC meeting that the sale of Corporate Debtor on a going concern basis were expressly rejected.

In respect of Regulation 39D (Fee of the liquidator): There has been no deliberation regarding the payment of fees to the liquidator for conducting the liquidation of the Corporate Debtor.

8. Hence, the present Application has been filed by the RP in the interest of justice and the same is bona fide in nature.

9. Further, the RP has also sought for direction to the petitioner/sole financial creditor to make payment for outstanding approved CIRP costs. It is contended that CIRP cost of Rs. 42,90,304 was approved by the CoC in the 2nd CoC meeting held on 15.03.2023 for the time period 19.01.2023 to 18.07.2023(180 days from insolvency commencement date).

10. The RP has contended that he has received only an amount of 20,00,001 out of the approved amount of 42,90,304 and the balance is due and payable. **Accordingly, we direct** the sole financial creditor namely Piramal Capital and

Housing Finance Limited to make payment of the balance amount to the Resolution Professional within 2 months and file affidavit of compliance before this Court.

11. 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.

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

- i.** The **IA-5091/2023** filed by Mr. Amit Vijay Karia, the Resolution Professional of M/s. Crystal Facilities Management Private Limited (Corporate Debtor) is **allowed** and **stands disposed of** 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 sole Financial Creditor namely Piramal Capital and Housing Finance Limited to make payment of outstanding CIRP costs to the Resolution Professional Mr. Amit Vijay Karia within 2 months from date of this order.
- iii.** 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.
- iv.** The CoC in its 5th Meeting dated 04.09.2023 has proposed the name of Mr. Ankit Goel to act as liquidator. Therefore, this Adjudicating Authority appoints Mr. Ankit Goel, as the Liquidator of the Corporate Debtor in the instant case. The Registration number of the Liquidator is IBBI/IPA-001/IP-P-02671/2022-

2023/14088, the address of the Liquidator is E-10A, Kailash Colony, New Delhi -110048 and the e-mail id of the Liquidator is ankitgoel@aaainsolvency.in .

- v.** The Liquidator has filed Written Consent in Form AA as well as his Registration Certificate annexed in the present petition. The liquidator has a valid Authorization for Assignment up to 20.04.2024.
Accordingly, Mr. Ankit Goel is appointed as the Liquidator.
- vi.** Mr. Amit Vijay Karia, 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.
- vii.** The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets 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.
- viii.** 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.
- ix.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in Liquidation. 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.
- x.** The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees can also be informed of this Liquidation order through their association.

- xi.** All the powers of the Board of Directors, and of 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.
- xii.** 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.
- xiii.** 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.
- xiv.** 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.
- xv.** 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.
- xvi.** The Liquidator shall also follow up 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.
- xvii.** The Liquidator shall submit 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;

- xviii.** 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.
- xix.** 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.
- xx.** The Registry is further directed to send a copy of this order to the IBBI for their record.
- xxi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)