



IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court -I)
KOLKATA

IA(IBC)(LIQ.)/17(KB)2024
in
CP(IB)/1411(KB)2018

Under section 33(1) of the Insolvency & Bankruptcy Code, 2016

In the matter of:
Bank of India

...Financial Creditor

Versus

Abhijeet Toll Road (Karnataka) Limited

...Corporate Debtor

And

In the matter of:
Mahesh Chand Gupta

... Applicant/Resolution Professional

Order pronounced on: 13/08/2024

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Sri D. ARVIND

: Member (Technical)

Appearances (through hybrid mode):

Mr. R.R.Modi,Adv.

] For Resolution Professional



ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)(LIQ.)/17(KB)2024-** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) by the Resolution Professional (“RP”) of Abhijeet Toll Road (Karnataka) Limited., the Corporate Debtor, praying for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.

The Ld. Counsel appearing for the RP submits that :

3. This Adjudicating authority, on a petition filed u/s. 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Financial Creditor, *vide* order dated 31/03/2022 in CP (IB)/1411(KB)2018, had ordered initiation of Corporate Insolvency Resolution Process (“CIRP”) against Abhijeet Toll Road (Karnataka) Limited, the Corporate Debtor appointing Mr. Anil Matta, as the Interim Resolution Professional (“IRP”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 public announcement was made in Form-A on 02.04.2022. Copy of Form-A dated 01.04.2022 is annexed herewith and marked as “**Annexure A-2**”.
5. Pursuant to publication of Form A, claims from creditors were received and subsequently the CoC was formed in accordance with the Code and the Rules and regulations framed thereunder, having following members:

Financial Creditor	Claim admitted	Voting share (%)
State Bank of India	70,20,01,944.15	43.31

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India Infrastructure Finance Company	27,30,77,634.11	16.85
Bank of India	35,59,02,000.64	21.95
Bank of Baroda	29,00,82,707.64	17.89
Total	162,10,64,285.90	100


6. The erstwhile RP called various meetings of the CoC and copies of the 1st CoC, 2nd CoC and 3rd CoC meeting minutes are annexed herewith and marked as “**Annexure A-3**” “**Annexure A-4**” and “**Annexure A-5**” respectively.
7. The 4th CoC meeting was held on 26.09.2022, wherein the CoC appointed the IRP as the RP and further resolved to extend the CIRP period by 90 days. A copy of the 4th CoC meeting minutes is annexed herewith and marked as “**Annexure A-6**”.
8. Thereafter an application being IA (IBC) No. 1462/2022 was filed before this Hon’ble Tribunal on 14.10.2022 by the erstwhile RP. It is pertinent to mention here that the CIRP period of 180 days had already expired on 27.09.2022.
9. Pending adjudication of time extension application i.e. IA (IBC) No. 1462/2022, that the Erstwhile RP called the 5th CoC meeting on 19.10.2022. In the said meeting, Form G, Information Memorandum, RFRP and Evaluation matrix were approved by the CoC members. The copy of the 5th CoC meeting minutes is annexed as “**Annexure A-7**”.
10. In terms of Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Form-G was published on 05.11.2022 in newspapers in Kolkata and Karnataka and till the last date for submission of EoI i.e. 15.11.2022, 6 EoIs were received. Copy of Form-G dated 05.11.2022 is annexed as “**Annexure A8**”.



11. The erstwhile RP duly shared the Information Memorandum, Request for Resolution Plan and Evaluation Matrix with the 4 prospective resolution applicants out of the 6 EoI applicants. The 4 prospective resolution Applicants include
- a. Kalyan Tol Infrastructure Ltd.
 - b. Richifield Packaging Pvt. Ltd.
 - c. Kundan Care Products Ltd.
 - d. Shanti GD Ispat and Power Pvt. Ltd.

However, till the last date to submit plan i.e. on 06.12.2022 no resolution plan was received.

12. It is submitted that extension application i.e IA No. 1642 of 2022 filed by the erstwhile RP was heard on various dates but the same was withdrawn by the erstwhile RP on 17.07.2023 for reasons best known to him. A copy of order dated 17.07.2023 is annexed as “**Annexure A-9**”.
13. It is stated that the erstwhile RP called the 6th and 7th CoC meetings on 26.12.2022 and 13.03.2023 respectively and copies of the minutes of the 6th and 7th CoC meeting are annexed herewith and marked as “**Annexure A-10**” and “**Annexure A-11**”.
14. It is submitted that 8th CoC meeting was held on 07.09.2023 in which the CoC with 100% voting share resolved to replace the RP with the new RP i.e. the Applicant herein. The copy of the minutes of the 8th CoC meeting alongwith the e voting report are annexed herewith and collectively marked as “**Annexure A-12**”. Thereafter the Hon’ble Tribunal vide order dated 09-04-2024 in IA(I.B.C)/2072(KB)2023, replaced the erstwhile RP with the Applicant herein as the new RP. The copy of which is annexed as “**Annexure-A-13**”. The said order was intimated to the Applicant herein vide email by the erstwhile RP on 16-04-2024.
15. Upon taking charge of the Corporate Debtor, it came to the light of the Applicant herein that CIRP was already over 180 days on 27-09-2022 and that no extension



or exclusion was granted by the Hon'ble Tribunal nor any related application is pending adjudication. Further publication of Form G and subsequent acts of erstwhile RP were beyond the 180 days period of CIRP. The erstwhile RP had not even taken the assets of the Corporate Debtor in his control/ custody. The last available audited accounts were relating to the financial Year ended 31st March 2021. There was no business activity carried out by the Corporate Debtor since last more than ten years and an Arbitration Award was pronounced against the Corporate Debtor to the tune of Rs 55 crores (approx.) in a dispute with Karnataka Road Development Corporation Limited on 06-01-2022 which was not challenged by the Erstwhile RP, despite having sufficient grounds. In the above circumstances, the Applicant herein held the 9th CoC meeting on 02.05.2023 wherein the matters regarding exclusion, extension and filing challenge to the arbitral award was discussed in details. After various discussions, the CoC with 78.05% voting share approved the resolution for filing exclusion application and challenge to the arbitral award but did not approve the resolution for extension of CIRP period. Copy of the minutes of the 9th COC meeting along with summary sheet of e-voting results are as “**Annexure A-14**”. It is pertinent to mention here that the exclusion application is being filed by the Applicant herein along with the instant application.

16. It is submitted that 10th CoC meeting was held on 14.05.2024, wherein the Applicant apprised that despite receiving 4 EoIs, no resolution was received. Further, the extension of CIRP was not approved by CoC in its 9th meeting. Therefore, the resolution for liquidation of the Corporate Debtor was proposed and e – voting was kept open. During the e – voting period, the representative of Bank of Baroda had requested for extension of voting time but the same could not be done in view of the amended CIRP regulations. As such the requisite voting majority of 66% could not be obtained as the votes in favour of the resolution was 60.16%, against 21.95% and abstained 17.89%. Copy of the minutes of the 10th COC meeting along with the report of e-voting results are annexed as “**Annexure A-15**”.



17. It is submitted that 11th CoC meeting was held on 27.05.2024 to consider the resolution for liquidation of the Corporate Debtor once again. The CoC with 82.11% voting share resolved to liquidate the Corporate Debtor and further resolved to appoint the Applicant herein as the Liquidator with 60.16% voting shares.

18. The resolutions along with their e – voting result are as follows:

Resolution	Voting result
<p>“RESOLVED THAT pursuant to the provisions of Sec 33(2) of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions of the CODE read with applicable provisions of CIRP regulations, the Committee be and is hereby decided to Liquidate “Abhijeet Toll Road (Karnataka) Ltd.”, the Corporate Debtor and consent be and is hereby accorded for filing an application with the Adjudicating Authority for Liquidation of CD.”</p> <p>“RESOLVED FURTHER THAT Mr. Mahesh Chand Gupta, Resolution Professional, be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority for the purpose of Liquidation of CD u/s 33(2) of CODE and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.”</p> <p>“RESOLVED FURTHER THAT Committee be and is hereby approve the appointment of Advocates and the fee payable to advocate on actual reasonable basis not exceeding Rs.50,000/-</p>	<p>Voted in favour by 82.11% each with one CoC member having 17.89% abstaining.</p>



<p>in total, for filing application before adjudicating authority for liquidation of CD, plus fee for attending the hearings and get the order for liquidation and RP is authorized to finalize the appointment of Advocate and fee payable to them with an intimation to CoC members via e mail and the fee payable to the advocates shall form part of CIRP Cost .”</p>	
<p>“RESOLVED THAT Mahesh Chand Gupta, whose appointment as Resolution Professional was approved by the Hon’ble NCLT vide order dated 09-04-2024 and holding registration number IBBI / IPA-001/ IP-P01489/ 2018-19/12304, be and is hereby proposed to be appointed as Liquidator of Abhijeet Toll Road (Karnataka) Limited (Corporate Debtor),who has given written consent to act as the liquidator of the Corporate Debtor in terms of Sec 34(1) of the CODE.”</p> <p>“RESOLVED FURTHER THAT the Liquidator shall be entitled to remuneration in terms of regulation 4 of the IBBI (Liquidation Process) Regulations.”</p>	<p>The said resolution was approved with the majority of 60.16% with dissent vote of 21.95% and one member of the CoC with 17.89% abstaining.</p>

18. It may be noted that the resolution with respect to approval of compliances under CIRP regulation 39B for contribution towards estimated liquidation expenses, under Regulation 39C for sale as a going concern and under Regulation 39D for liquidator fee were not approved as all the three resolutions could get 38.80% in the favour, 43.31% dissenting and 17.89% abstaining. A copy of the minutes of the 11th CoC meeting along with report of e-voting results are annexed collectively as “**Annexure A-16**”. Further the Applicant/ resolution Professional

has given his consent to act as Liquidator of the Corporate debtor, which along with the AFA of the Resolution Professional is annexed herewith and marked as **“Annexure A-17”**.

19. It is submitted that despite receiving 4 EoIs, no resolution plan was received. Further the CoC in its 11th meeting with 82.11% voting share has also resolved for liquidation of the Corporate Debtor.
20. It is further submitted that there are no assets except one small piece of agricultural land of about 187 square meters at a remote place at Raigad district in Maharashtra which have been valued by the valuers engaged by the Ex-RP at about Rs. 2.5 Lakhs.
21. In the above facts it is therefore prayed that the Corporate Debtor may be liquidated in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the rules and Regulations framed thereunder.
22. It is further submitted that the Applicant herein may be appointed as the Liquidator as the CoC with 60.16% voting share has approved the appointment of the Applicant herein as the Liquidator.
23. In the above scenario, the applicant has filed the instant application being IA(IBC)(LIQ.)/17(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
24. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.



25. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
26. The CoC has recommended the name of **Mr. Mahesh Chand Gupta** to be appointed as liquidator. In this regard, it be mentioned that the replacement of the liquidator is covered under section 34(4) of the Code, which provides as under:-
(4) The Adjudicating Authority shall by order replace the resolution professional, if-
- a. The resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
 - b. The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing ;or]*
 - c. The resolution professional fails to submit written consent under sub-section (1)*
27. We also note that the circular ibid has been issued by IBBI under the powers given to the Board under section 34(4)(b), whereby the Board in Para 3 of the said circular recommends that the liquidator be appointed from the penal list of IBBI.
28. This Bench, therefore, hereby orders as follows: -
- a. **IA(IBC)(LIQ.)17(KB)2024** filed by Mr. Mahesh Chand Gupta, RP/Applicant of Progressive Meters Pvt. Ltd., the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
29. In view of the above, we hereby appoint **Mr. Sunil Choraria , Regn. No. IBBI/IPA-002/IP-N01209/2022-2023/14078** having e-mail ID chorariamba@rediffmail.com whose name appears at 19 of the IBBI Panel for Kolkata region, as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he 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 his 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.

- a. 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.
- b. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in “Financial Express” (English) and “Aajkal ” in Vernacular Language i.e. Bengali and in “Financial Express” in English and Varatha Bharti (Kannada) Language at (Bangalore)) stating that the Corporate Debtor is in liquidation.
- c. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- d. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by in managing the liquidation process of the Corporate Debtor.
- e. 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 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.
- f. 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.

g. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal.

30. The application bearing **IA(IBC)(LIQ.)/17(KB)2024** shall stand disposed of in accordance with the above directions.
31. **CP(IB)/1411(KB)2018** is to come up for filing of Periodical Progress Report on **24/09/2024**.
32. 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.
33. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

B.Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 13th day of August, 2024.

PJ