



Private Limited (Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s. E Infrastructure & Entertainment (India) Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.

2. CP (IB) No.31/BB/2021 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "Mr. Anil Kempanna H P" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. E Infrastructure & Entertainment (India) Private Limited was admitted on 17.11.2021 and Mr. Srinivas Thatikonda was appointed as Interim Resolution Professional (IRP).
3. The facts of the case, briefly stated are that after receiving the Order on 26.11.2021, the IRP published Form-A Public Announcement calling for claims from the creditors of the Corporate Debtor in two daily newspapers on 27.11.2021. The IRP constituted a Committee of Creditors (CoC) Consisting of following persons/entities:

<b>Creditor/s</b>	<b>Voting Share (%)</b>
HDFC	59.87%
Anil Kempanna H P	40.13%
<b>Total</b>	<b>100.00%</b>

4. IA.No.390/2021 filed was by the IRP of the Corporate Debtor seeking direction against the erstwhile Directors of the Corporate Debtor to cooperate with the Resolution Professional and hand over the assets of the Corporate Debtor. However, the same is pending before this Adjudicating Authority.
5. It is submitted that in the 1<sup>st</sup> CoC meeting held on 24.12.2021, the Applicant informed the CoC about the non-cooperation from the ex-management of the Corporate Debtor; and regarding the Application filed for the same before this Tribunal. Further, the applicant informed the CoC that he cannot continue as a Resolution Professional due to health issues due to post Covid Syndrome

and requested the CoC to appoint a new Resolution Professional for conducting the CIRP.

6. In the 2<sup>nd</sup> meeting of CoC held on 18.01.2022, it was informed that no office, assets of the Corporate Debtor could be traced, no business activity of the Corporate Debtor was existing on the said date, the ex-directors of the Corporate Debtor had failed to cooperate with the Applicant and the Application for directions against the erstwhile Directors could not be considered by this Hon'ble Tribunal due to the pandemic. The CoC in its commercial wisdom, decided to liquidate the Corporate Debtor as it could not see any possibility of revival of the Corporate Debtor. Hence, the CoC has voted unanimously for liquidating the Corporate Debtor. It is stated that more than 66% of the CoC has passed the resolution for liquidating the Corporate Debtor and the same is as under:

*“RESOLVED THAT in pursuant to Section 33(2) of IBC, 2016 and the rules made thereunder, the consent of members of the CoC be and is hereby accorded to approve the initiation of liquidation of Corporate Debtor.*

*RESOLVED FURTHER THAT estimate of the liquidation cost of Rs.6,25,000/- plus applicable GST other than liquidator fee, be and is hereby approved, in case of the liquidation order passed by Hon'ble National Company Law Tribunal and CoC, the Committee of creditors will make contribution towards the estimated Liquidation Cost.*

*RESOLVED FURTHER THAT the Interim Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.”*

RESULTS:

CoC MEMBER	% VOTING SHARE	STATUS OF VOTING
HDFC Bank Limited	59.87%	Voted in "Favour"
Mr .Anil Kempanna H P	40.13%	Voted in "Favour"

*The Resolution was passed with 100% voting share in favour.”*

7. The Hon'ble NCLAT, in *Praveen Kumar Nand Kumar v. VSL Securities Pvt Ltd.* in CA No.1/2020 in CA No.308/2000, dated 09.06.2020, observed as under:

IA No.43/2022 in  
C.P. (IB) No.31//BB/2021  
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*“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of 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”.*

8. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records.
9. The relevant provisions of Sections 33(1) and 33(2) of the Code 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, it 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 creditors 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).”*

10. **Prescribed period for filing application-** In the present case, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 17.11.2021. The present Application is filed on 03.02.2022 i.e., within the corporate insolvency resolution process but before confirmation of resolution plan.

- 11. Appointment of Liquidator** - 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 CIRP shall, subject to submission of written consent, act as the Liquidator for the purpose of Liquidation. Section 34(4)(c) of the Code states that if the Resolution Professional fails to submit written consent under Section 34(1) of the Code, the Adjudicating Authority shall by order replace the RP. In the present case, it is stated in the application that the Resolution Professional showed his unwillingness to continue as Liquidator and thus did not submit his consent to act as the Liquidator. Sub Section (7) of Section 34 of the Code says that the Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an Insolvency Professional as Liquidator by an order appoint such Insolvency Professional as Liquidator.
- 12.** In this regard a letter bearing File No.25/02/2022-NCLT dated 03.01.2022 has been received from National Company Law Tribunal, New Delhi forwarding therewith a copy of IBBI letter No.IP-12011/1/2020-IBBI/1103/2785 dated 30.12.2021 along with the guidelines and the panel of Resolution Professionals approved for NCLT, Bengaluru Bench for appointment as IRP or Liquidator. The panel is valid from 01.01.2022 to 03.06.2022. We select Mr. Ravindra Beleyur appearing at Serial No.25 email ID: ravi@beleyur.com, Registration No. IBBI/IPA-001/IP-P00189/2017-18/10368, Mobile No.9448146963 of the panel to be appointed as Liquidator.
- 13.** Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder
- a. Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** -The liquidation cost is as per the resolution passed at agenda Item No.3 of Annexure B

**b. Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The CoC has not made any recommendation regarding sale of the Corporate Debtor as a going concern. Therefore the Liquidator is directed to refer Regulation 32A of the IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

**c. Fees of the Liquidator [Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.** The fee payable to the Liquidator is as per Regulations 4(2) of the IBBI (Liquidation Process) Regulation, 2016

**14. Pending applications, if any, and its effects** – The Learned Counsel for the Applicant has stated that IA No.390/2021 filed for a direction to the erstwhile directors to cooperate is pending, but the same have no affect on the instant Application.

**15.** In view of the satisfaction of the conditions provided under Section 33 (2) of the Code, the Corporate Debtor **M/s. E Infrastructure & Entertainment (India) Private Limited is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

i. That 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 against the corporate Debtor;

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

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

iii. That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and

- workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and
- iv. That 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 effect and shall be vested in the Liquidator; and
  - v. That 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 provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
  - vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (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 stake holders 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.
  - vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
  - viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.
  - ix. The Liquidator shall file his written consent within one week from today.

16. Thus, **I.A. No. 43 of 2022** stands disposed of.

17. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

— Sd —

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

— Sd —

**(AJAY KUMAR VATSAVAYI)**  
**MEMBER (JUDICIAL)**

Bhanu Priya (LRA)