SL. No. 2

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 25.02.2025 at 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	**IA(IBC)(Liq) No. 21/2024 in Company Petition (IB) 398/7/HDB/2022**
NAME OF THE COMPANY	**Indore Dewas Tollways Ltd**
NAME OF THE PETITIONER(S)	**Union Bank of India S A M Branch**
NAME OF THE RESPONDENT(S)	**Indore Dewas Tollways Ltd**
UNDER SECTION	**7 of IBC**

ORDER

IA(IBC)(Liq) No. 21/2024

Orders pronounced, recorded vide separate sheets. In the result, the IA(IBC)(Liq) No. 21/2024 is allowed and disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Vamsi

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA (IBC) (LIQUIDATION) No.21 of 2024
in
CP(IB) No. 398/7/HDB/2022

[Under Section 33 read with Section 34 of IBC, 2016 & 60(5)]

In the matter of
M/s. INDORE DEWAS TOLLWAYS LIMITED

Between:
Madhu Sudhanarao Mallipaddi,
Insolvency Professional & RP
IBBI/IPA001/IP-02633/2022-2023/14081
R/o. 502, H.No. 8-3-966/16, KOR Residency,
Nagarjuna Nagar, Srinagar Colony,
Behind State Bank of India,
Hyderabad – 500 073.

…. Applicant/Resolution Professional

1. M/s Union Bank of India,
   Sam Branch, 3rd Floor,
   Andhra bank Buildings, Koti
   Hyderabad- 500 068.

2. Punjab National Bank
   Zonal Satra Hyderabad
   1st Floor, My Home Jupally Complex,
   Greedlands, Ameerpet,
   Hyderabad- 500 016.

3. State Bank of India
   Stressed Assets Management Branch Secunderabad
   5-9-76, 2nd & 3rd Floor, Prabhat Towers,
   Opp. SBI, LHO, Amaravathi,
   Besides Slate School, Chappel Road,
   Gunfoundry, Hyderabad – 500 001.

4. India Infrastructure Finance Corporation Limited
India Infrastructure Finance Company Ltd.
Registered Office at: 5th Floor,
Plate A&B, Office Block 2, NBCC Tower,
East Kidwai Nagar, New Delhi – 110023.

…Respondents/CoC Members

In the matter of:

M/s Union Bank of India,
SAM Branch, 3rd Floor,
Andhra Bank Buildings, Koti,
Hyderabad- 500 068.

…Financial Creditor

Versus

M/s. Indore Dewas Tollways Limited,
6-3-1090, B-1, TSR Towers,
Rajbhavan Road, Somajiguda,
Hyderabad- 500 082.

…. Corporate Debtor

Date of Order: 25.02.2025

Coram:

SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER JUDICIAL
SHRI. SANJAY PURI, HON'BLE MEMBER TECHNICAL

Counsels/Parties Present:

For the Petitioners	:	Mr. Ch. Srinivasulu, Counsel for the Resolution Professional. Madhu Sudhanarao Mallipaddi, Resolution Professional.
For the Respondents	:	Mr. G. P. Yash Vardhan, Ld. Counsel for the Respondents No. 1 to 4.

Date of Order: 25.02.2025

[PER: BENCH]

ORDER

1) This Application is filed by the Resolution Professional of M/s Indore Dewas Tollways Limited (Corporate Debtor) under Section 33 read with section 34 of the Insolvency and Bankruptcy Code, 2016 (IBC Code) & 60 (5) seeking to liquidate the Corporate Debtor, M/s Indore Dewas Tollways Limited, under Section 33 of the Insolvency and Bankruptcy Code, 2016;

2) It is submitted that vide Order dated 31.10.2023 in CP No. CP(IB) No.398/7/HDB/2022 this Tribunal appointed the Applicant Mr. Madhu Sudhanarao Mallipaddi, as Interim Resolution Professional.

3) On 27.09.2024 the CoC conducted its 14th meeting and take a decision to go for Liquidation of the Corporate Debtor as no prospective Resolution Plan received for resolution of the Corporation Debtor and only remedy available is Liquidation and appointment of Liquidator.

4) It is submitted that on 03.11.2023 the Applicant/Resolution Professional has taken measures and issued a Public Announcement in Form A and certain claims were received and constituted Committee of Creditors (CoC) consisting of Union Bank of India with 31.77%, Punjab National Bank with 34.57%, State Bank of India with 11.76% and India Infrastructure Finance Company Limited with 21.90% voting share.

5) **Steps taken by the Resolution Professional:**

5.1. In accordance with the provisions of Section 25(2)(h) of the Code, an advertisement in Form G inviting Expressions of Interest ('EoI') was published on 14.01.2024 in Financial Express (English) on 13.01.2024, Nava Telangana (Telugu) Hyderabad editions, Times of India (English) Indore edition and Swadeshi (Hindi) Indore edition and the last date ended for EoI was 29.01.2024. Only one EoI had received and CoC suggested for extension of the timelines to receive more EoIs and on 12.02.2024 fresh Form G was published in Financial Express (English) on 13.02.2024, Nava Telangana (Telugu) Hyderabad editions, Times of India (English) Indore edition and Swadeshi (Hindi) Indore edition fixing the last date for receiving EoIs by 22.02.2024. The RP had received three EoIs and none of the PRAs had submitted the Resolution Plans.

5.2 It is submitted that there are two pending cases before the Hon'ble High Court of Delhi with respect to the Arbitration proceedings for the claims made by the Corporate Debtor, being the concessionaire of the Toll Road, on National Authority of India (NHAI) one for the losses incurred during the construction of the project for an amount of Rs.1063 Crores against which NHAI has filed their counter claim of Rs.550.08 Crores.

5.3 It is submitted that the tenure of the Arbitrational Tribunal got over by 31.08.2023, the Corporate Debtor had field Petition under Section 29 of the Arbitration and Conciliation Act 2017 for extension of the tenure of the Arbitration Tribunal which were in progress at the point of time.

5.4 The Corporate Debtor had also filed another claim of Rs.663 Crores for the loss incurred due to termination of the Concession Agreement by NHAI which was rejected by NHAI. The Corporate Debtor has approached the Hon'ble High Court of Delhi for clubbing the said claim for termination with the existing Arbitration. Vide order dated 11.03.2024 The Hon'ble High Court of Delhi had issued an order for resuming the proceedings of the Arbitrational Tribunal by extending the period by 18 months from 31.08.2023 upto 31.01.2025.

5.5 It is submitted that the CoC members have authorised the RP to extend the time for receiving the EoIs. On 20.04.2024 the Resolution Professional published Form -G (Extended 2) in Financial Express (English), Nava Telangana (Telugu) Hyderabad editions, Times of India (English) Indore edition and Swadeshi (Hindi) Indore edition. The RP has not received any EoIs.

5.6 It is further submitted that through an IA No. 157 of 2024, RP filed his first progress report and this Authority has taken on record the same on 23.01.2024 and the second progress report filed through an IA No. 855 of 2024, on 29.04.2024 the same has taken on record and the third progress report filed through an IA No. 1487 of 2024, on 22.07.2024 has taken on record the same.

5.7 The CIRP period of 180 days ended by 28.04.2024 and on 29.04.2024 this Authority extended the 90 days of CIRP timeline prayed by the RP through an IA No. 846/2024. The CIRP period for 270 days ended by 27.07.2024 and the Hon'ble Bench vide its orders IA(IBC)/1587/2024 dated 30.07.2024 has extended 60 days CIRP time lines beyond 270 days upto 330 days as approved by the members of the CoC and the same expired on 25.09.2024.

5.8 It is submitted that as per the decision taken by the CoC, on 02.08.2024 fresh Form G the RP issued publication, one Expression of Interest received from M/s. Anirudh Group and as the RP received only one EoI has shared RFRP and informed that the last date for receipt of Resolution Plan was on 02.09.2024. The RP also informed about the timelines to follow by the PRA in submitting their Resolution Plan. During the meeting, the UBI representative asked why the valuers did not consider the inclusion of NHAI Claim which would be useful for negotiation with PRA. The RP informed that the valuation was done through three IBBI registered valuers. The RP informed that the valuation is subjective and since the claims are contingent, the Valuers have not been able to provide valuation for the claims.

5.9 On 29.08.2024 the RP conducted 11th Committee of Creditors at TF-8, Empire Square, Road No. 36, Jubilee Hills, Hyderabad (also through Zoom Link). During the 11th CoC meeting the RP has submitted detailed statement of expenditure up to 31.07.2024 i.e., Rs.58,62,849/- (Starting from 31.10.2023 to 28.07.2024 for 270 days) and also informed the CoC a cash balance in Current Accounts of the Corporate Debtor is

Rs.4,30,21,158/-. There was a cash balance of Rs.4,17,49,262/- to the credit of the company as on the date of filling of present application.

5.10 It is submitted that on 02.09.2024 a Resolution Plan was received from M/s. Anirudh Agro Farms Limited along with Demand Draft for Rs.10,00,000/- by Bank remittance to the current account No.532101010035247 maintained at the Union Bank of India. On 04.09.2024 the resolution plan was opened in the CoC in the presence of PRA. The PRA participated and explained various contents of Resolution Plan including the upfront money to be infused, accrual of Bank balance to RA, sharing of contingency assets in certain proportions depending on the period of realisation, cap on CIRP expenses and expenses to be incurred for pursuing the claims etc., The members of the CoC, after deliberations on the Resolution Plan, informed PRA that the submitted Resolution Plan was not acceptable to the CoC.

5.11 During further deliberations in CoC meeting held on 04.09.2024, the RP also informed about constitution of Conciliation committee with NHAI in progress. The RP himself along with consultant Mr. Praveen met the concerned in the NHAI. The conciliation proceedings are handled by GM (CMD) who informed us that once the documents are forwarded from GM(T) the constitution of Committee will be taken up. The RP informed that all the required documents have been submitted through DTALAKE portal as per the policy of NHAI and the same has been confirmed by NHAI.

5.12 The Corporate Debtor had filed a claim of Rs. 1063 Crores on NHAI for the prolongation claims, COS etc., for the losses during the construction period. NHAI has put counter claim of Rs.550.80 Crores for various reasons of delay in completion of the project. These claims have been referred to the Arbitration Tribunal comprises of three members. The Hon'ble High Court of Delhi has been extended the tenure of Arbitrational Tribunal against the Petition O.M.P (Misc)(comm) 314/2023 vide its order dated 11.03.2024 by 18 months w.e.f., 31.08.2023 i.e. up to February, 2025.

5.13 The Corporate Debtor has also lodged a claim of Rs.663 Crores on NHAI for termination of the Concession Agreement and taken over the assets and operations of the project without paying any compensation. NHAI has not accepted the claim made by the Corporate Debtor. The Corporate Debtor has not invoked the Arbitration Clause and filed Petition ARB.P.884/2023 in the Hon'ble High Court of Delhi seeking the said claim to be clubbed with the matters before the existing Arbitral Tribunal for the Prolongation claims, COS etc., The RP further informed the CoC that upon submission by the concerned Advocates that the (CCIE) conciliation Committee formation is progress, the Hon'ble High Court of Delhi has adjourned the Arbitration Petition 884/2023 from 23.08.2024 to 16.10.2024 for clubbing the claim of Rs.663 Crores with the existing claim before the ongoing Arbitral Tribunal. The proceedings are going on and the Hon'ble High Court of Delhi put the hearing on 19.11.2024. The matter is still not yet disposed.

5.14 It is submitted that the Conciliation Process is in progress having agreed to resolve all the disputes i.e. Prolongation claims, COS etc., and claims for termination of the Concession Agreement under Conciliation as suggested by NHAI. The designated officials of NHAI informed that they have taken the required internal approvals. The Corporate Debtor has submitted the required data as required under NHAI Policy for constitution for Conciliation Committee (CCIE). At present the process is in progress for the constitution of Conciliation Committee. That all the required documents were uploaded and the documents reach to GM(T) at HO from PIU Indore. The documents would be forwarded to GM (CMD) who would constitute the Committee for Conciliation CCIE. The RP informed that, on reaching of documents to GM(CMD), a joint agreement would be signed by the Company and NHAI having agreed to go for conciliation. The Company opted for CCIE-1 as the same committee conducted conciliation proceedings of the initial claim for prolongation, COS and others.

5.15 The CIRP period completed 330 days as permitted under IBC 2016. The CIRP period was extended twice for 90 days and 60 days respectively after completion of 180 days. Taking the cognizance of the present position of the claims which will maximize the value of the Corporate Debtor, members of the Corporate Debtor, members of the CoC opined to seek the extension of CIRP period beyond 330 days through E Voting.

5.16 The RP submitted that the members of the CoC deliberated on the Valuation Reports for the financial assets from three valuers and opined that the valuation done by the Valuers is not acceptable. The members of the CoC expressed that the Registered Valuers (SFA) have not considered the claims submitted by the Corporate Debtor on NHAI. The members of the CoC asked the RP to get valuation done from the experienced values who have got the expertise in valuation of claims that generally found in BOT projects. The RP informed that the valuation is subjective and since the claims are contingent, the Valuers have not been able to provide valuation for the claims.

5.17 The RP submits that the valuation of claims before Arbitration in BOT projects is done by the Techno-Legal experts. The RP sought information from CoC to call quotations for BOT experienced valuation. The RP informed that the valuation of the claims may be done by the Techno-Legal experts since it is a specialised subject by giving scope including.

i) Reviewing the clauses of the Concession Agreement with respect to compensation for default of Authority, termination payment etc.,

ii) Internal policy of NHAI on calculation of termination payment.

However, the required voting of 66% was not received through E voting for

1) Extending the CIRP period beyond 330 days and
2) Appointing techno legal expert for valuing the claims.

5.18 The Resolution Plan submitted by M/s. Anirudh Agro Farms is failed and which is not commercially viable and the required voting was not obtained for extension of CIRP period beyond 330 days, the CoC members have resolved to go for Liquidation of the Corporate Debtor in meeting held on 27.09.2024. The CoC members resolved to go for Liquidation and also appointing a Liquidator, any one, from the panel maintained by IBBI.

(Copy of the Minutes of meeting of CoC with E voting result (16/10/2024) held on 27/09/2024 is annexed)

5.19 On 15.10.2024 the RP filed his fourth progress report and the same is taken on record. RP besides asking for the past pending CIRP expense dues and also informed that RP is entitled for his fee and CIRP expenses until he is discharged as the Resolution Professional. He also emphasised to the members of the CoC Regulation 39B, 39D of IBBI(CIRP) Regulations, 2016 regarding the fee of Liquidator and Liquidation cost.

5.20 The RP is also filing Condonation of delay in filing Application for Liquidation as there was a considerable delay in E voting of the last meeting held on 27.09.2024 occurred at the instance of the members of the CoC where the Resolution for Liquidator appointment is proposed under Section 33 of IBC, 2016, as the CIRP timelines of 330 days were expired on 25.09.2024. The delay is neither intentional nor wanton and only to enable the members of the Coc to obtain the necessary internal approvals for exercising their voting rights. After completion of 330 days, the RP is officiating the affairs of the Corporate Debtor, and he will be the custodian until the Liquidator is appointed.

5.21 The CoC in the 14th Committee of Creditors meeting not accepted the proposal for appointment of Resolution Professional as Liquidator of the company and they want to go for appointment of the Liquidator by this Authority from the IBBI panel of Insolvency Professionals maintained by this Bench.

5.22 The Committee of Creditors shall decide fee as per the Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Exclusion of Liquidation cost) plus applicable taxed and out of pocket expenses to the Liquidator excluding legal and other incidental costs at actuals in the event that the liquidation is passed by this Authority under Section 33 of the IBBI Code, 2016.

5.23 The except the claim of Rs.1063 Crores before this Authority and claim of Corporate Debtor to the tune of Rs.663 Crores, no other assets are available to deal with by the Resolution Professional. Moreover, there is no potential and viable Resolution Plan for resolution of the Corporate Debtor. The Committee of Creditors in the 14th CoC has decided on the Liquidation of the Company.

6)Memo filed on behalf of the Respondents No. 1 to 4:

6.1 It is submitted by the Respondents No.1 to 4 that during the Joint Lenders Meeting (“**JLM”)** dated 05.12.2024, the officials of the Respondents No.2 to 4 unanimoulsy agreed and gave consent to the Respondent No.1(Union Bank of India) to appoint the Liquidator on behalf of the CoC Members. Subsequently, during the JLM dated 06.01.2025, the discussion on appointment of the Liquidator was held.

6.2 It is submitted that, during the JLM dated 06.01.2025, the Respondent No.2 to Respondent No.4 gave mandate to the Respondent No.1 (Union Bank of India) to appoint Counsel to represent all the lenders i.e., Respondent No. 1 to Respondent No.4. The Authorised signatory of Respondent No.1 has executed the Vakalatnama on behalf of the Respondent No.1 to Respondent No.4.

6.3 It is submitted that the Members of CoC have received few profiles of Insolvency Professionals to act as Liquidator for the Liquidation process of the Corporate Debtor. These profiles are currently under review by the respective competent authorities of the CoC Members.

6.4 It is submitted that the Union Bank of India has proposed the name of Mr. Nirmal Kumar Agarwal having IBBI Reg No. IBBI/IPA-001/IP-P02112/2020-21/13380 to act as the Liquidator for the Liquidation process of the Corporate Debtor. The Liquidator submitted his Written Consent on 03.02.2025.

(copy of written consent is annexed as Annexure No.1)

ORDER

7) The Application is accordingly allowed with the following directions:

a. Liquidation of **M/s. Indore Dewas Tollways Limited**, shall be conducted in the manner as laid down in Chapter III of Part II of the IBC, 2016.

b. **Mr. Madhu Sudhanarao Mallipaddi** with registration no. IBBI/IPA-001/IP-02633/2022-2023/14081, email: madhumallipaddi @gmail.com, phone number :9840976875 is discharged and Mr. Nirmal Kumar Agarwal having IBBI Reg No. IBBI/IPA-001/IP-P02112/2020-21/13380 email**:** nirmalagarwal123@rediffmail.com**,** phone number: 9101295915 is appointed as Liquidator, as per the IBBI website, his AFA is valid upto 31.12.2025. He has to file his consent in Form-2 before this Tribunal. He shall issue a public announcement stating therein that the Corporate Applicant is in Liquidation.

c. The Moratorium declared under Section 14 of the IBC, 2016 shall cease to operate hereafter.

d. Subject to Section 52 of the IBC 2016, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.

e. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

f. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

g. Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.

h. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

i. This Order 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.

j. Copy of the Order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Telangana, the Registered Office of the Corporate Debtor; and the Liquidator.

k. With the above directions, the **IA (IBC)(Liquidation) No. 21 of 2024** is allowed and stands disposed of.

Sd/-	**Sd/-**
(Sanjay Puri)	**(Rajeev Bhardwaj)**
Member (Technical)	**Member (Judicial)**

Vamsi