

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 3010 OF 2021

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

Mr. V.V. Anand

Resolution Professional/
...Applicant No.1

I.A. 3844 OF 2023

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Union Bank of India

Financial Creditor/
...Applicant No.2

In the matter of

C.P.(IB) No. 1197/MB/2017

Konkan Minerals Private Limited

Corporate Applicant

Order delivered on: 11/10/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/
Financial Creditor : Mr. Sumedh Sawant, Advocate

ORDER

Per: *Prabhat Kumar, Member (Technical)*

1. The above applications I.A. No. 3010/2021 is filed by Mr. V.V. Anand, Resolution Professional; & 3844/2023 is filed by Union Bank of India, seeking liquidation of Konkan Minerals Private Limited (hereinafter referred to as the “Corporate Debtor”) under Section 33 (1) of the Insolvency and Code, 2016 (hereinafter called as “the Code”).
2. The brief facts of the application are as follows:
 - a. The Tribunal vide order dated 19.05.2021 approved the Resolution Plan in I.A. No. 1057/2018 submitted by Mr. Gururaj Indaje as erstwhile Director of the Corporate Debtor. Vide said order dated 19.05.2021, the Resolution Professional and Monitoring Committee were directed to supervise the implementation of the Resolution Plan and Resolution professional were further directed to file status of implementation of Resolution Plan. Further, as per the Resolution Plan, the erstwhile Directors were required to remit the agreed amount of settlement over a period of 4.5 years. The initiated payment including CIRP cost and down payment to the Applicant and other payments were required to be made

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within 30 days of the sanction of Resolution Plan by this Tribunal on or before 18.06.2021.

- b. The Applicant submits that the Resolution Applicant till date has paid only first instalment of Rs.27.50 Lakh (of which Rs.5.5 lakh paid on 18.06.2021 and Rs.22.00 Lakhs on 30.07.2022) i.e. only 10% of the approved Resolution Plan. The second instalment was due on 19.02.2022, therein the Resolution Applicant has defaulted.
- c. Further, the default has been brought to the notice of the Resolution Applicant on many occasions by mails/letters and in the meetings of the Monitoring Committee.
- d. Therefore, the Applicants submits that the approved Resolution could not be implemented as the SRA have failed to make the upfront payment in terms of approved resolution plan. Thus, in view of the said default, the Corporate Debtor are deemed to have acted in contravention of the terms of the Resolution Plan approved u/s 31 of the Code.
- e. Further, the Applicant submits that a legal notice dated 05.07.2021 was sent to the SRA, recorded the default and put the resolution applicant to notice that in view of the said default to adhere to make the initial payment to all the stakeholders including the applicant as per the approved resolution plan and order dated 19.05.2021, the Resolution

Plan as approved has reserved the right of the Applicants to initiate proceedings u/s 33(3) of the Code.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, this bench is of the opinion that since the SRA failed to implement the Resolution Plan, Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016.

ORDER

4. The above I.A. No. 3010/2021 & 3844/2023 are allowed and the Corporate Debtor "*Konkan Minerals Private Limited*" is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.
- a. Mr. Ajay Amrutlal Mutha, having Registration No. IBBI/IPA-001/IP-P-02152/2020-2021/13279, Address: Raj-Prem Imarat Company, M.G. Road ,Ahmednagar, Maharashtra ,414001 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency &

Bankruptcy Board of India (Liquidation Process) Regulations,
2016.

- d. The Liquidator appointed under section 34(1) of the Code. All 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 with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, 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.
- h. This liquidation order u/s 33(7) 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

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Corporate Debtor continued during the liquidation process by the Liquidator.

- i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

With the above directions, the I.A. No.3010/2021 & IA 3844/2023 filed u/s 33 (1) by the applicant is hereby allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)