



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

IA. No. 3353 of 2022

IN

C.P.(IB)2489(MB) of 2018

Under Section 33(3), r/w 14 of Insolvency
& Bankruptcy Code, 2016

In the matter of

Kieon Developers Private Limited

.... CORPORATE DEBTOR

I. A. No 3353 of 2022

Mr. Devang Sampat

.... Applicant/Liquidator

Order delivered on 20.12.2022

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Mr. Satya Ranjan Prasad, Member (Technical)

For the Applicant: Mr. Amir Arsiwala, (Advocate)

The above application I.A. No. 3353 of 2022 is filed by Resolution Professional, Mr. Devang Sampat (hereinafter referred to as the "Applicant") seeking liquidation of **Kieon Developers Private Limited** (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:



- a. *Pass an order directing the Corporate Debtor to be liquidated in accordance with section 33(1) in chapter III in Part II of the Insolvency and Bankruptcy Code, 2016;*
- b. *Appoint the Applicant as the liquidator to conduct the liquidation of the Corporate Debtor in accordance with section 34 in chapter III in Part II of the IBC,2016;*
- c. *Costs of this interlocutory application;*
- d. *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.*

2. The brief facts of the application are as follows:

- A. The present Application has been filed by Mr. Devang Sampat (IP Registration No. IBBI/IPA-001/IP-P00224/2017-18/10423, the Resolution Professional of **Kieon Developers Private Limited** ("Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy code, 2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the financial creditor, unanimously resolved to liquidate the Corporate Debtor.
- B. The Applicant submitted that the Application filed by the Operational Creditor had Admitted for initiating CIRP vide order dated 13.11.2019 against M/s **Kieon Developers Private Limited**.
- C. Further that Ms Tanuja Jalan had appointed as Interim Resolution Professional and invited claims along with proof of claims through Public Announcement in Form A dated 08.12.2019 in accordance with the CIRP Regulations.
- D. On 09.05.2020, The members of the Committee of Creditors passed a resolution for replacement of the erstwhile Resolution Professional in its second COC meeting pursuant



to the Resignation of Ms. Tanuja Jain on account of certain health issues.

- E. The Applicant further stated that on 12.05.2020 the initial period of 180 days expired amidst the covid-19 pandemic.
- F. In the second COC meeting dated 14.09.2020, the members of the COC passed a resolution for replacement of the erstwhile resolution professional.
- G. On 09.05.2022, the Interlocutory application No. 157 of 2022 was filed by the Authorized representative of the COC and this Tribunal by way of an order, allowed this application, thereby, appointing Mr. Devang Sampat, the Applicant as the Resolution Professional of the Corporate Debtor.
- H. The applicant convened the third COC meeting on 05.08.2022 which was adjourned to 08.08.2022 and thereafter to 12.08.2022.
- I. The fourth COC meeting dated 07.09.2022 held for considering and approving an extension of time of 90 days in the CIRP period under Section 12(2) of the Code along with other mandatory resolutions pertaining to the CIRP period of the Corporate Debtor.
- J. During the first COC meeting dated 29.09.222, the members of the COC deliberated on the expenditures that will be incurred during the liquidation period and that since the timelines as prescribed under the Code were not adhered to during the CIRP period, liquidation would be the only viable option for the benefit of the Corporate Debtor.
- K. On 08.10.2022, the Members of the COC in its commercial wisdom, approved the resolution for liquidation by 97.27% of the total voting share, along with other pertinent resolution in relation to the liquidation of the Corporate Debtor.



L. On 6th COC Meeting, the Applicant further stated that the CoC members discussed and agreed for the above. Thereafter the following resolution was proposed to be passed:

“RESOLVED THAT the COC hereby approve Liquidation with selling an asset on a standalone basis.

RESOLVED THAT the COC hereby approves the appointment of the existing RP Mr. Devang Sampat – IBBI/IPA-001/IP-P00224/2017-18/10423 as Liquidator in case Liquidation is Approved and Fees of Liquidator will be Rs. 1,25,000 per month plus applicable GST.

RESOLVED FURTHER THAT the COC hereby approve liquidation estimated costs

1. Fee Payable to the liquidator under regulation 4 is 15,00,000
2. Remuneration payable by the liquidator under sub-regulation (1) of regulation 7; liquidator may appoint professionals to assist him in the discharge of his duties, (legal Rs. 7,50,000, valuers, accounting & Others Rs 7,50,000) is 15,00,000/-
3. Costs incurred by the liquidator under sub-regulation (2) of regulation 24;(cost for verification of claims) is NIL.
4. Costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor; security is 2,00,000 (Any further amount will be informed)
5. Costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern is NIL.



6. The amount repayable to contributories under sub-regulation (3) of regulation 2A is 1,89,000 @ 6% on Rs 2574000)

7. Any other cost incurred by the liquidator which is essential for completing the liquidation process is 5,00,000 (including interest)

Therefore a Total estimated liquidation cost being 38,89,000/-

The above resolution was passed with 97.27% in favour of the resolution.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 6th CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor. The CoC has appointed the Applicant as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The Applicant has not agreed to act as Liquidator to carry on the process of Liquidation and not given his consent to act as Liquidator. This bench, therefore allows the above Interlocutory Application Number 3353 of 2022 and passed the following:

ORDER

1. The above I.A. No. 3353/2022 is Allowed and the Corporate Debtor Kieon Developers Pvt. Ltd. is ordered to be **liquidated as a Going Concern.**
 - a. **Mr. Devang Sampat**, having Registration No. IBBI/IPA-001/IP-P00224/2017-18/10423 and is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.



- b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration shall be as per the chart given in Regulation 4(2) of the IBBI (Liquidation Process) Regulation 2016, subject to minimum fees of RS. 2.50 lakhs plus taxes for the entire liquidation process.
- 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. Will have 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. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. 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.



- h. 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.
- i. 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.

With the above directions, this application i.e. I.A. No. 3353 of 2022 is hereby allowed and disposed of.

Sd/-

Satya Ranjan Prasad
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)