

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 587/JPR/2022
In CP No. (IB)- 69/7/JPR/2019

IN THE MATTER OF:

JFC FINANCE (INDIA) LIMITED

...Financial Creditor

VERSUS

AJIT SOLAR PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

IA (IBC) No. 587/JPR/2022:

MR. DEVENDRA SINGH, RP

Of Ajit Solar Private Limited

Assotech Business Cresterra, Office No.

216, 2nd Floor, Tower- 1, Sector- 135,

Noida- 201305 (Uttar Pradesh)

...Applicant

FOR THE APPLICANT : Palash Singhai, Adv.
 Krishnaveer Singh, Adv.
 Harshal Sareen, Adv.

Order Pronounced On: 11.09.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

- The present Application bearing *IA (IBC) No. 587/JPR/2022* has been filed by *Mr. Devendra Singh*, the Resolution Professional ('Applicant'/ 'RP')

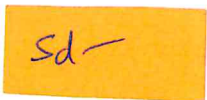
IA (IBC) No. 587/JPR/2022

in

CP No. (IB)- 69/7/JPR/2019

for *M/s Ajit Solar Pvt. Ltd.* ('Corporate Debtor'), under Section 33 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') seeking approval for Liquidation of the Corporate Debtor.

2. This Adjudicating Authority *vide* order dated 26.04.2019 had admitted the Application filed by *M/s JFC Finance (India) Pvt. Ltd.* ('Financial Creditor') under Section 7 of the Code for initiation of the Corporate Insolvency Resolution Process ('CIRP') of *M/s Ajit Solar Pvt. Ltd.* ('Corporate Debtor') and as a consequence thereof, appointed *Mr. Sandeep Kumar Gupta* as Interim Resolution Professional ('IRP') who was later confirmed as the Resolution Professional in the said matter.
3. The erstwhile RP issued Form- G thereby inviting Expressions of Interests ('EOI') from Prospective Resolution Applicants ('PRA') to submit a Resolution Plan for the Corporate Debtor. The erstwhile RP received four EOI from PRAs. However, as the eligible PRAs failed to submit a Resolution Plan and the period of CIRP was approaching its final date, it was resolved by the Financial Creditor (being the sole member of CoC) to initiate the liquidation proceedings of the Corporate Debtor in the 10th meeting held on 14.01.2020. Subsequently, in the 11th meeting of CoC held on 15.05.2020, the erstwhile RP expressed his inability to carry out his role owing to medical issues. Thereupon, the Financial Creditor appointed

Devendra Singh as the RP of the Corporate Debtor and the same was approved by this Adjudicating Authority *vide* Order dated 10.11.2020.

4. In the interregnum, *IA No. 57 of 2020* was filed for initiation of Liquidation of the Corporate Debtor. Subsequent to the filing of the said IA, the RP received 2 EoIs from PRAs i.e., *Shon Randhawa* and *Genus Innovation*. Thereafter, in the stakeholder committee meeting held on 08.04.2021, the Financial Creditor decided to withdraw the liquidation application. Consequently, an Application bearing *IA No. 247/JPR/2021* was preferred by the Financial Creditor praying for the dismissal of the Liquidation Application i.e., *IA No. 57 of 2020*.
5. As submitted by the RP, this Adjudicating Authority had orally directed for conducting a CoC meeting so as to resolve to withdraw the Liquidation Application. In the 12th CoC meeting held on 24.12.2021, it was resolved that “*Resolution Professional be and is hereby authorized to file an application before NCLT Jaipur Bench seeking the withdrawal of liquidation application in the matter of Ajit Solar Private Limited in view of the abovementioned circumstances*”. Thereafter, *IA No. 16/JPR/2022* was preferred by the RP seeking exclusion of 90 days.
6. *IA No. 247/JPR/2021 & IA No. 16/JPR/2022* were allowed by this Adjudicating Authority *vide* its Order dated 22.06.2022. Subsequently, the

Sd-

Sd-

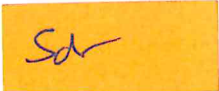
RP conducted the 13th meeting of CoC on 30.06.2022 wherein several matters and issues were discussed including the fixation of revised eligibility criteria under Section 25(2)(h) of the Code for fixing the eligibility for PRAs. The CoC approved the eligibility criteria in compliance with Regulation 36(A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 regarding publication of Form-G. Consequently, the RP published Form-G in the newspapers namely *Business Standard* (English & Hindi) All editions, *Economic Times* (English) – Jaipur Edition and *Rashtradoot* (Hindi) – Jaipur Edition.

7. In pursuance to that, the RP received 7 EOIs from the PRAs. The details of the PRAs are as under:

- A. *Proma Industries Limited.*
- B. *Vikram Solar Limited.*
- C. *RKG Fund I, A Scheme of RKG Trust.*
- D. *Kundan Care Products Limited.*
- E. *Genus Innovation Limited.*
- F. *Sherisha Technologies Private Limited.*
- G. *Dr. Mukesh Kumar Agarwal.*

The RP issued the provisional list of PRAs on 25.07.2022 in compliance with Code.

8. Moreover, as per Regulation 35 of the 2016 Regulation, the RP was required to appoint a registered valuers to determine the liquidation value and fair value of the Corporate Debtor. In consonance with Regulation 27,




the RP appointed *M/s AAA valuation professionals LLP* for conducting the valuations on a fixed remuneration of Rs. 80,000/- (Rupees Eighty Thousand Only) inclusive of out of pocket expenses plus applicable taxes.

9. In the meantime, the RP filed an *IA No. 422/JPR/2022* for placing on record the list of Financial Creditors, list of Operational Creditors and list of Creditors (other than financial creditors and operational creditors).
10. Prior to expiry of last date of submission of Resolution Plan, i.e. 29.08.2022, the RP received an email from one of the PRA i.e., *M/s Vikram Solar Limited* on 23.08.2022 seeking an extension till 07.10.2022 for filing the Resolution Plan. Similarly, the RP received another email from one of the PRA i.e. *M/s Sherisha Technologies Pvt. Ltd.* seeking an extension of 2 weeks for submission of Resolution Plan In response thereto, the RP replied *vide* email dated 30.08.2022 informing the PRAs that request will be placed before the CoC in its forthcoming meeting and the decision shall be communicated accordingly.
11. In pursuance thereof, the request was placed before the COC in its 15th meeting of CoC held on 30.08.2022. In that meeting, it was resolved to extend the last date of submission of Resolution Plan from 29.08.2022 to 07.10.2022. In the said meeting, it was also resolved to file an application



before this Adjudicating Authority for extension of 45 days for the successful conclusion of CIRP of the Corporate Debtor.

12. Thereafter, an Application bearing *IA No. 444/JPR/2022* was filed before this Adjudicating Authority seeking extension of 45 days by the RP. The said IA was allowed by the Adjudicating Authority *vide* Order dated 20.09.2022 and an extension of 45 days was granted. Subsequent to the order passed by this Adjudicating Authority, the last date for submission of Resolution Plan was extended till 07.10.2022 and within the extended timeline, no eligible PRAs submitted the Resolution Plan.
13. Thereafter, in the 16th CoC meeting dated 11.10.2022, the CoC resolved for filing an Application for liquidation of the Corporate Debtor. As per the decision taken by the CoC, the RP filed the instant Application i.e., IA (*IBC*) *No. 587/JPR/2022* seeking initiation of Liquidation Proceedings against the Corporate Debtor. Hence, the present Application has been filed.
14. We have heard the parties and perused the averments made in the Application along with the documents enclosed therein. To determine the present Application qua Liquidation of the Corporate Debtor, it is pertinent to mention Section 33 of IBC, 2016 which is reproduced hereunder:

“33. *Initiation of liquidation.* —
 (1) *Where the Adjudicating Authority, -*

Sd -

Sd -

- (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 creditor approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of sub-Section (1).*

[Explanation: For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”

15. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in the matter of *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.*,

Company Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision

Sd—

Sd—

falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen while passing the Order for Liquidation.

16. ***The prescribed period for filing Application*** – In the present case, the Application under Section 7 of the Code was admitted on 26.04.2019. Thereafter, the CIRP period of the Corporate Debtor was extended from time to time by this Adjudicating Authority in view of the surrounding circumstances. The instant Application has been filed by the Resolution Professional seeking initiation of the Liquidation Proceedings on 16.11.2022 which is within the prescribed period. Further, no resolution plan was received under Section 30(6) of the Code, hence, the RP has filed the instant Application in accordance with Section 33(1)(a) of the Code. Thus, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(1)(a) of the Code.

17. ***Appointment of Liquidator and fee to be paid*** – The Applicant in the 16th meeting of the CoC dated 11.10.2022 presented the said agenda before the Committee for his appointment as Liquidator. Section 34(1) of the Code

Sd-

Sd-

provides that where the Adjudicating Authority passes an order for Liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”

18. Thus, *Mr. Devendra Singh* is eligible to be appointed as Liquidator and by virtue of Section 34(1) of the Code, shall be deemed to be the Liquidator in the present matter. *Mr. Devendra Singh* with IBBI registration No. IBBI/IPA-002/IP-N00001/2016-17/10001 is directed to file his written consent in format/ Form-AA within 7 days from the date of this Order, if not filed already. Thus, *Mr. Devendra Singh* is appointed as the Liquidator.
19. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted via Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019 and Regulation 39BA of the CIRP Regulations, 2016 has




been inserted vide *Notification No. IBBI/2022-23/GN/REG093*, dated 16.09.2022. The relevant aspects in this respect are examined hereunder.

20. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** – The estimated Liquidation Cost as presented by the Applicant is Rs. 10,00,000/- (Rupees Ten Lakhs Only) plus GST, if any, including the Liquidator's remuneration. Further, the Corporate Debtor has liquid assets worth Rs. 4,41,289/- (Rupees Four Lakh Forty-One Thousand Two Hundred and Eighty Nine Only) and Cash in hand amounting to Rs. 2,240/- (Rupees Two Thousand Two Hundred and Forty Only). The CoC approved the resolution accorded for estimated Liquidation Cost of Rs. Rs. 10,00,000/- (Rupees Ten Lakhs Only) as presented by the Resolution Professional in the 16th CoC meeting dated 11.10.2022 payable as per sub-regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016. Further, it was undertaken in the aforementioned meeting that whatever be the shortfall between the liquidation cost and liquid asset, the same shall be bridged by the CoC.

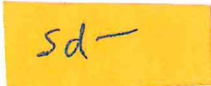
21. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)***- As per Regulation 39BA of the CIRP Regulations, 2016, an opportunity to explore the compromise or arrangement may be explored by the Liquidator during the Liquidation of the Corporate Debtor.

Sd—

Sd—

It is observed that the suspended director had not proposed any compromise or arrangement, hence the agenda to this regard was rendered irrelevant. However, it is noted that in compliance of the law laid down, the Liquidator shall explore an opportunity to explore compromise or arrangement, if the same is presented during the Liquidation of the Corporate Debtor.

22. *Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)* – Under Section 35(1)(f) of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the Corporate Debtor in Liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified, subject to Section 52 of the Code. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the Corporate Debtor by means of private sale with the prior permission of the Adjudicating Authority. In the current matter, the CoC resolved to authorise the Liquidator to explore the possibilities of sale of the Corporate Debtor as a going concern under Clause (e) or Clause (f) of Regulation 32 of Liquidation Regulations, 2016 and if he is unable to do the same, the

Liquidator was further authorised to sell the assets of the Corporate Debtor on standalone basis/in a slump sale/ sale of assets collectively/ assets in parcels as deemed fit.

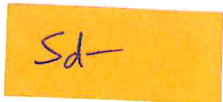
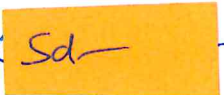
23. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)***– The committee is required to approve the fee of the proposed Liquidator in terms of Regulation 4 of the Liquidation Process Regulations, 2016. The CoC has approved the resolution of remuneration of the Liquidator, set at Rs. 1,00,000/- (Rupees One Lakhs Only) plus GST @ 18% on a lump sum basis or the fee calculated as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 whichever is less.
24. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, *M/s Ajit Solar Pvt. Ltd.* is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:
- a. 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 by or against the Corporate Debtor;

Sd—

Sd—

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

- b. The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- c. This order of Liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;
- d. 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 an effect and shall be vested in the Liquidator;
- e. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. Further, provisions of Section 19 of the Code shall apply concerning the liquidation process as they apply with Corporate Insolvency Resolution Process with the substitution of references to the Resolution Professional for the Liquidator;

Sd-Sd-

- f. The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (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 stakeholders 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;
- g. Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.
25. In view of the foregoing, *IA (IBC) No. 587/JPR/2022* stands disposed of. Copy of this order be supplied to the Liquidator as well as to the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**