



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

Liquidation. A.-20/2024

In

IB-867(ND)/2022

**IN THE MATTER OF IB-867(ND)/2022:**

**M/s. Kisten Realtech Private Limited** ..... **Operational Creditor**

**Versus**

**M/s. Aerens Jai Realty Private Limited** ..... **Corporate Debtor**

**AND IN THE MATTER OF Liquidation. A.-20/2024:**

**Mr. Prabhakar Kumar,**

Resolution Professional of the Corporate Debtor

..... **Applicant**

**Versus**

**Mr. Anil Jha and Anr.**

..... **Respondents**

**Order Pronounced On: 01.10.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant/RP : Mr. Ishwar Mohapatra Adv.

For the Respondent : Mr. Rohan Aggarwal, Mr. Yasharth Jayant Lal,  
Adv.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. This Application has been filed by Mr. Prabhakar Kumar, the Resolution Professional of the Corporate Debtor before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with other applicable provision of the Code seeking Liquidation of the Corporate Debtor. The Applicant seeks the following relief:

**Liquidation. A.-20/2024 In IB-867(ND)/2022**

**Date of Order: 01.10.2024**



*“a) Allow the present Application for liquidation of the Corporate Debtor and pass appropriate orders under the IB Code, 2016; and  
b) Pass such further order(s)/direction(s) as this Hon’ble Adjudicating Authority may deem necessary in the facts and circumstances of the present case.”*

2. **Brief Background of the Case**

An Application was filed by M/s. Kisten Realtech Private Limited ("Operational Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Aerens Jai Realty Private Limited ("Corporate Debtor") under Section 9 of the Code filed before this Adjudicating Authority. This Adjudicating Authority vide order dated 30.05.2023 ("Admission Order") admitted the application and declared a moratorium and appointed Mr. Prabhakar Kumar as an Interim Resolution Professional. Subsequently, Mr. Prabhakar Kumar was confirmed as the Resolution Professional by the CoC.

3. The liquidator has made a public announcement in Form-A as per the CIRP regulations on 04.06.2023 in the Newspapers namely Financial Express and Jansatta, inviting claims from various stakeholders. The Committee of Creditors ("CoC") of the Corporate Debtor at their first meeting confirmed and approved the appointment of Applicant from IRP to Resolution Professional ("RP") and the same has been confirmed and approved by this Adjudicating Authority vide its order dated 05.09.2023 in I.A. No. 3701 of 2023.
4. It is submitted that in the 3<sup>rd</sup> CoC meeting, convened on 31<sup>st</sup> July 2023, the Resolution Professional proposed a resolution to issue and invite Expressions of Interest (EOI) from prospective Resolution Applicants for participation in the resolution plan of the Corporate Debtor. During the meeting, it was also discussed about the release of Form-G in a leading newspaper, but the resolution was rejected by the members of the CoC, with 83.79% of votes against it.
5. In the 04<sup>th</sup> CoC meeting held and concluded on 22<sup>nd</sup> August 2023, under agenda item C3, the Resolution Professional once again




proposed to invite Expressions of Interest (EOI) from prospective Resolution applicants for participation in the Resolution Plan of the Corporate Debtor. Additionally, there was a discussion regarding the release of Form-G in a leading newspaper. However, the members of the CoC disapproved the proposal, with 68.46% of e-votes against the resolution. The 05<sup>th</sup> CoC Meeting convened held and conducted on 21<sup>st</sup> September 2023, Resolution No. C3 was passed unanimously with 100% e-votes in favor, authorizing the issuance of Form-G. Subsequently, the Applicant published Form-G on 29<sup>th</sup> September 2023 in two newspapers, namely the Financial Express in English (Delhi Edition) and Jansatta in Hindi (Delhi Edition). Accordingly, the Applicant has received Expressions of Interest (EOIs) from two (2) prospective Resolution Applicants. Furthermore, the list of prospective Resolution Applicants was issued on 23.10.2023.

6. In the 6<sup>th</sup> CoC meeting held and concluded on 23rd October 2023, the members, in their commercial wisdom and with the goal of attracting more competitive bidders to the resolution process, resolved to extend the deadline for the submission of Expressions of Interest (EOI) from more competitive bidders. This was achieved by re-issuing Form-G to invite fresh Expressions of Interest (EOI). The resolution passed unanimously with a 100% vote via the e-voting system in favor of the said resolution.
7. Due to the republication of 'Form-G' and the subsequent processes, the completion of the procedure was expected to take a considerable amount of time, exceeding the 180 days of the CIRP period. Consequently, the members of the CoC resolved and approved 90-days extension for the completion of the CIRP period and authorized the Applicant to file an application seeking an extension of the CIRP period by 90 days. This resolution was passed with a unanimous 100% vote via the e-voting system in its favor. The application seeking extension for a period of 90 days beyond 180 vide I.A. No. 6182/2023 w.e.f 27.11.2023 was allowed by this Adjudicating



Authority vide order dated 23.11.2023, resulting in the period of extension ending on 24.02.2024. However, the last date of submission of Resolution Plan was 28.11.2023 and no PRA has submitted the Resolution Plan.

8. It was submitted by the RP that the object of the code was to maximise the value of the asset, which could be met through resolution plan only. In case, the Liquidation of the Corporate Debtor was proposed, it would result in turning the company to its death. In such a scenario, it was preferable to consider inviting Prospective Resolution Applicants as a final option to sustain the company for the benefit of its creditors and retail buyers. Therefore, given the circumstances, it was advised to proceed with inviting prospective Resolution Applicants by publishing Form-G.
9. In the Eight CoC meeting considering the fact that the republication of fresh “Form-G” and the subsequent procedure is expected to take a considerable amount of time, the CoC passed the resolution authorizing the Resolution Professional to file application before the Adjudicating Authority for seeking extension of the CIRP period by 60 days beyond the initial 270 day period as considering the extended period of Insolvency Resolution Process (CIRP) of 270 days is set expire on 24<sup>th</sup> February 2024.
10. The Applicant/resolution Professional re-published Form-G on 21.02.2024 in the English edition of the Financial Express and the Hindi edition of Jansatta. The Adjudicating Authority, through an order dated 27.02.2024, granted an extension of 60 days beyond the extended period of 270 days from 25.02.2024.
11. It is submitted that during 10<sup>th</sup> COC meeting held on 23.04.2024, it was discussed that though timeline of CIRP expired as such it will go for automatic liquidation. After further discussions, CoC approved and Resolved for Liquidation of Corporate Debtor with 100% vote and advised RP to file the application for liquidation with the Adjudicating Authority at the earliest. During this meeting Mr. Reetesh Agarwal, an Insolvency Professional holding IBBI



registration IBBI/IPA-001/IP-P00878/2017-2018/11475 has given his consent to act as Liquidator of the Corporate Debtor.

12. It may be noted that in the present situation sole CoC members, have recommended for Liquidation of the Corporate Debtor with 100% voting share, present Application is being filed by the Applicant in accordance with Explanation to Section 33(2) of the IBC.
13. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona fide in nature.
14. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
15. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
16. The above-quoted judgement, makes it clear that the "Commercial wisdom of CoC" is to be given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.
17. In the 10<sup>th</sup> Meeting of the CoC dated 23.04.2024, it was resolved to Liquidate the Corporate Debtor which is as follows:

***“RESOLVED THAT** in pursuant to Section 33 (1) (a) of IBC-2016 and the rules made thereunder, the consent of members of the COC be and is hereby accorded to approve the filing of application with Hon'ble NCLT, New Delhi Bench, regarding the initiation of liquidation of Corporate Debtor and to appoint Mr.*



*Reetesh Agarwal, an Insolvency Professional holding IBBI registration IBBI/IPA-001/IP-P00878/2017-2018/11475 as the liquidator of the Corporate Debtor.*

**“RESOLVED FURTHER THAT** *the consent of the members of COC be and is hereby accorded to fix the Liquidator’s fees as per Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, subject to discussion and approval during the first meeting of the stakeholder consultation committee of the corporate debtor.*

**“RESOLVED FURTHER THAT** *the 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.”*


18. Based on the resolution of the CoC, the Applicant filed the present Application seeking Liquidation of the Corporate Debtor. We find that the Application satisfies the requirements of Section 33(2) of IBC as there is no confirmed resolution plan of the Corporate Debtor and that the resolution to Liquidate the Corporate Debtor is supported with 100% voting of CoC (the requirement being not less than 66%).
19. In light of the above facts and circumstances, it is hereby ordered as follows:
- i.** The **Liquidation. A.-20/2024** filed by Mr. Prabhakar Kumar, the Resolution Professional of the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
  - ii.** The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code had recommended that an IP other than the RP/IRP may be appointed as Liquidator in all



the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.

- iii.** Therefore, this Adjudicating Authority appoints Mr. Reetesh Agarwal as the Liquidator of the Corporate Debtor. The Registration number of the Liquidator is IBBI/IPA-001/IP-P00878/2017-2018/11475.
- iv.** Mr. Prabhakar Kumar, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.
- v.** The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.
- vi.** The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii.** The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.
- viii.** All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- ix.** The personnel of the Corporate Debtor is directed to extend all assistance and cooperation to the Liquidator as required

by him in managing the Liquidation process of the Corporate Debtor.

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- x.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but 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 the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
  - xi.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
  - xii.** The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
  - xiii.** The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as a going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from the liquidation commencement date, the Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
  - xiv.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 of the

Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

**xv.** The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

**xvi.** The Registry is directed to send a copy of this order to the IBBI for their record.

**xvii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**

