



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

Item No.01

IA-4491/2022

In

(IB) -312(ND)/2021

IN THE MATTER OF:

M/s. SHRI SAI ENTERPRISES

..... Operational Creditor

VERSUS

M/s. ICEBERG DEVELOPERS PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. VIJENDER SHARMA

Resolution Professional of M/s. Iceberg Developers Private Limited

..... Applicant

Order Pronounced On: 31.08.2023

SECTION

U/s 33 of IBC, 2016

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Harshit Agarwal, Adv.

ORDER

Order pronounced in open court vide separate sheets. **IA-4491/2022** is
allowed.

-SD-

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

-SD-

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



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

**IA-4491/2022
In
(IB) –312(ND)/2021**

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

M/s. SHRI SAI ENTERPRISES Operational Creditor
VERSUS

M/s. ICEBERG DEVELOPERS PRIVATE LIMITED
..... Corporate Debtor

AND IN THE MATTER OF:

Mr. VIJENDER SHARMA

Resolution Professional of M/s. Iceberg Developers Private Limited

..... Applicant

Order Pronounced On: 31.08.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Harshit Agarwal, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. Vijender Sharma, the Resolution Professional of M/s. Iceberg Developers Private Limited, the Corporate Debtor on 05.09.2022, before this Adjudicating

IA-4491/2022 In (IB) – 312(ND)/2021
Date of Order: 31.08.2023



Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code"), seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the Fourth CoC meeting held on 01.09.2022, for seeking the following relief:

"a) Pass the order for liquidation of Corporate Debtor under Section 33 of IBC, 2016;

b) pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case."

2. An Application was filed to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Iceberg Developers Private Limited ("Corporate Debtor") under Section 9 of the Code filed by M/s. Shri Sai Enterprises ("Operational Creditor") before this Adjudicating Authority in (IB)-312/ND/2021. This Adjudicating Authority vide order dated 20.04.2022 ("Admission Order") was pleased to admit the application, initiate CIRP against the Corporate Debtor and appointed Mr. Vijender Sharma as the Interim Resolution Professional ("IRP"). Further, the IRP was appointed as Resolution Professional ("RP") by this Adjudicating Authority.
3. The copy of the Order was received by IRP on 26.04.2023 and the IRP started his duties w.e.f. 26.04.2023. Thereafter, the IRP filed an application for exclusion of six days from the period of CIRP before this Adjudicating Authority. This Adjudicating Authority vide its order dated 20.05.2022 excluded the six days from the CIRP and mentioned that the CIRP shall be taken to be commence from 26.04.2022 instead of 20.04.2022.
4. During the CIRP, the IRP made public announcements for the invitation of claims under Form-A in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") from the Creditors of the Corporate Debtor. The



Applicant received one claim from the Operational Creditor i.e., M/s. Shri Sai Enterprises.

5. The Applicant prepared the list of creditors and constituted the Committee of Creditors (CoC) as on 10.05.2022 and the same were filed before this Adjudicating Authority.
6. The CoC consisted of only one member i.e., M/s. Shri Sai Enterprises as the Operational Creditor. The Applicant convened the first meeting of the CoC on 13.06.2022, wherein the CoC with 100% voting rights, appointed the Applicant as the Resolution Professional (“RP”).
7. The Applicant convened the Second meeting of the CoC on 28.06.2022, wherein the RP apprised the members that the Information Memorandum (IM) has been prepared based on the information and document provided by the Corporate Debtor. Further, the RP apprised the members regarding the non-cooperation of the members of the Suspended Board of Directors with the Applicant and Registered Valuers. The members of the CoC also approved the eligibility criteria for the qualification of the Prospective Resolution Applicants.
8. The Applicant invited Prospective Resolution Applicant in accordance with Section 25(2)(b) of the Code to submit the Resolution Plan(s) vide publishing Form-G in the newspaper dated 03.07.2022 in Financial Express and Jansatta Newspapers (English and Hindi Edition). Against Form-G, the two Prospective Resolution Applicants submitted their Expression of Interest ("EOI") and out of the two Resolution Applicants, only one Resolution Applicant namely M/s. SavFab Developers Private Limited was considered as the Successful Resolution Applicant. Accordingly, the final list of PRAs was issued by RP on 12.08.2022. The Sole eligible PRA i.e., M/s. Savfab Developers Pvt. Ltd. vide mail dated 29.08.2022 has denied to submit any Resolution Plan. As per the EoI in Form-G, the last date for submission of Resolution Plan was 1st September, 2022. Since no



resolution plan was received by M/s. SavFab Developers Pvt. Ltd., the RP called the CoC Meeting to take further decisions by the CoC.

9. The Fourth CoC Meeting was convened on 01.09.2022, wherein the CoC denied publishing the Form-G again and approved to liquidate the Corporate Debtor under Section 33(2) of the Code by 100% voting share. The CoC also recommended the name of the Applicant to continue as Liquidator of Corporate Debtor at the professional fees of Rs. 2.5 Lakh per month plus GST and actual out-of-pocket expenses.

The extract of the minutes of the meeting is reproduced below for the ready reference:-

RP mentioned that as if CoC do not want to publish the Form-G again, then due to not receiving the Resolution Plan against the Form-G published during the CIRP of Corporate Debtor, the CoC may consider approving to liquidate the Corporate Debtor and instruct RP to file the application before the Hon'ble NCLT.

CoC mentioned that they want to go for the liquidation of the Corporate Debtor and authorised the RP to file the appropriate application before the Hon'ble NCLT for the liquidation of the Corporate Debtor.

Further the members of the CoC Meeting approved to appoint the Resolution Professional Mr. Vijender Sharma to act as Liquidator on behalf of M/s. Iceberg Developers Private Limited.

Matter was put up for e-voting and CoC resolved to approve to liquidate the Corporate Debtor u/s 33(2) of IBC, 2016 by 100%.

10. Hence, the present Application is being filed by the RP in the interest of justice and the same is bona fide in nature.
11. In light of the above facts and circumstances, it is hereby ordered as follows:



- i.** Prayers as sought for in **IA-4491/2022** filed by Mr. Vijender Sharma, the Resolution Professional of M/s. Iceberg Developers Private Limited, the Corporate Debtor is allowed and the Corporate Debtor is ordered to be liquidated in terms of Section 33(1) of the Code read with sub-clause (i) of clause (b) thereof;
- ii.** Mr. Vijender Sharma having Reg. No. IBBI/IPA-003/IP-N00003/2016-2017/10022, having e-mail id: vijender@vsa.net.in; having address: Building No. 11, 3rd Floor, Hargovind Enclave, Vikas Marg, New Delhi-110092, having contact No. +919810166877 whose name has been proposed by CoC in its 4th meeting held on 01.09.2022 is hereby appointed as liquidator as provided under Section 34(1) of the Code read with Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

The Institute of Cost Accountants of India, Insolvency Professional Agency had issued the Authorization for Assignment to the Liquidator which was valid till 01.11.2022 only as reflected which is filed along with the Application.

Therefore, the Liquidator shall file a valid Authorization for Assignment within 3 days of the pronouncement of this order.
- iii.** 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.
- iv.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in liquidation.
- v.** All the powers of the Board of Directors, and of 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.

- vi.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- vii.** 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.
- viii.** In accordance with section 33(7) of the Code, 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.
- ix.** 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.
- x.** The liquidator shall also follow up 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.
- xi.** The Liquidator shall submit 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;
- xii.** 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.

- xiii.** The application bearing **IA-4491/2022** shall stand disposed of in accordance with the above directions.
- xiv.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xv.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xvi.** 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)**