



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court -II)
KOLKATA**

**IA(IBC)/954(KB)2021
in
CP(IB)/720(KB)2017**

*Under section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016
read with rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

**Bihar State Construction Corporation Limited
(CIN: U45200BR1974SGC001146)**

.... Corporate Applicant

And

In the matter of:

**Nitesh Kumar More,
Resolution Professional of Bihar State Construction Corporation Limited**

... Applicant

Order reserved on: 23/03/2023

Order pronounced on: 18/04/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For RP : Mr. Shaunak Mitra, Adv.
Mr. Saurav Jain, Adv.
For Corporate Applicant : Ms. Amrita Pandey, Adv.
Ms. Sneh Singh, Adv.



ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/954(KB)2021** is an application filed under section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Bihar State Construction Corporation Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Nitesh Kumar More, the RP.
3. This Adjudicating authority, on a petition filed u/s. 10 of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Bihar State Construction Corporation Limited, the Corporate Applicant, *vide* order² dated 16/10/2019 in CP(IB)/720(KB)2017, had ordered initiation of CIRP against Bihar State Construction Corporation Limited, the Corporate Applicant (Corporate Debtor). Ms. Nitesh Kumar More was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the IBC, Public Announcements³ in **Form A** was published in “*Morning India*” (English) and “*Sanmarg*” (Hindi) (Patna Edition) on 18/10/2019 inviting claims from the creditors, stipulating last date of submission of claims on 30/10/2019. In response, the applicant had received several claims from the creditors as well from employees consisting of dues of last 30 years.

¹ At pages 26 and 27 of the application

² Annexure “A” at pages 29 to 33 of the application

³ Annexure “B” at pages 34 and 35 of the application



5. An appeal being Company Appeal (AT) (Insolvency) No. 1493 of 2019 was filed by the Bihar State Construction Corporation Ltd. Employee Union for setting aside the said order of CIRP dated 16/10/2019. *Vide* order dated 19/12/2019, the Hon'ble NCLAT passed the following order in the said appeal:

“Till the next date, the ‘Interim Resolution Professional’ will not constitute the ‘Committee of Creditors’, if not yet constituted. However, in the meantime, the ‘Interim Resolution Professional’ will ensure that the company remains as an on-going concern and will take the assistance of the (suspended) Board of Directors and the employees. The person who is authorized to sign the Bank Cheques may issue cheques but only after authorization of the ‘Interim Resolution Professional’. The Bank accounts of the ‘Corporate Debtor’ be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the paid Director, the Employees’/workmen, electricity bills etc.”

However, vide subsequent order dated 02/03/2020 passed in the said Appeal (supra), Hon'ble NCLAT had directed the IRP *“to constitute Committee of Creditors and take forward the Corporate Insolvency Resolution Process”*. Copies of the aforesaid orders⁴ dated 19/12/2019 and 02/03/2020 form **Annexure “C”** to the application.

Finally, the Hon'ble NCLAT *vide* order dated 19/09/2022 had dismissed the said Appeal (supra) and passed the following orders:

- *Also keeping in view of the facts that the seventh meeting held on 30/10/2021, the CoC rejected to reissue Form G again as no EOI had been received till date, the Corporate Debtor is not carrying any business and huge losses also. Hence, CoC decided to liquidate the Corporate Debtor. In the same meeting, the resolution for filing of liquidation application and confirming the Resolution Professional as Liquidator was approved by the CoC with 100% voting and as such the liquidation application was filed before the Adjudicating Authority on 01/11/2021 bearing I.A. Nos. 954 of 2021.*
- *With these reasons, we do not find any merit in the instant Appeal. The impugned order dated 16/10/2019 passed by the Adjudicating*

⁴ Annexure “C” at pages 36 to 39 of the application



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court II)

IA(IBC)954(KB)2021
in CP (IB)/720(KB)2017

Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) in Company Petition (IB) No.720/KB/2017 is hereby affirmed. The Appeal is hereby dismissed”

6. The applicant has so far held 7 numbers of CoC meetings from time to time and minutes of those meetings were duly annexed to the application. The appointment of IRP has been confirmed as RP at the 1st CoC meeting held on 28/11/2019 by the members of the CoC.

Sl. No.	No of meetings	Annexure	Page Nos.
1	1 st meeting (28/11/2019)	“D”	40 to 43
2	2 nd to 6 th meetings (18/06/2020; 31/12/2020; 03/02/2021; 07/07/2021 & 21/09/2021	“E” Collectively	44 to 60
3	7 th meeting (30/10/2021)	“I”	83 to 92

7. *Vide* order⁵ dated 02/08/2021 passed in IA(IBC)/305(KB)2021, this Adjudicating Authority had granted exclusion of 478 days from the CIRP period and *vide* another order⁶ dated 30/08/2021 passed in IA(IBC)/639(KB)2021 had also granted extension of the CIRP period by 90 days, thereby the CIRP period had ended on 01/11/2021.
8. In terms of regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 **first Form G** was published in “*Morning India*” (English) and “*Sanmarg*” (Hindi) (Patna Edition) on 01/01/2021, stipulating last date of receipt of Expression of Interest (“EoI”) as 16/01/2021; **second Form G** was published in “*Morning India*” (English) and “*Sanmarg*”

⁵ Annexure “G” at pages 80 to 81 of the application

⁶ Annexure “H” at page 82 of the application



(Hindi) (Patna & Ranchi Editions) on 04/02/2021, stipulating last date of receipt of Expression of Interest (“EoI”) as 28/02/2021 and the **third Form G** was published in “*Morning India*” (English) and “*Sanmarg*” (Hindi) (Patna & Ranchi Editions) on 08/07/2021, stipulating last date of receipt of Expression of Interest (“EoI”) as 10/08/2021. Copies of all these Form G⁷ form **Annexure “G”**.

9. At the 7th CoC meeting⁸ held on 30/10/2021, the CoC with 100% voting share has passed the following Resolutions: -

“RESOLVED THAT the consent of CoC is given to file a petition for liquidation of company.”

“RESOLVED FURTHER THAT the consent of CoC is given to appoint CA Nitesh Kumar More as liquidator of corporate debtor.”

10. Mr. Nitesh Kumar More has submitted his consent⁹ dated 30/10/2021 to act as the Liquidator of the Corporate Debtor which is placed at page 83 of the application.
11. After taking into consideration of exclusion of 478 days from the CIRP period, 270 days CIRP period had ended on 01/11/2021.
12. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.
13. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
14. This Bench, therefore, hereby orders as follows: -

⁷ Annexure “F” at pages 61 to 79 of the application

⁸ Annexure “I” at pages 83 to 92 of the application

⁹ Annexure “17” at pages 120 to 123 of the application



- a. IA(IBC)/954(KB)2021 filed by **Mr. Nitesh Kumar More, RP of Bihar State Construction Corporation Limited**, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
- b. **Mr. Nitesh Kumar More [Reg. No. IBBI/IPA-001/IP-P01087/2017-2018/11785] of 18, Rabindra Sarani, Gate No.1, Room No.1, Kolkata 700001, having e-mail i.d. nmore@gmail.com , telephone no. 88201 54348 and 83360 87901** is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in “*Morning India*” (English) and “*Sanmarg*” (Hindi) (Patna & Ranchi Editions) stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. 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



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court II)

IA(IBC)954(KB)2021
in CP (IB)/720(KB)2017

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, as provided in section 33(5) of the Code read with its proviso.

h. 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.

i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the **Registrar of Companies, Bihar**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, Bihar**.

15. The application bearing **IA(IBC)/954(KB)2021** shall stand disposed of in accordance with the above directions.
16. **CP(IB)/720(KB)2017** is to come up for filing of Periodical Progress Report on **13/07/2023**.
17. 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.
18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 18th day of April, 2023.

hb.