

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA-8/2024

In

CP (IB) -24(PB)/2018

Order under Section 33(1) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

State Bank of India

... Financial Creditor

Versus

Shakti Bhog Foods Limited

...Corporate Debtor

AND IN THE MATTER OF:

IA-8/2024

Mr. RamRatan Kanoongo

Resolution Professional

Shakti Bhog Foods Limited

...Applicant/Resolution Professional

Order Pronounced On: 20.01.2025

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar :

Hon'ble President

Shri Avinash K. Srivastava:

Hon'ble Member (Technical)

Appearances:

For the RP: Mr. Mukesh Jain, Ms. Eshna Kumar, Mr. Mukhtesh & Ms. Jasleen Singh, Adv.

For the Suspended Directors: Mr. Milan Negi, Adv.


ORDER



1. This is an Application filed on 27.02.2024 by Mr. Ram Ratan Kanoongo, the Resolution Professional of Shakti Bhog Foods Limited the Corporate Debtor (CIN: U74899DL1992PLC051124) before this Adjudicating Authority under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**” or “**Code**”) seeking initiation of liquidation proceedings of the Corporate Debtor based on the decision taken by the Committee of Creditor (“**CoC**”) in its 18th Meeting held on 15.02.2024. Prayers made in the Application read as below:

- a) *Consider the present I.A. 8 of 2024 under provision of Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 for Liquidation of the Corporate Debtor;*
- b) *Appoint Mr. Ram Ratan Kanoongo having registration number IBBI/IA-001/1P-P000?0/2017-18/10156 as the Liquidator of the Corporate Debtor under Section 33(2) of the Code;*
- c) *Direct the Registry to communicate this order to the Registrar of Companies, Delhi and to the Insolvency and Bankruptcy Board of India (1881), New Delhi;*
- d) *Consider declaring under Section 31 (3)(a) of the Code that Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33(5) shall commence;*
- e) *Consider that this order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016;*
- f) *Consider that no suit, prosecution or other legal proceeding shall lie against the Applicant being the Insolvency Professional for anything done or intended to be done in good faith under Section 233 of the Code;*
- g) *Issue such other orders as the Hon'ble Tribunal may deem fit.*

Brief Background of the Case

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2. An Application was filed by State Bank of India ("Financial Creditor") to initiate the Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor under Section 7 of the Code read along with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. This Adjudicating Authority vide order dated 22.09.2022 ("Admission Order") was pleased to admit the application and a moratorium was declared including appointment of Mr. Ram Ratan Kanoongo as an Interim Resolution Professional ("**IRP**").
 3. The IRP made a public announcement for the invitation of claims in Form-A dated 24.09.2022, inviting claims to be filed on or before 06.10.2022. It is submitted that as per Section 21(1) & 18(1)(c) of the IBC, 2016 and Regulation 17(1) of IBBI (CIRP), 2016, RP has constituted the Committee of Creditors (CoC) and submitted his report to the Adjudicating Authority on 15th October 2022. Accordingly, the IRP has constituted the CoC comprising of 10 Financial Creditors.
 4. The IRP convened 1st Meeting of the Committee of Creditors ("**CoC**") on 22.10.2022, wherein List of Creditors and the Constitution of COC was approved. Further IRP, Mr. Ram Ratan Kanoongo was confirmed as Resolution Professional ("**RP**").
 5. It is submitted that the Applicant/RP convened 2nd Meeting of the COC on 16.11.2022, wherein eligibility criteria for Prospective Resolution Applicant was approved and two Registered Valuer Entities were appointed. Further pursuant to 2ndCO C meeting, the applicant published Form G on 25.11.2022 for inviting Expression of Interest and the last date for submission of EOI was 12.12.2022. Publication of Form-G was approved by COC in its 2nd COC meeting. The result of 2nd COC meeting has been annexed as Annexure A-4 at Page 135. In response to it, the RP received 9 EOIs.
 6. It is submitted that the Applicant/RP convened 4rd Meeting of the COC on 30.12.2022, wherein Information Memorandum (*IM*), Request for Resolution Plan (**RFRP**) and Evaluation Matrix was approved with 90.45% voting by CoC. A copy of minutes of the 4th COC meeting has been annexed as **Annexure A-4 at Page 168.**



7. The Applicant/RP convened 5th Meeting of the COC on 07.02.2023, wherein resolution was passed for approval of extension of submission of resolution plan till 6th March, 2023 with 84.05% votes in favour. Further, the RP convened the 6th Meeting of the COC on 03.03.2023 wherein the timeline for submission of resolution plan was extended till 6.04.2023. Along with it, the CIRP of Shakti Bhog Foods Limited was extended by 90 days. Thereafter RP convened 7th Meeting of the COC on 06.04.2023 wherein the timeline for submission of resolution plans was again extended till 17.04.2023.
8. The RP convened the 8th meeting of the COC on 18.04.2023, wherein the RP informed the COC that he has filed various applications with the Hon'ble NCLT u/s 66 of IBC. Along with it, the RP also received Resolution Plans from 4 Prospective Resolution Applicants.
9. It is submitted that the RP convened the 9th Meeting of the COC on 08.05.2023, wherein the RP informed that the injunction application towards infringement of the trademarks of "Shakti Bhog" was filed by him before the Hon'ble Delhi High Court which was heard on 26th April 2023. Along with it, the RP stated that the resolution plans from 3 Prospective Resolution Applicants were compliant with the code and submitted to the CoC for their consideration:
 - A) ITC Limited**
 - B) Shanti G.D. Ispat & Power Pvt. Ltd.**
 - C) Vidya Polymers Private Limited**
10. The RP convened various COC meetings from the 10th to the 15th meeting of COC wherein it was discussed that there are various pending litigations of the Corporate Debtor. Also, in the 11th Meeting of the COC on 05.09.2023, the RP stated that the CoC in the previous meeting had interacted with the PRAs and basis which the COC had observed that the best way for maximising the value of the Resolution Plan is to await the outcome of trademark infringement case filed in Hon'ble Delhi High Court.

11. On 10th November 2023 the Hon'ble Delhi High Court, passed an order in **CS (COMM) 244/2023**, the relevant portion of which is extracted below:



“16. Today being the last day before the ensuing five-day holiday and the insolvency proceedings being underway, in order to ensure that no prejudice is caused to either party, the Court directs as under;

(i) that there would be no impediment in the committee of creditors considering the mark 'SHAKTI BHOG' as an asset of the Plaintiff and valuing the same.

(ii) However, it is made clear that there shall be no final order in respect of the mark 'SHAKTI BHOG'. The valuation so made by the CoC shall be subject to further hearing and orders in this interim injunction application.

(iii) that the Defendant No.1 who claims to be the assignee of the mark 'SHAKTI BHOG' shall not transfer any right, title or interest in the mark until the hearing in the application is concluded and orders are passed by this Court.

(iv) that all the Defendants shall also ensure that no further licenses or permissions are granted for manufacture of 'SHAKTI BHOG' branded food products by any third party except the Defendants arrayed in the present suit.

(v) that the CGPDTM shall not entertain any request for recordal of assignment deed or license of the 'SHAKTI BHOG' mark by anyone without orders of this Court.

17. At this stage, Mr. Grover, ld. Counsel for the Defendants submits that there are other contract manufacturers apart from those who are impleaded herein, who have been issued licenses to the manufacturers of food products under the mark 'SHAKTI BHOG'. If so, he is permitted to move an application in this regard.”

12. It is submitted that the RP convened the 15th Meeting of the COC on 11.12.2023 where the RP informed that the CoC in their previous meeting, looking to the abnormal high time taken for the legal process at Hon'ble Delhi High Court, had decided that post the Hon'ble Delhi High Court's hearing on 10th November 2023, the RP should engage with PRAs for curing the defects and invite them for commencing the final negotiations with the CoC. Accordingly, he had held the meeting with all the three PRAs.



13. It is submitted that the RP convened the 16th Meeting of the CoC on 14.12.2023 and the RP stated that, in the last CoC meeting, due to non-availability of other two PRAs, the CoC was able to negotiate with the team of Vidya Polymers Pvt Ltd only. Accordingly, this meeting has been held to negotiate with other two PRAs namely; a) ITC Limited and b) Shanti GD Ispat Power. The RP informed that both the PRAs have shown their availability for having a discussion with the CoC.
14. It is submitted that the RP convened 17th Meeting of the CoC on 12.01.2024. The RP stated that the CoC, in the previous meetings, had interacted with all the three PRAs and had decided to grant 7-10 days' time to all the PRAs for submitting their final plans. Accordingly, the PRAs were informed to submit their Final Resolution Plans by 5th Jan 2024.
15. It is submitted that the RP convened the 18th Meeting of the CoC on 20.01.2024 wherein it was observed that all the three Resolution Plans are still "conditional", thus not in compliance with the provisions of IBC and RFRP. The RP brought to the attention of the CoC that the deferred payment linked to the outcome of ongoing litigation may be construed as a "conditional plan," which is impermissible under the terms of the RFRP. Certain other clauses that make the RP conditional are listed below:

Name of the party presenting the resolution plan	Conditions laid out in the plan
Resolution Plan of Shanti GD Ispat & Power Pvt Ltd dated 5th Jan 2024 (Annexure -4 Page 374, Petition/Application)	The Resolution Plan is conditional as it <ul style="list-style-type: none">(i) defines the Effective Date as based on multiple uncertain future events, including judicial outcomes and asset release conditions; and(ii) links debenture redemption to the sale of all tangible assets without addressing the revival of the Corporate Debtor as a going concern.
Resolution Plan of Vidya Polymer Private Limited dated 17th April	The Resolution Plan is conditional as it: <ul style="list-style-type: none">(i) imposes pre-voting conditions under Clause 12, rendering the plan



2023(Annexure -4 Page 375, Petition/Application)	ineffective if unmet, and releasing the Resolution Applicant from all obligations, including performance guarantees; (ii) proposes liquidation of the Corporate Debtor contrary to the RFRP framework, failing to meet the requirement of a going concern resolution; and (iii) reserves a right to unilaterally modify the plan, contravening the principles of "viability" and "implementability" as established by the Hon'ble Supreme Court.
Resolution Plan of ITC Limited dated 17th April 2023 (Annexure -4 Page 377, Petition/Application)	The Resolution Plan of ITC Limited is conditional as it includes: (i) onerous conditions precedent under Clause E, making the plan's implementation contingent on their fulfilment; (ii) an uncertain Effective Date dependent on the unconditional transfer of assets, contrary to the RFRP definition; and (iii) a provision allowing modification of the plan post-NCLT approval, contingent on the Resolution Applicant's acceptance, undermining its finality and implementability.

16. Hence, in the event of non-compliant plans in place, a resolution for liquidation of the Corporate Debtor was put forth for e-voting in the 18th CoC meeting held on 20 January 2024 and the same was approved by 76.73% votes. The minutes of the 18th meeting are extracted below for ready reference:



Sr. No.	Particulars	Particulars of Votes Cast	
		Particulars	% Voting
1	<u>Resolution No. 1 - To approve the Liquidation of Shakti Bhog Foods Limited.</u> "RESOLVED THAT, in line with section 33(1)(a) of IBC, 2016, the CoC hereby decides to file an application through the Resolution Professional for seeking the Liquidation of Shakti Bhog Foods Limited".	Votes cast in favour	76.73
		Votes cast against	-
		Votes Abstained	23.27
		Total	100%

17. It is submitted that the RP convened 19th Meeting of the COC on 08.02.2024 in which in terms of Regulation 39C of CIRP Regulations, 2016, CoC deliberated in detail towards exploring the possibility of sale of the CD as a going concern under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 and the said discussion was approved with 83.04% votes. The minutes of the 19th meeting are extracted below for ready reference:

Sr. No.	Particulars	Particulars of Votes Cast	
		Particulars	% Voting
3	<u>Resolution No. 3 - To approve the sale of CD as a Going Concern</u> "RESOLVED THAT pursuant to Regulation 39C of IBBI (CIRP) Regulations, 2016, the Committee of Creditors has decided to allow the Liquidator to sale the CD as a going concern as per under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016."	Votes cast in favour	83.04
		Votes cast against	4.43
		Votes Abstained	12.53
		Total	100%
		Result: Resolution received 83.04% of votes. Hence passed.	

In terms of Regulation 39D of CIRP Regulations, 2016, CoC decided to appoint the RP as the Liquidator of Corporate Debtor with 87.47% votes along with fees as discussed in the said meeting which was approved to be in terms of regulation 4(2) of Liquidation Process Regulations, 2016, being approved with 85.10% votes. The minutes of the same are extracted below for ready reference:



Sr. No.	Particulars	Particulars of Votes Cast	
		Particulars	% Voting
4	Resolution No. 4 - To finalise the name of the Liquidator. "RESOLVED THAT, pursuant to section 33(1)(a) read with Section 34(1) of the Code, 2016, the CoC hereby approves the name of Mr. Ram Ratan Kanoongo having IBBI/IPA-001/IP-P00070/2017-18/10156 to act as the Liquidator of the Shakti Bhog Foods Limited. The above Resolution requires 66% of the votes.	Votes cast in favour	87.47
		Votes cast against	-
		Votes Abstained	12.53
		Total	100%
		Result: Resolution received 87.47% of votes. Hence passed.	

Sr. No.	Particulars	Particulars of Votes Cast	
		Particulars	% Voting
1	Resolution No. 5 - To approve the fees of the Liquidator. "RESOLVED THAT pursuant to Regulation 39D of IBBI (CIRP) Regulations, 2016, the Committee of Creditors has fixed the fees of the Liquidator as per the liquidation table provided under Regulation 4(2) of Liquidation Regulations, 2016." The above Resolution requires 51% of the votes.	Votes cast in favour	85.10
		Votes cast against	2.37
		Votes Abstained	12.53
		Total	100%
		Result: Resolution received 85.10% of votes. Hence passed.	

18. The Applicant/Resolution Professional states that substantial efforts were undertaken by him in order to bring forth resolution plan for Corporate Debtor so as to revive its business operations. However, in view of conditional plans received in wake of Trademark Infringement issue, a resolution for Liquidation of Corporate Debtor has been passed by COC. The same is evident from the submissions made in the preceding paras.
19. Notice of this liquidation application was duly issued as per directions of this Adjudicating Authority to the Suspended Directors of the Corporate Debtor, returnable on 19.11.2024. On the subsequent hearing held on 17.12.2024, learned counsel representing the Suspended Directors appeared and submitted that they had no objections to the Interim Application filed by the Resolution Professional. Order dated 17.12.2024 is extracted below:

ORDER

IA-8/2024

Mr. Mukesh Jain, Ld. Counsel for the RP appeared in Court. Mr. Milan Singh Negi, Ld. Counsel for the Suspended Director appeared in Court and states that he has no objection to the present IA filed by the RP.

Arguments heard. Order Reserved.


20. In the light of above facts and circumstances, it is hereby ordered as follows:

- i.** **IA-8/2024** filed by Mr. Ram Ratan Kanoongo, the Resolution Professional of Shakti Bhog Foods 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-clauses (i), (ii) and (iii) of clause (b).
- ii.** This Adjudicating Authority in view of IBBI's letter dated 18th July, 2023 (Written Submission, Exhibit L- Page 63) appoints **Ms. Keshri Kumar** as the Liquidator of the Corporate Debtor from the available panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is **IBBI/IPA-001/IP-P-02459/2021-2022/13769** and the address of the liquidator is **46F, Sector-7, Jasola Vihar, Near Living Style Mall, South, National Capital Territory of Delhi, 110025.**
- 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. 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 timely of the Liquidation order.



- 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.** 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.
- 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.

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- xiii.** 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.
 - xiv.** The Registry is further directed to send a copy of this order to the IBBI for their record.
 - xv.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

21. The Application bearing I.A. No. 8 of 2024 filed in IB-24(PB)/2018 stands disposed of in accordance with the above directions.

List the matter on **13.02.2025**

Sd/-

**RAMALINGAM SUDHAKAR
PRESIDENT**

Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**