

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT – 1**

ITEM No.303  
IA/26(AHM)2024 in  
CP (IB) 559 of 2019

**Order under 60(5) of IBC,2016 r/w Reg 31(A) of IBBI**  
**reg,2016 r/w Rule 11 & 32 of NCLT Rule,2016**  
**IN THE MATTER OF:**

State bank of India  
on Behalf Stakeholder Consultation Committee  
V/s  
Ramakant Gupta Liquidator of  
M/s Sujyot Infrastructure Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on: 17/01/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

**-SD-**

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-SD-**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, AHMEDABAD**

**IA/26 (AHM) 2024 in  
CP (IB)/559(AHM) 2019**

[An application under Section 60(5) of the Insolvency Bankruptcy Code, 2016 and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, read with Rule 11 and 32 of National Company Law Tribunal Rules, 2016.]

In the matter of ***Sujyot Infrastructure Private Limited***

**State Bank of India**

On behalf of SCC of M/s. Sujyot  
Infrastructure Private Limited  
Stressed Asset Management Branch  
Through Assistant General Manager (Authorized officer)  
Mr. Kamal kumar Garg,  
2<sup>nd</sup> Floor, Paramsiddi Complex,  
Opp. V.S. Hospital, Ellisbridge,  
Ahmedabad 380006

... Applicant

Versus

**Mr. Ramakant Gupta**

Liquidator of M/s. Sujyot Infrastructure Private Limited  
609, 21st Century Buidling,  
Near UdhnaDarwaja,  
Ringh Road, Surat,  
Gujarat 395002

... Respondent

**Order Pronounced on 17.01.2024**

**CORAM:**  
**SHAMMI KHAN, MEMBER (JUDICIAL)**  
**SAMEER KAKAR, MEMBER (TECHNICAL)**

**APPEARANCE:**

For Applicant : Mr. Saurabh S. Rachchh, Ld. Adv.

**ORDER**  
**[Per: Bench]**

1. The present application is filed under Section 60(5) of the Insolvency Bankruptcy Code, 2016 and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, read with Rule 11 and 32 of National Company Law Tribunal Rules, 2016 seeking the following reliefs:

- 1) *Your Lordship may be pleased to allow the Present Application;*
- 2) *Your Lordship may be pleased to replace Mr. Ramakant Gupta by Mr. Sachin Bhattbhatt as Liquidator.*
- 3) *Your Lordship may be pleased to grant any other relief as may deem fit in the interest of justice.*

2. **FACTS OF THE CASE ARE AS FOLLOWS:**

I. The Corporate Debtor, a company incorporated on June 17, 2011, and duly registered under the Companies Act, 1956, engaging in Construction and Civil Engineering business. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) was filed on 09.04.2019 by Applicant –

(State Bank of India or bank) against Corporate Debtor i.e. M/s Sujyot Infrastructure Private Limited in Company Petition (IB) No. 559 of 2019 which was allowed and Corporate Insolvency Resolution Process was commenced against the Corporate Debtor vide order dated 22.12.2021 of this Tribunal.

- II. It is submitted by the Counsel for Applicant that on 17.06.2022 an Interlocutory Application No. 558 of 2022 was filed by Resolution Professional (RP) of the Corporate Debtor for initiation of liquidation process of the corporate debtor. This Tribunal vide its order dated 30.10.2023 passed an order of initiation of liquidation process of the Corporate Debtor. It is pertinent to note that while passing the order of liquidation, this Tribunal as per IBBI Circular No. Liq-12011/214/2023-IBB1/840 dated 18/07/2023 appointed the present respondent- Mr. Ramakant Gupta as a Liquidator to carry out the liquidation process of Corporate Debtor.
- III. It is stated that the present application has been preferred by the applicant for replacement of the liquidator appointed vide order dated 30.10.2023.
- IV. It was submitted that the Resolution Professional- Mr. Parag Sheth was to be appointed as the "Liquidator". However, this Tribunal as per the Circular dated 18.07.2023 appointed the present

respondent- Mr. Ramakant Gupta as "Liquidator". The applicant has now noticed that the present respondent is not empanelled with the applicant as a Liquidator and hence the applicant requested to replace the liquidator- Mr. Ramakant Gupta with Mr. Sachin Bhattbhatt who is empanelled with the applicant bank.

- V. The counsel for applicant submitted that such submission of the bank is not in any manner indicating that the bank is leveling any allegations or incompetency on part of the present liquidator- Mr. Ramakant Gupta.
  - VI. It is stated that such agenda for replacement of liquidator was discussed in the Second Meeting of Stakeholder consultation Committee dated 20.12.2023 whereby it was resolved to replace Mr. Ramakant Gupta the present respondent as liquidator and to appoint Mr. Sachin Bhattbhatt as a Liquidator in place of Mr. Ramakant Gupta hence this application.
  - VII. It is stated that the proposed liquidator has also given written consent dated 21.12.2023 to act as a liquidator in the present matter.
3. We have heard the Counsel for the Applicant and perused the documents on record. We have observed the following :

a. The State Bank of India has preferred the present application on behalf of SCC for replacement of the present liquidator who is Respondent herein only with the reason that the present Liquidator is not on the panel of the State Bank of India.

b. The SCC in its 2<sup>nd</sup> Meeting considered the said proposal and the relevant Resolution is provided hereinbelow:

**“RESOLVED THAT** *the members of the Stakeholders consultation committee hereby approve the replacement of present liquidator i.e., Mr. Ramakant Gupta having Registration no. IBBI/IPA-001/IP-P-02673/20222023/14105 with newly nominated liquidator i.e. Mr. Sachin Bhattbhatt having Registration no. IBBI/IPA-003/IP-N000138/2017-2018/11514.”*

c. It is essential to emphasize that in accordance with the statutory mandate outlined in Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, a mandatory Written Consent Form, as stipulated in Form AA of Schedule II, is a prerequisite for the proposed liquidator's appointment. In addition to the requisite 66% voting percentage to pass the resolution, this form must be submitted before the Adjudicating Authority for the purpose of replacing the liquidator. It is noteworthy that such written

consent has been attached in the present application.

- d. Moreover, during its 2<sup>nd</sup> Meeting, the SCC had approved the agenda of replacement of the Liquidator with 100% voting without giving any reasons for the replacement of the Liquidator.
- e. The provisions provided for replacement of Resolution Professional are contained in Section 27 of the IBC, 2016 and are reproduced below:

*“Section 27. Replacement of resolution professional by committee of creditors.*

*(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced; it may replace him with another resolution professional in the manner provided under this section.*

*(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.*

*(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.*

*(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.*

*(5) where any disciplinary proceeding are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another professional under the section.”*

f. The IBBI (Liquidation) Regulation 31A. 11 specifically states that the Liquidator can be replaced by the SCC after recording the reasons in the minutes of the SCC. The relevant portion of the IBBI Liquidation Regulation are reproduced hereunder:

*“31A. (11) The consultation committee, **after recording the reasons**, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator :*

*Provided that where a liquidator is proposed to be replaced, he shall-*

*(a) continue to work till his replacement; and*

*(b) be suitably remunerated for work performed till his replacement.”*

g. It is noticed that there exist a marked difference for change of Resolution Professional and change of Liquidator. During CIRP the COC has the wisdom to replace the RP if there is majority of more than 66% without assigning any specific reason for such replacement as such option is available as a matter of right. In the Liquidation process, the SCC has to record specific reason for replacement of the Liquidator.

h. Nowhere in the instant application, the Applicant had recorded any reason, neither the applicant

is leveling any allegations nor incompetency on part of the liquidator who is performing his duties in the manner it should be performed. The relevant portion of para 4 of the application is reproduced hereunder:

*“The applicant humbly submits that such submission of the applicant is not in any manner indicating that the applicant is levelling any allegations or incompetency on part of the liquidator. The applicant is submitting for replacement of the liquidator only because there is large money involved in the present matter and therefore with a commercial wisdom it is humbly submitted by the applicant that the liquidator i.e. the present respondent Mr. Ramkant Gupta be replaced by Mr. Sachin Bhattbhatt as a Liquidator.”*

4. In our view wisdom or right for change of liquidator is not available to SCC in the Liquidation process, recording the above we reject the present application as we hold no cognizant reason for replacement of the Liquidator are provided in the present application. The applicant bank had stated only single reason to replace the present Liquidator that the Liquidator is not on the panel of the State Bank of India. In our view; it cannot be a valid and reasonable reason to change or to replace the Liquidator.
5. The Liquidator is directed to complete the liquidation process expeditiously as per law.

6. Accordingly, with these observations the present application is dismissed and is disposed off. No order to cost.

**-SD-**

**SAMEER KAKAR  
MEMBER (TECHNICAL)**

**-SD-**

**SHAMMI KHAN  
MEMBER (JUDICIAL)**

Sandeep Pandey/LRA