



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

**IA(IBC)/756(KB)2022  
in  
CP(IB)/2074(KB)2019**

*Under section 33 of the Insolvency & Bankruptcy Code, 2016*

*In the matter of*

Sanjeev Kumar Mishra

...Operational Creditor

*Versus*

Abhijeet Hazaribagh Toll Road Limited.  
(CIN: U45209WB2010PLC149763)

...Corporate Debtor

*And*

*In the matter of*

Mr. Nirmal Kumar Agarwal,  
Resolution Professional of Abhijeet Hazaribagh Toll Road Limited

... Applicant

**Order reserved on: 12/10/2022**

**Order pronounced on: 07/11/2022**

*Coram:*

**Shri Rohit Kapoor** : **Member (Judicial)**  
**Shri Balraj Joshi** : **Member (Technical)**

*Appearances (through video conferencing):*

For RP : Ms. Deebaleena Ganguly, Adv.  
Mr. Mohit Sharma, Adv.  
Mr. Nirmal Kumar Agarwal, RP in person



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**ORDER**

***Per: Rohit Kapoor, Member (Judicial)***

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/756(KB)2022 is an application filed by the Resolution Professional of Abhijeet Hazaribagh Toll Road Limited, the Corporate Debtor, seeking liquidation of the Corporate Debtor. This application is duly supported by an affidavit<sup>1</sup> affirmed by Mr. Nirmal Kumar Agarwal, RP.
3. This Adjudicating authority *vide* order dated 07/01/2022 in CP(IB)/2074(KB)2019 had ordered initiation of CIRP against the Corporate Debtor and appointed Mr. Nirmal Kumar Agarwal as the Interim Resolution Professional (IRP). However, the said order dated 07/01/2022 was brought to the knowledge of the IRP by the Operational Creditor only on 03/02/2022.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **Regulations 2016**), Public Announcement<sup>2</sup> in **Form A** was published on 05/02/2022 in “*Business Standard*” (English) and “*Ek Din*” (Bengali) in Kolkata Edition and “*The Indian Express*” (English) and “*Loksatta*” (Marathi) in Nagpur. Committee of Creditors (“**CoC**”)<sup>3</sup> was duly constituted on 28/02/2022 with four Financial Creditors. The CoC at its 2nd meeting held on 22/03/2022 has confirmed the appointment of the IRP as the Resolution Professional (RP)<sup>4</sup>. Altogether five CoC meetings were held by the IRP/RP.
5. As per regulation 36 of the said Regulations 2016 and with the approval of the CoC, **Form G**<sup>5</sup> was published in “*Business Standard*” (English) and “*Ek Din*” (Bengali) in Kolkata Edition and “*The Indian Express*” (English) and

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<sup>1</sup> At pages 16 to 18 of the application

<sup>2</sup> Paragraph 5 at page 10 of the application

<sup>3</sup> Paragraph 8 at page 11 of the application

<sup>4</sup> Paragraph 2 of affidavit at page 18 of the application

<sup>5</sup> Paragraph 9 at page 11 of the application



“*Loksatta*” (Marathi) in Nagpur on 16/05/2022 inviting Expression of Interest (in short “**EoI**”) from prospective resolution applicants. However, no EoI has been received till the last date of submission of EoI from any prospective resolution applicant. The CoC was duly apprised of the above facts and the applicant placed before the CoC the agenda for liquidation of the Corporate Debtor on the ground that there are no substantial assets in the Corporate Debtor and also the Corporate Debtor is not a going concern for last 7 years. The members of the CoC decided to take some legal opinion before passing any resolution recommending liquidation of the Corporate Debtor.

6. *Vide* order<sup>6</sup> dated 04/07/2022 passed in IA(IBC)/639(KB)2022, this Adjudicating Authority had granted 27 days exclusion thereby 180 days CIRP period has come to an end on 01/08/2022.
7. The CoC at its 5th meeting held on 02/07/2022 with 100% voting share has passed resolutions, recommending to initiate liquidation process against the Corporate Debtor and appointing the existing RP as the Liquidator of the Corporate Debtor, subject to his giving consent to act as liquidator. A copy of the minutes of the said 5<sup>th</sup> CoC meeting is annexed as “**Annexure – A1**” at pages 19 to 34 and the resolution passed by the CoC is at paragraph 13 at page 13 of the instant application. Voting results is annexed as “**Annexure A - 3**” at pages 36 to 38 of the instant application.
8. While reserving the order on 21/09/2022, RP was directed to file an affidavit with respect to his consent to act as a Liquidator by 22/09/2022. When the matter was put for clarification on 12/10/2022, Ld. Counsel appearing for the RP submits that RP has duly uploaded his consent dated 27/07/2022 to act as a Liquidator of the Corporate Debtor along with his Authorisation for Assignment (“AFA”) valid till 16/01/2023 separately in the e-filing portal on 15/09/2022.

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<sup>6</sup> Annexure A2 at page 35 of the application



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9. 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.
10. On conjoint reading of these two provisions, this Adjudicating Authority is left with no option but to order liquidation of the Corporate Debtor.
11. This Bench, therefore, hereby orders as follows: -
  - a. IA(IBC)/756(KB)2022 filed by **Nirmal Kumar Agarwal, RP** of **Abhijeet Hazaribagh Toll Road Limited**, 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-section (1) thereof;
  - b. **Mr. Nirmal Kumar Agarwal, RP [Reg. No. IBBI/IPA-001/IP-P02112/2020-2021/13380]**, having e-mail i.d. [nirmalagarwal123@rediffmail.com](mailto:nirmalagarwal123@rediffmail.com) 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., “*Business Standard*” (English) and “*Ek Din*” (Bengali) in Kolkata Edition and “*The Indian Express*” (English)



and “*Loksatta*” (Marathi) in Nagpur 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 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, West Bengal**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, West Bengal**.

12. The application bearing **IA(IBC)/756(KB)2022** shall stand disposed of in accordance with the above directions.

13. **CP(IB)/2074(KB)2019** is to come up for filing of periodical progress report on



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**18/01/2023.**

14. 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.
15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed on this, the 7th day of November, 2022.

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