

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

**I.A. 499/2022**

**IN**

**Company Petition No. (IB) – 274(PB) /2019**

*Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016  
for liquidation of the corporate debtor*

In the matter of:

**Central Bank of India.... Financial Creditor**

**VERSUS**

**RS Ingot and Billet Private Limited ....Corporate Debtor**

**AND**

In the matter of:

**Mr. Shravan Kumar  
Vishnoi**

**.... Applicant/Resolution Professional**

**Order delivered on: 05.05.2022**

**Coram:**

**SHRI DHARMINDER SINGH,**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI AVINASH K. SRIVASTAVA,**

**HON'BLE MEMBER (TECHNICAL)**

## ORDER

**PER- DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

1. This is an application filed by the Resolution Professional, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation to Corporate Debtor, M/s. RS Ingot and Billet Private Limited.
  
2. The brief facts of this case are that, the Financial Creditor, Central Bank of India, had filed an application under Section 7 of the Code bearing number IB-274/(PB)/2019 for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on 31.07.2019 initiating CIRP against the Corporate Debtor and Mr. Shravan Kumar Vishnoi was appointed as the Interim Resolution Professional (IRP).
  
3. Further, the 1<sup>st</sup> meeting of CoC was held on 29.08.2019

AC

and IRP Mr. Shravan Kumar Vishnoi was confirmed to be appointed as Resolution Professional of the Corporate Debtor.

4. The 2<sup>nd</sup> CoC meeting was held on 23.09.2019, the resolution professional appointed the registered Valuers, Transaction Auditor with permission of Members of CoC.
5. Thereafter, in the 3<sup>rd</sup> CoC meeting held on 11.10.2019, the Resolution Professional with the approval of members of CoC published the Form-G for invitation of Expression of Interest for Resolution Plan on 14.10.2019 and the RP had received few Expressions of Interest from the Prospective Resolution Applicants.
6. Later on, the RP called the 04<sup>th</sup> CoC meeting on 04.11.2019 to discuss the outcome of the publication of Form-G Invitation of Expression of Interest'. The members of CoC discussed the matter at length and decided to reissue or republish the Form-G for invitation of Expression of Interest.

7. The Last date for the submission of the Resolution Plan was 29.12.2019 and only one resolution plan was received by the resolution professional before the last date.
8. Further, Resolution Professional had called the 5<sup>th</sup> CoC meeting on 06.01.2020, the members of CoC had decided to publish fresh Form-G again for the invitation of expression of Interest. The CIRP period of the Corporate Debtor was ending on 26.01.2020. Accordingly, the CoC directed the RP to file an application before NCLT under section 12 of the IBC, 2016 for the extension of time period of CIRP by 90 days beyond 180 days.
9. It is further submitted that the Principal Bench, New Delhi vide its order dated 20.02.2020 had granted 90 days extension to the CIRP timeline from 26.01.2020 to end the CIRP time period on 25.04.2020.
10. The Resolution Professional after publishing the

Form-G again for inviting the expression of interest on 11.01.2020, had convened the 06<sup>th</sup> CoC meeting on 07.02.2020 to discuss the outcome of issuance of FORM-G and non-receipt of any new expression of Interest from the Prospective Resolution Applicant, apart from existing expression of Interest which was received at the time of first publication of Form-G on 14.10.2019.

11. The Resolution Professional accordingly issued the provisional and final list of Prospective Resolution Applicant as per the timeline of last published Form-G with existing expression of Interest received by the Resolution Professional up to the date.

12. The Resolution professional accordingly, called the 7<sup>th</sup> CoC meeting on 12.03.2020 to discuss the receipt of one Resolution Plan from the Prospective Resolution Applicant on or before the last date of submission of Resolution Plan i.e. 07.03.2020. The CoC opened the Plan, discussed and decided that, the decision on the plan would be taken in the next meeting

of Committee of Creditors.

13. It is further submitted that, the Corporate Insolvency Resolution Process was going to end on 25.04.2020, but due to COVID-19 Pandemic and declaration of nationwide Lockdown, the operations, all over the country were in a stand still position. The Insolvency and Bankruptcy Board of India vide its notification dated 20.04.2020 has inserted new regulation 40C after Regulation 40B in Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to that effect, the lockdown period shall not be counted from the CIRP Process, if any activity could not be complete. The Regulation 40C - Special provision relating to timeline reads as under:

*“Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the*

*wake of Covid-19 outbreak shall not be counted for the purposes of the time line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”*

14. Resolution Professional tried its best to convene the next meeting of CoC but the members of the CoC every time expressed their inability to attend the meeting either in person or through video conferencing.

15. After rigorous follow-ups and requests, the RP could convene 08<sup>th</sup> Meeting of Committee of Creditors, which was held on 08.07.2020. The Committee of Creditors in this meeting, after having discussion on the Resolution Plan received from the Prospective Resolution Applicant, decided to put the matter for Approval or Rejection of Resolution Plan through e-voting so that the same may be decided by the higher authorities of financial creditors. Accordingly, the e-voting was

commenced on 11.07.2020. The period of e-voting was extended on the request of one of the members of CoC i.e. Punjab National Bank and finally the e-voting was closed on 18.07.2020. All the members of the Committee of Creditors rejected the Resolution plan with 100% vote share. The CoC advised that after the e-voting next meeting of CoC would be called to discuss about Liquidation under the provisions of Section 33 of the IBC, 2016.

16. Thereafter, the Resolution Professional had convened the 09<sup>th</sup> CoC Meeting held on 24.07.2020 after having the decision with respect to the rejection of the resolution plan by the Committee of Creditors on 18.07.2020 (through e-voting) and the CoC in its 09<sup>th</sup> meeting decided with 100% vote share to liquidate the Corporate Debtor and authorized the Resolution Professional to make an application for the Liquidation of the Corporate Debtor.

17. However, the RP in the same meeting also apprised the members of CoC as per the Regulation 39B(1) of CIRP Regulation, 2016, the cost of Liquidation is to be taken into consideration in case when the CD goes into liquidation. The CoC took note of the estimate of the Liquidation Costs.

18. Accordingly, CoC resolved to liquidate the CD in its 09<sup>th</sup> CoC meeting which was held on 24.07.2020 with 100% vote share on the completion of CIRP after completing all the steps prescribed in the Code. The resolution passed by the CoC is reproduced hereunder:

***“RESOLVED THAT** the application for liquidation of the corporate debtor be filed before the Hon’ble NCLT, Principal Bench, New Delhi under provisions of Section 33 of Insolvency and Bankruptcy code, 2016.*

***FURTHER RESOLVED THAT** Mr. Shraavan Kumar Vishnoi, Resolution Professional, be and is hereby authorized to file Liquidation application to the Hon’ble NCLT, Principal Bench, New Delhi under the provisions of Insolvency and Bankruptcy Code, 2016.”*

Name of the Bank	Voting share (Round off)	Voting - Approve/Reject/Abstain
Punjab National Bank	83	Approve
Central Bank of India	17	Approve

**VOTING RESULT:-**The Resolution was approved with 100% Vote Share of the members of the CoC.

19. The RP had filed the application No. 3339/2020 for Liquidation on 28.07.2020 along with submitting his consent with the liquidation application as the CoC did not decide on the name of liquidator and about its remuneration in this 24.07.2020 CoC meeting.
20. On the request of Financial Creditors, the Resolution Professional had convened 10<sup>th</sup> meeting of Committee of Creditors, which was held on 25.09.2020, where the CoC decided to change the Resolution Professional without any prior intimation to Resolution Professional.
21. Thereafter, the RP had filed the IA-4599/2020 under Section 60(5) of IBC, for withdrawal of Liquidation Application i.e. IA-339/2020 and for the extension of

CIRP time period under section 60(5) of IBC, 2016 and exclusion of CIRP time period wasted due to COVID19 Pandemic under Regulation 40C of IBBI (CIRP) Regulations, 2018 and also for the payment of CIRP Cost, which is pending for disposal before Hon'ble National Company Law Tribunal, Principal Bench, New Delhi.

22. However, on 06.12.2021 the Resolution Professional has received an e-mail from the financial creditor i.e. Punjab National Bank, having the vote share of 82.81% requesting the Resolution Professional to file Liquidation Application under section 33 of the Insolvency and Bankruptcy Code, 2016 for the Liquidation of Corporate Debtor and appoint Mr. Debashish Nanda having IBBI Registration No. IBBI/IPA-003/IP-N00040/2017-18/10316 as Liquidator of the Corporate Debtor, if the Hon'ble Adjudicating Authority deems fit.

"RESOLVED THAT Mr. Debashis Nanda having IBBI Registration IBBI/IPA-003/IP-N00040/2017-2018/10316 who has given his consent to the Committee of Creditors dated 23/09/2020 to act as the Resolution Professional on the same fee as of the existing Resolution Professional be and is hereby appointed as the Resolution Professional by replacing existing resolution professional Mr. Shravan Kumar Vishnoi."

After E-Voting, the voting result was as under:

Name of the Bank	Voting Share	Voting – Approve / Reject / Abstain
Punjab National Bank	83	Approve
Central Bank of India	17	Approve

Voting Result:- The Resolution was Approved with 100% vote share of the members of COC

23. Subsequently, 11<sup>th</sup> CoC meeting was conducted on 07.12.2021 wherein, it was approved to file a fresh application for liquidation.

24. Therefore, the RP is approaching this Tribunal for passing an order of Liquidation of the Corporate Debtor as referred to in section 33(1) of IBC, 2016, as no resolution plan was received by the Resolution Professional under section 30 of the Code. Hence there is no alternative to save the CD, but to go for Liquidation.

25. Lastly, it is seen from the record that the RP Mr.

Sharavan Kumar Vishnoi who has filed the present Liquidation Application has annexed the consent form of Mr. Debashish Nanda to act as a Liquidator, for which this Bench is of the considered view that, it is implied that Mr. Shraavan Kumar Vishnoi has withdrawn his consent to act as RP as well as Liquidator in the present matter. Therefore, this adjudicating authority in light of Section 34(1) r/w section 34(4)(c) of IBC, 2016, in absence of any written consent submitted by the Mr. Shraavan Kumar Vishnoi (RP), in the prescribed form to appoint him as the Liquidator, hereby decided to appoint Mr. Debashish Nanda as the Liquidator.

26. Resultantly, the present application u/s 33(2) of IBC stands allowed and liquidation of the corporate debtor, namely M/s RS Ingot and Billet Private Limited in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations, is

hereby ordered with following directions:

- a. The Mr. Debasish Nanda, holding Registration No. IBBI/IPA-003/IP-N00040/2017-2018/10316, to be appointed as the Liquidator in terms of Section 32(1) of the Code;
- b. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

- e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. 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.
- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h. The Liquidator shall submit a 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;

- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps;
- j. Accordingly, IA-499(PB)/2022 filed in IB 274/(PB)/2019 is allowed and disposed of in the aforementioned terms.

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

  
**(DHARMINDER SINGH)**  
**MEMBER (JUDICIAL)**