



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA/1428/CHE/2023 in CP(IB)/110/CHE/2022

(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of *NELLAI REALTORS PRIVATE LIMITED*

N.Veerapandian,
Interim Resolution Professional of
Nellai Realtors Private Limited
New No.36, Second Street, Gopalapuram,
Thiru Vi ka Nagar, Jawahar Nagar,
Chennai – 600 082

... Applicant

Order Pronounced on 31st August 2023

CORAM

JUSTICE RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : *Dominic S.David, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an application filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows:

(a) to pass an order of liquidation of the Corporate Debtor in terms of Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

(b) to appoint Mr.Prakul Thadi (IBBI Registration No: IBBI/IPA-002/IP-N01149/2021-2022/13806) as the Liquidator of the





Corporate Debtor at a fee as per Regulation 4 (2)(b) of IBBI(Liquidation Process) Regulations, 2016.

(c) to pass such other order or orders as this Hon'ble Tribunal may deem fit.

2. From the averments made in the application, it is evident that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor namely, Nellai Realtors Private Limited was initiated on 31.03.2023 and the Applicant herein was appointed as the Interim Resolution Professional (IRP).

3. Pursuant to the CIRP order, the IRP issued a Public Announcement of the CIRP on 06.04.2023 inviting claimants of the Corporate Debtor to submit their claims by 17.04.2023.

4. It is stated that the list of Financial Creditors and the amount of claims admitted as well as the voting share of the (Committee of Creditors) CoC is as follows:

S.No.	Name of Financial Creditor	Amount Claimed (in INR)	Amount Admitted (in INR)	Voting Share (in %)
1	M/s. Piramal Capital & Housing Finance Limited	82,26,11,662/-	82,26,11,662/-	100%



5. The first meeting of CoC was held on 03.05.2023 wherein the applicant appraised the CoC that the Corporate Debtor has no business operations as of today and as on Insolvency Commencement Date, the status of the Corporate Debtor was not a going concern.

6. It is submitted that the Applicant vide emails dated 25.05.2023 and 30.05.2023 requested the sole member of the CoC to consider approving the eligibility criteria to enable the RP to publish Form G i.e., invitation for expression of interest for submission of resolution plans by Prospective Resolution Applicants (PRA's).

7. However, the sole member of the CoC vide email dated 30.05.2023 requested the Applicant to withhold the publication of Form G as they are in the process of evaluating strategy to be adopted for all the 19 entities who are all the co-borrowers to the loan disbursed to the Corporate Debtor and that they will require further time to internally finalize the strategy and initiate appropriate steps to that effect, as the corporate debtor is not a going concern. As a result, the Applicant withheld the publication of Form G. The e-mail correspondence between the Applicant and the CoC is enclosed as *Annexure-F* of the application typeset.

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8. It is stated that in the 2nd CoC meeting held on 19.06.2023, the CoC after discussions and deliberations resolved to liquidate the Corporate Debtor with 100 % voting. The minutes of the 2nd CoC meeting are annexed at *Annexure-G* of the Application typeset and the extract of Resolution is reproduced hereunder:

Item No. 9

TO CONSIDER, DISCUSS AND APPROVE THE AGENDA FOR LIQUIDATION OF THE CORPORATE DEBTOR AS PER SECTION 33(2) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH REGULATION 40D OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016.

Facts and Explanatory Statement

The Chairperson apprised that as requested and decided by the CoC member to liquidate the Corporate Debtor after analysing that the financial health of the Corporate Debtor. This agenda item was placed for consideration and discussion by the CoC member to proceed with the Liquidation of the Corporate Debtor.

The Chairperson apprised the members of the CoC that as per Section 33(2) of the Code, where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).



Section 33(1): The Adjudicating Authority shall-

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter

(ii) issue a public announcement stating that the corporate debtor is in liquidation and

(iii) require such order to be sent to the authority with which the corporate debtor is registered

[Explanation. - For the purpose of the sub-section (2) of Section 33, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

The Chairperson further apprised the members of the CoC that as per Regulation 40D of CIRP Regulations, the committee while considering the Liquidation of the corporate debtor may consider factors including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature. And such consideration may be recorded and submitted in the application for liquidation submitted by the resolution professional to the Adjudicating Authority.

As stated earlier by the CoC member that they have decided to proceed with Liquidation of the Corporate Debtor after considering the following facts that-

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- *The Corporate Debtor has been non-operational for a long time, and there is no other business conducted by the Corporate Debtor. Therefore, they do not foresee any prospective resolution applicant coming forward with a viable resolution plan due to the non-operational status of the Corporate Debtor. Also, there are no actively working staff in the Corporate Debtor.*
- *The main parent company, Jeffson Universal Logistics Private Limited is already in Liquidation. Further, even the main operational company i... St. John Freight Systems Private Limited, to which all these corporate debtors are a part of group companies, has ended up in Liquidation.*
- *The Corporate Debtor doesn't hold any other asset except one immovable property. The Corporate Debtor was merely incorporated for the purpose of holding title over the immovable property due to land ceiling restrictions in the state of Tamil Nadu pursuant to which a single company cannot hold immovable property exceeding a stipulated extent. Therefore, Corporate Debtor has no other business operations apart from holding the title over the immovable assets.*

After due discussion and deliberation on the reasons for early Liquidation of the Corporate Debtor by the members of the Committee of Creditors, the following Resolution was placed accordingly, for their consideration:

Resolution:

"RESOLVED THAT pursuant to sub-section (2) of Section 33 of the Insolvency and Bankruptcy Code, 2016, and other applicable provisions of Insolvency and Bankruptcy Code. 2016 and rules and regulations made thereunder, the approval of the Committee of Creditors of Nellai Realtors Private Limited be and is hereby accorded for the liquidation of the Corporate Debtor.



RESOLVED FURTHER THAT in accordance with Regulation 40D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons).

Regulations, 2016, the Committee of Creditors considered that continuing with the Corporate Insolvency Process will not achieve any resolution and will increase their cost/expenses only and also the decision of the Liquidation is being considered based on the factors to be recorded and submitted in the Application for Liquidation of the Corporate Debtor.

RESOLVED FURTHER THAT the Committee of Creditors hereby approves that the cost/expenses/fees that will be incurred to give effect to this resolution shall be treated as Insolvency Resolution Process Cost of Nellai Realtors Private Limited.

RESOLVED FURTHER THAT the committee of creditors hereby authorizes Interim Resolution Professional/ Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution.

Item No. 10

TO CONSIDER THE APPOINTMENT OF THE LIQUIDATOR AS PER SECTION 34 OF THE INSOLVENCY AND BANKRUPTCY CODE

The Chairperson apprised the members of the CoC that the Resolution Professional further intimates the member of the CoC that as per Section 34 of the Code, where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter 11 or for the pre-packaged insolvency resolution process under Chapter 1-A shall, subject to submission of a written consent by the



resolution professional to the Adjudicatory Authority in specified form, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

The authorized representative of Piramal informed that they have proposed the name of Mr. Prakul Thadi (IBBI Registration No: IBBI/IPA-002/1P-N01149/2021-2022/13806) to act as the Liquidator of the Corporate Debtor. The CoC member vide email dated June 21, 2023 had shared the consent form of Mr. Prakul Thadi with the IRP.

Accordingly, the following Resolution is placed before the Members of CoC for their consideration.

Resolution:

"RESOLVED THAT as per sub section (1) of Section 34 of the Insolvency and Bankruptcy Code, and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the approval of the Committee of Creditors of Nellai Realtors Private Limited be and is hereby accorded for the appointment of an Insolvency Professional Mr. Prakul Thadi (IBBI Registration No: IBBI/IPA-002/1P-N01149/2021-2022/13806), as Liquidator for the process of Liquidation in the matter of Nellai Realtors Private Limited, if the Adjudicating Authority passes an order for liquidation of the Corporate-Debtor-under Section 33 of the Code

RESOLVED FURTHER THAT as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016, and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the approval of



the Committee of Creditors of Nellai Realtors Private Limited be and is hereby accorded to fix the fees payable to the liquidator if an order for liquidation is passed under section 33.

RESOLVED FURTHER THAT the committee of creditors hereby authorizes Interim Resolution Professional/ Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution.

9. The proposed Liquidator, Mr.Prakul Thadi has also filed his written consent to act as the Liquidator of the Corporate Debtor and also on verification from the IBBI Website, it is seen that the Authorization for Assignment (AFA) for the said person is valid up to 06.09.2023.

10. The applicant has annexed **Form-H** and the same is placed at *Annexure-J* of the Application typeset. It is seen from **Form-H** that there are no PUFEE applications pending in this matter.

11. We have heard the submissions and perused the documents placed on record.

12. It is seen from the records that the Committee of Creditors in the 2nd COC meeting held on 19.06.2023 has unanimously resolved to liquidate the Corporate Debtor. Considering the circumstances, this Tribunal has no other option but to order for liquidation of this



Corporate Debtor viz., Nellai Realtors Private Limited under Section 33 (2) of IBC, 2016. We also find that the present matter satisfies the mandate under Section 33(2) of the IBC, 2016. The Section 33(2) of the IBC 2016 is extracted hereunder:

Section 33 (2)

“Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

13. In view of the aforesaid, we order for liquidation of the Corporate Debtor viz., Nellai Realtors Private Limited.

14. We hereby appoint *Mr. Prakul Thadi, with Reg. No. IBBI/IPA-002/IP-N01149/2021-2022/13806 (E-Mail Id: prakulthadi@hotmail.com) (AFA is valid up to 06.09.2023)* as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.



- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) 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.
- e) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

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15. The Registry is directed to communicate this order to the Registrar of Companies, concerned and to the Insolvency and Bankruptcy Board of India;

16. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

17. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

18. With the above said directions, this IA/1428/CHE/2023 filed for Liquidation of the Corporate Debtor stands allowed.

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SAMEER KAKAR
MEMBER (TECHNICAL)

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JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram Ananth V