241

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

## IA(IBC)/1146(CHE)/2021 in IBA/267/2019

*(Filed under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016)*

**S. Santha Kumar**
Resolution Professional
M/s. RP Telebuy Skyshop Private Limited
Suite No.108, First Floor, Kavery Complex,
No. 96, Nungamabakkam High Road,
Chennai – 600 034

*... Applicant*

*Along with*

## IA(IBC)/567(CHE)/2021 in IBA/267/2019

*(Filed under Section 25 of the Insolvency and Bankruptcy Code, 2016)*

**S. Santha Kumar**
Resolution Professional
M/s. RP Telebuy Skyshop Private Limited
3, Pillayar Koil Street, Kamaraj Nagar,
Chrompet, Chennai – 600 044

*... Applicant*

*-Vs-*

**Committee of Creditors of**
M/s. RP Telebuy Skyshop Private Limited
CNGSN & Associates LLP, No. 43, Flat C&D,
Swathi Court, Vijayaraghavan Road, T. Nagar,
Chennai – 600 017

*... Respondent*

*Along with*

## IA(IBC)/265(CHE)/2021 in IBA/267/2019

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

**Nandhi Brick Works**
Represented by its Partner Mr. G.V Ramesh
No.5/4, V.V. Koil Street,
Aminijikarai, Chennai – 600 029

*... Applicant*

*-Vs-*

1. **Mr. S. Santha Kumar**
   Interim Resolution Professional
   M/s. RP Telebuy Skyshop Private Limited
   B5, Patteeswarar park, North Block,
   Dr. Ramasamy Layout, Velandipalayam,
   Coimbatore – 641 025

2. **M/s. Neustar Media Private Limited**
   Represented by its Director
   Having its registered office at:
   Prince Info Park, Town A – 2nd Floor,
   B81, 2nd Main Road, Ambattur Industrial Estate,
   Chennai – 600 058

*... Respondent*

*Along with*

## Cont. P (IBC)/1(CHE)/2022 in IBA/267/2019

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 425 of the Companies Act, 2013)*

***In the matter of M/s. RP Telebuy Skyshop Private Limited***

**S. Santha Kumar**
Resolution Professional
M/s. RP Telebuy Skyshop Private Limited
Suite No.108, First Floor, Kavery Complex,
No. 96, Nungamabakkam High Road,
Chennai – 600 034

*... Applicant*

-Vs-

1. **Vasanth Chandrasekhar**
No.5/11, Shrinivasa Apartment
MMTC Colony, Main Road,
Nanganallur, Chennai – 600 061

2. **Chandrasekhar Balasubramanyan**
B6/3, Door No.2, NCBS Colony, 2nd Main Road,
Near ICICI Bank, Nanganallur, Chennai – 600 061

*... Respondent*

*Order Pronounced on* ***22nd November 2023***

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**
**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant :* *S. Sathyanarayanan, Advocate*
*For Liquidator in IA(IBC)/1146/CHE/2021;*
*IA(IBC)/567(CHE)/2021; and*
*Cont. P (IBC)/1(CHE)/2022*

*A. Vikash, Advocate*
*For Applicant in IA(IBC)/265(CHE)/2021*

## ORDER

## *(hearing conducted through VC)*

IA(IBC)/1146(CHE)/2021 is an Application filed by the Resolution Professional of the Corporate Debtor viz. M/s. RP Telebuy Skyshop Private Limited under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016, seeking relief as follows;

*a) Pass an order of Liquidation of the Corporate Debtor viz. M/.s RP Telebuy Skyshop Pvt. Ltd.*

*b) Appoint any Insolvency Professional as Liquidator;*

*c) Pass an Order cessation of the moratorium declared under Section 14 of IBC; and*

*d) Pass such other orders in the interest of Justice.*

2. IA(IBC)/567(CHE)/2021 is an Application filed by the Resolution Professional of the Corporate Debtor viz. M/s. RP Telebuy Skyshop Private Limited under Section 25 of the Insolvency and Bankruptcy Code, 2016, seeking reliefs as follows;

*a) Direct the Respondent to pay the agreed remuneration to the Applicant;*

*b) Direct the Respondent to reimburse the expenses incurred by the Applicant; and*

*c) Pass such other and further reliefs as this Hon'ble Tribunal may deem it fit and appropriate and thus render justice.*

3. IA(IBC)/265(CHE)/2021 is an Application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, seeking relief as follows;

*a) Direct the 1st Respondent Resolution Professional not to take any steps in guise of the said order in IBA No.267/2019 dated 14.02.2020, thereby causing hardship and irreparable loss to the Applicant herein and further restrain the 1st Respondent from entering the Applicant's premises and direct the 1st Respondent Resolution Professional to hand over the said premises to the Applicant by taking away the goods of the 2nd Respondent, if desired and thus render justice.*

*b) Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.*

4. Cont. P (IBC)/1(CHE)/2022 is a Contempt Application filed by the Liquidator of the Corporate Debtor viz. M/s. RP Telebuy Skyshop Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 425 of the Companies Act, 2013 seeking relief as follows;

*a) Pass an order punishing the Respondents for the wilful, intentional disobedience and contempt to comply with the order dated 28.09.2021 passed by this Hon'ble Tribunal in IA/1200/20;*

*b) Direct the Respondents to provide for the documents / records sought for in IA/1200/2020; and*

*c) Pass such other orders in the interest of justice.*

5. The Corporate Insolvency Resolution Process ('CIRP') in respect of Corporate Debtor was initiated on 14.02.2020 and one Mr.S. Palaniappan was appointed as the "Interim Resolution Professional".

6. It is stated that consequent to the initiation of CIRP, paper publication was effected by the IRP and the COC comprising of sole financial creditors was constituted by the then IRP. Further, this Tribunal in an application filed by the sole financial creditor of the Corporate Debtor, vide its order dated 24.06.2020 appointed the Applicant herein viz. S. Santha Kumar as the Resolution Professional of the Corporate Debtor.

7. It is submitted that the Resolution professional was not able to obtain any relevant information or records regarding the Corporate Debtor from the Public portals of Income Tax and Ministry of Corporate Affairs due to the non- compliance of the Suspended Board members. It is submitted that even after persistent follow up by the RP, the Suspended Board Members did not provide the required information/documents. It is submitted that the RP was unable to verify the claims submitted due to the non- availability of the books of accounts of the Corporate Debtor.

8. It is submitted that owing to the non-cooperation of the suspended Board Members, the RP filed IA/1200/2020 under Section

19(2) of the Code before this Tribunal. This Tribunal vide its order dated 04.05.2021 allowed the said Application and directed the Respondents to make available the documents to the RP. However, inspite of orders being passed, the suspended directors failed to comply with the same. Hence, the RP moved Cont. P (IBC) /1 (CHE)/2022 before this Tribunal to punish the Respondents.

9. It is submitted that the CoC of the Corporate Debtor comprises of the following;

| S. No. | Name of Creditor | Voting Share (%) |
|---|---|---|
| 1 | V. Vivek Anand | 87.71% |
| 2 | M/s. Advay Bhandari Educational Trust | 12.29% |

10. It is submitted that the subsequent to the initiation of CIRP, the pandemic began and every economic activity came to standstill. Due the prevailing pandemic and the consequential lockdowns imposed by the central and state government considerable time was lost in carrying out the CIRP activities

11. It is submitted that the Committee of Creditors deliberated about the lock down and CIRP activities in its 4th COC Meeting held on

07.05.2021 and resolved to approach this Tribunal seeking for exclusion of 272 days from the computation of CIRP period lost due to covid-19 pandemic and also to seek for further extension of 90 days as provided under Section 12 of the Code to decide on the future course of action and to complete the CIRP of the Corporate Debtor effectively. An application was filed before this Tribunal for exclusion and extension of CIRP vide IA/513/2021.

12. It is stated that in view of the total non-cooperation on the part of the Suspended Board Members, and non- availability of necessary information/documents of the Corporate Debtor, the CIRP could not be proceed with the submission of Information Memorandum, Appointment of Valuers and Publishing of EOI.

13. It is submitted that the Committee of Creditors, after considering various factors including the fact that the suspended director is not co-operating and decided and passed a Resolution to liquidate the Corporate Debtor at its 6th CoC Meeting held on 28.10.2021. It is submitted that the COC in its 6th Meeting held on 28.10.2021 unanimously resolved to liquidate the Corporate Debtor under Section

33(2) of IBC and directed the Applicant herein to approach this Tribunal with an Application seeking directions for liquidation of the Corporate Debtor.

14. It is stated that after filing of an Application for Liquidation of the Corporate Debtor, the said IA/513/2021 was dismissed as infructuous by this Tribunal vide order dated 02.11.2021.

15. It is submitted that the Resolution Professional does not want to continue as the Liquidator in respect of the Corporate Debtor.

**IA/567/CHE/2021**

16. This is an Application filed by the RP of the Corporate Debtor to direct the Respondent / CoC to pay the agreed remuneration. It is submitted that the Applicant / RP conducted a total of 4 CoC meetings. The Respondent / CoC had agreed to pay a remuneration of Rs.60,000/- per month to the Applicant. The same was approved by the CoC in its 2nd meeting held on 28.09.2020. Thus, it is submitted that the fee payable to the Applicant / RP upto May 2021 amounts to Rs.7,78,800/- (inclusive of GST).

17. It is submitted that the Applicant has incurred various expenses which are required to be reimbursed, which come to the tune of Rs.1,33,000/-.

18. The Respondent / CoC has filed its counter. It is stated that the Respondent has received an email from the erstwhile RP in the month of February 2020 asking all the creditors to file the claim. The Respondent had received request from Spacex Furniture and Nexus Worldwide who were the largest creditors that they will support a Resolution Plan to revive the Corporate Debtor. It is stated that based upon these request and assurances, the Respondent filed the claim with the IRP. It is submitted that from 23.03.2020 onwards, the entire country was affected with Covid – 19 pandemic and hence both Spacex Furniture and Nexus Worldwide did not submit any Resolution Plan in respect of the Corporate Debtor. It is submitted that the Respondent had communicated the said fact to the IRP in the month of September / October 2020 and have also volunteered to resign from the CoC.

19. It is submitted that the Respondent has no interest to support the Company directly or indirectly and that he has filed his claim to the tune of Rs.30 Lakhs and the said amount is already at risk.

20. Heard the submissions made by the Learned Counsel for both the parties and perused the records. It is seen that the Financial Creditors in the 1st CoC meeting held on 17.03.2020 had passed the following Resolution;

> *RESOLVED THAT pursuant to Section 22 (2) of Insolvency and Bankruptcy Code 2016, subject to the approval of Honourable NCLT Chennai Bench the committee hereby resolves for appointment of* ***Mr.Santha Kumar S, an insolvency professional holding Reg. No. IBBI/IPA-01/IP-P00930/2017-18/11549 as the "Resolution professional" for the purpose of CIRP of M/s. RP Telebuy Skyshop Private Limited and he shall be remunerated at Rs.60,000/-(Rupees sixty thousand only) in addition to reimbursement of all out of pocket expenses to be incurred by him in relation with CIRP.***
>
> *RESOLVED FURTHER THAT The remuneration to the IRP for the period under RP shall be paid at Rs.60,000/- (Rupees Sixty Thousand Only) till the date of appointment of new RP by the Adjudicating authority and shall be reimbursed by the COC*

21. Thus, it can be seen that the CoC has agreed for the remuneration of Rs.60,000/- per month payable to the RP and also unanimously passed a Resolution to the said effect. Further, the RP also conducted a total of

6 CoC meetings. However, due to non – cooperation on the part of the suspended Board of Directors of the Corporate Debtor, the Resolution Process in respect of the Corporate Debtor could not be achieved.

22. Be that as it may, the Respondent has filed a counter stating that they are unable to bear any expenses and that they wanted to voluntarily withdrawn their claim as a Financial Creditor. However, till date they continue to be the member of the CoC. Under these circumstances, we direct the Respondent / CoC to pay the fees of the RP at Rs.60,000/- per month as agreed and ratified by them in the 1st CoC minutes dated 17.03.2020. The fees of the RP shall be payable from the date of his appointment till the date of filing of IA(IBC)567(CHE)/2021. i.e. 22.06.2021. Further, the Respondent / CoC is directed to pay the expenses incurred by the Applicant during his tenure as the Resolution Professional. The said amount will form part of the CIRP costs. The Respondents shall pay the fess of the RP and the expenses incurred by him, within a period of 30 days from the date of this order.

23. With the above said directions of IA(IBC)567(CHE)/2021 stands **disposed of**.

**IA(IBC)/265(CHE)/2021**

24. The Applicant herein claims to be the Landowner of the property situated at No.1, Kanniamman Street, Kamarajar Nagar, Maduravoyal, Chennai – 600 095. As per the Lease Agreement dated 06.04.2019, the Applicant had let out on lease the said premises comprising of 5,000 sq. ft. at the 1st Floor in favour of M/s. Neustar Media Private Limited for the purpose of office and warehouse on a monthly rent of Rs.80,000/- plus GST as applicable from time to time.

25. It is submitted that the RP of the Corporate Debtor on 15.12.2020 by showing the order passed in IBA/267/2019 dated 14.02.2020 had unlawfully taken the possession of the said premises rented out by the Applicant to the 2nd Respondent and locked the said premises. It is submitted that the 1st Respondent / RP had taken such steps without giving any notice or by informing the Applicant. It is further submitted that the order dated 14.02.2020 passed by this Tribunal IBA/267/2019 is no way connected to the Applicant herein and the property was not rented out to the 1st Respondent / Corporate Debtor.

26. The Respondent / RP has filed reply. It is submitted that the erstwhile IRP vide letter dated 17.02.2020 sent to the suspended director, Mr. Vasanth had requested the suspended director to provide all records and documents of the Corporate Debtor. In response to the IRP letter, Mr. Vasanth undertook to provide the requested records within a specified duration. Further, in the said response the suspended director had also specified the locations of the Corporate Debtor in which its operations were carried out. Among the three addresses specified therein, the location of the Corporate Debtor at No. 1, Street, Kamarajar Nagar, Maduravoyal, Chennai 600095 was notified as the warehouse of the - Corporate Debtor and the suspended director also provided the list of stock stored in the said warehouse.

27. It is submitted that from the Stock List as on 18.02.2020 provided by Mr. Vasanth vide email dated 20.02.2020, it is given to understand that goods of the Corporate Debtor worth of Rs. 30 lakhs (approximately) are stored in the said warehouse from the initiation of the CIRP.

28. It is submitted that the Applicant along with his team and the suspended director, Mr. Vasanth, visited the warehouse and took possession of the said premises. During the said visit Mr. Vasanth had stated that the warehouse has only one entry and the other side of the premises, which was divided using a plywood, was used by some other third party. Believing it to be true, the Applicant and his team left the place after changing the lock to the front entrance of warehouse.

29. In his next visit to the warehouse on 15.12.2020, the Applicant was surprised to find out that the lock placed by the 1st Respondent was missing and the warehouse was in fact accessed by the staffs of Mr. Vasanth from the other side of the building. On further enquiry it was found that the adjacent space was also used by Mr. Vasanth for his other business activities and the plywood placed between the two premises was also removed, enabling Mr. Vasanth and his staff to have access to the Corporate Debtor's warehouse. When enquired about the same from Mr. Vasanth, he started blaming the landlord, for all the mischief. The Respondent immediately filed a complaint before the Commissioner of Police, Greater Chennai Police, against the illegal act of the suspended director.

30. It is submitted that in order to protect and preserve the assets of the Corporate Debtor and to further intimate the stakeholders of the Corporate Debtor about the initiation of the CIRP, RP had placed a notice outside the warehouse of the Corporate Debtor intimating about the initiation of the CIRP of the Corporate Debtor.

31. It is submitted that it was clearly specified that it is the warehouse of the Corporate Debtor and the goods worth Rs.30 Lakhs of the Corporate Debtor are stored in the said premises. At the time of visit to the said premises, the name board of the Corporate Debtor was also displayed in the said premises.

32. Heard the submissions made by the Learned Counsel for both the parties. In the present case it is seen that the Lease Agreement was entered into between the Applicant (Landlord) and one M/s. Neustar Media India Private Limited. There is no agreement standing in the name of the Corporate Debtor.

33. Section 14 of IBC, 2016 states as follows;

> **14. Moratorium. -**
> (1) Subject to provisions of sub-sections *(2)* and *(3)*, on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -
>
> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
>
> (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
>
> (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
>
> (d) **the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor**.

34. We are of the view that the premises of the Applicant would fall under Section 14(d) of IBC, 2016. The RP has every right to take over the said premises. Further, it is alleged that the goods of the Corporate Debtor to the tune of Rs.30 Lakhs are stored in the said premises.

35. Under these circumstances, the Application filed by the Applicant is devoid of merit and deserves to be dismissed. Accordingly IA(IBC)/265(CHE)/2021 stands **dismissed**.

**Cont. P (IBC)/1(CHE)/2022**

36. In relation to the Contempt Petition, it is seen that this Tribunal vide its order dated 07.04.2021 had directed the Respondents to make available the list of documents to the RP within a period of 2 weeks from the date of the said order. However, the Respondents have not complied with the said order. Hence, this Tribunal vide its order dated 28.09.2021 held as follows;

> *7. It is seen that inspite of the directions passed by this Tribunal on several occasions, the Respondent is obstinate and has not provided the requisite documents as sought for by the Applicant and hence the Applicant is not in a position to take forward the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. In spite of posting the matter specifically for compliance on the part of the Respondents, there was representation neither by the Respondent nor by the Counsel even. This action of the Respondents would amount to contumacious disobedience of the orders passed by this Tribunal.*
>
> *8. Since, this Application has already been allowed by the order of this Tribunal 07.04.2021, we are constrained to close the present Application, however liberty is granted to the Applicant to file a Contempt Application as against the Respondents for wilful disobedience of several orders passed by this Tribunal and upon filing of the same, necessary orders will be passed.*

37. In spite of the above mentioned order dated 28.09.2021, the Respondent did not hand over any documents to the Applicant / RP. Hence the RP has moved the present Contempt Petition.

38. Be that as it may, since we are inclined to order for Liquidation of the Corporate Debtor, we direct the Respondents to provide necessary co-ordination to the Liquidator in terms of Regulations 9 of the IBBI (Liquidation Process) Regulations, 2016. In case the Respondent fails to co-operate with the Liquidator, the Liquidator is at liberty to approach the concerned police officials, who may provide assistance to the Liquidator in this regard. With the above said observations, Cont. P (IBC)/1(CHE)/2022 stands **closed**.

**IA(IBC)/1146(CHE)/2021**

39. This is an Application filed by the RP seeking Liquidation of the Corporate Debtor. The CoC in its 6th meeting held on 28.10.2021 has resolved to liquidate the Corporate Debtor and passed the following Resolution.

> **ITEM NO. 6: TO APPROVE FILING OF APPLICATION UNDER SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 BEFORE THE HON'BLE ADJUDICATING AUTHORITY SEEKING LIQUIDATION OF THE CORPORATE DEBTOR**
>
> The Chairman sought the CoC members approval as per Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for filing

necessary application with Hon'ble NCLT for seeking approval for liquidation of the Corporate Debtor

**After discussion the following resolution is passed with 100% of the voting by the CoC members:**

*"RESOLVED THAT the approval of the CoC be and is hereby accorded to liquidate the Corporate Debtor as per the provisions of Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 and authorizes the Resolution Professional to file necessary application with an Adjudicating Authority to get necessary approval."*

40. The RP has also filed his Form – H in the prescribed format. It is stated that the Resolution Professional does not want to continue as the Liquidator in respect of the Corporate Debtor.

41. As a consequence, the Corporate Debtor is ordered for liquidation as per Section 33(1)(a) of IBC, 2016. **Asha Rathod with Registration No. IBBI/IPA001/IP-P02017/2020-2021/13108** ***(email id:- asharathod86@gmail.com)*** is appointed 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.

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

43. 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.

44. 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.

45. With the above said directions, this **IA(IBC)/1146/CHE/2021** filed for Liquidation of the Corporate Debtor stands **allowed**.

-sd-

**VENKATARAMAN SUBRAMANIAM**
MEMBER (TECHNICAL)

-sd-

**SANJIV JAIN**
MEMBER (JUDICIAL)

*Raymond*