



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM:SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**  
**SHRI PRASANTA KUMAR MOHANTY,**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 78/JPR/2020**  
**In CP No. (IB)-25/9/JPR/2019**

**UNDER SECTION 33 & 34 OF THE INSOLVENCY AND  
BANKRUPTCY CODE, 2016**

**IN THE MATTER OF:**  
**Shyam Construction Co.**

**...Operational Creditor/Applicant**

**VERSUS**

**Devi Infradevelopers Pvt. Ltd.**

**...Corporate Debtor/Respondent**

**MEMO OF PARTIES**

**Shyam Construction Company**  
Plot No. 53, Anand Nagar,  
Sirsi Road, Jaipur,  
Rajasthan - 302021

**...Operational Creditor/Applicant**

**VERSUS**

**Devi Infradevelopers Pvt. Ltd.**  
116, Anand Nagar, Sirsi Road,  
Jaipur, Rajasthan - 302021

**...Corporate Debtor/Respondent**



**AND IN THE MATTER OF**  
**IA No. 78/JPR/2020**

**Devi Infradevelopers Pvt. Ltd.**

116, Anand Nagar, Sirsi Road,  
Jaipur, Rajasthan - 302021

**...Applicant**

**VERSUS**

**Krishna Yadav (Suspended Director)**

119, Ananad Nagar, Krishna Marg,  
Vaishali Nagar, Jaipur - 302012

**Vikram Singh Yadav (Suspended Director)**

R/0 248, Nalgal Nunia, Mahindragarh,  
Haryana - 123023

**...Respondents**

**For the Applicant:**

Brij Kishore Sharma, RP.

**Order Pronounced On: 09.09.2022**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application bearing IA No. 78/JPR/2020 is filed by the Resolution Professional for Devi Infradevelopers Pvt. Ltd. ('Applicant' / 'RP') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 ('Code') for passing an order of Liquidation against Devi Infradevelopers Pvt. Ltd. ('Corporate Debtor').

2. The Adjudicating Authority *vide* order dated 31.07.2019 had admitted the Application filed by Shyam Construction Company under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of



Corporate Debtor and as a consequence thereof appointed Mr. Brij Kishore Sharma as Interim Resolution Professional ('IRP').

3. In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('COC'). The first meeting of CoC was held on 30.08.2019, wherein the CoC unanimously appointed the IRP as the Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority *vide* order dated 08.11.2019. It is also seen that the RP had appointed two registered valuers to determine the fair and liquidation values under Regulation 35 of the CIRP Regulations, 2016.

4. In the third CoC meeting held on 24.01.2020, the RP proposed the liquidation of the Corporate Debtor. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor. Copy of the minutes of the third meeting of CoC is annexed as Annexure – 2 of the Application.

5. It is submitted that the RP convened the third meeting of CoC on 24.01.2020. In the said meeting the RP placed before the CoC members, the resolution in Agenda No. 4, the details of the tentative cost of CIRP which includes Rs. 22,500/-, *i.e.* the cost of publication for inviting Expression of Interest ('EOI') for submitting a resolution plan for the Corporate Debtor. It is seen that the CoC (in Agenda No. 6) has already approved the liquidation of the Corporate Debtor. The proposal for Liquidation of Corporate Debtor was approved with 85.37% votes in favour of the resolution. Copy of the Minutes



of the third meeting and record of the summary of decision taking on the Agenda(s) through E-voting are enclosed as Annexure A and B, respectively *vide* Dairy No. 326/2020 dated 12.02.2020.

6. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows:

“33. *Initiation of liquidation.* —

(1) *Where the Adjudicating Authority, -*

- (a) *before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30, or*
- (b) *rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, if 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.*

(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 creditor 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-clause (i), (ii) and (iii) of clause (b) of sub-Section (1)”.*

6. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:



*“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.*

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

**7. The prescribed period for filing Application -** In the present case, the Application under Section 9 of the Code was admitted on 31.07.2019, and the date for completion of CIRP was 27.01.2020, within the 180 days of the timeline prescribed under the Code, and no extension was sought. Accordingly, the RP filed the present Application on 17.02.2020 in accordance with Section 33(2) of the Code. Hence, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code.

**8. Appointment of Liquidator and fee to be paid –** Section 34(1) of the Code provides that 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 shall, subject to submission of written consent act as the Liquidator for liquidation.

The relevant provisions of Section 34(1) of the Code are as follows:

*“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 II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified*



*form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”*

9. The present RP, Mr. Brij Kishore Sharma, is eligible as Liquidator. It is noted that liquidation proceedings herein, at the instance of CoC, have given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any reason to replace the existing RP. Brij Kishore Sharma, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00036/2016-17/10075, who has filed his written consent dated 13.02.2020 to act as the Liquidator *vide* Dairy No. 359/2020 dated 17.02.2020 on Page No. 31 of the Application. Thus, Mr. Brij Kishore Sharma is appointed as the Liquidator.

10. It is also seen that Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

11. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)**– The Liquidator *vide* Dairy No. 326/2020 dated 12.02.2020 has not decided on the estimated liquidation cost and decided that the liquidation costs will be taken on an actual basis which will be approved by the stakeholders’ committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation



costs. Moreover, it is seen that Mr. Brij Kishore Sharma has appointed two independent valuers for the assets of the Corporate Debtor as follows:

- A. Financial Assets (Securities), namely, Mr. Gautam Mourya and Ms. Rupal Kumbaht.
- B. Plant & Machinery, namely, Mr. Anubhav Agarwal and Mr. Lakshya Malhotra.

While submitting the fifth progress report dated 21.01.2020, reports from the valuers have been received by Mr. Brij Kishore Sharma. The Liquidator is directed to place on record the valuation reports along with the status report of the vehicles owned by the Corporate Debtor within two weeks of this order.

**12. *Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** — Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, the regulation 32A of the Liquidation Regulations, 2016 lay down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority. The COC in its third meeting has discussed selling the Corporate Debtor as a going concern, as the first option or selling the business(s) of the



Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if the Adjudicating Authority passes an order of liquidation. The RP explained that the Corporate Debtor has no means to run the business as the unit has already been closed, so it is not practically possible to explore the possibilities to sell as a going concern. With a 100% voting share, the CoC discussed that it is not possible to sell as a going concern, and they passed the resolution.

13. ***The fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)***

– It is seen that the CoC, in consultation with the resolution professional, has failed to fix the fee payable to the liquidator. Thus, the Liquidator shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.

14. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, Devi Infradevelopers Pvt. Ltd. is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

- (i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;



Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of Corporate Debtor, with the prior approval of the Adjudicating Authority;

- (ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- (iii) This order of liquidation under Section 33 of Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;
- (iv) All the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have an effect and shall be vested in the Liquidator;
- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor, and provisions of Section 19 of the Code shall apply concerning liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- (vi) The Liquidator shall publish a public announcement per

Regulation 12 of the IBBI (Liquidation Process) Regulations,



2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date;

- (vii) Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

15. *Pending Applications, if any, and its / their effect* – The learned counsel for the Applicant has stated that there are no pending applications which has any bearing on the order of liquidation.

16. In view of the foregoing, IA No. 78/JPR/2020 is disposed of. Copy of this order is supplied to the counsel for the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

DEEP  
CHANDRA  
JOSHI

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JOSHI  
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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
MOHANTY

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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**