

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

IA 2529/2022 in CP (IB) 4172/MB/2019

Under Section 33 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016.

Mr. Raj Kumar Dad

Resolution Professional of Bhattad Brothers Realty Private Limited

302 L- Wing, Shree Sankeshwar Nagar Society, SV Road Ashok Van Dahisar East ,Mumbai-400068.

...Applicant/Resolution Professional

In the matter of

Rangbarshi Projects Pvt. Ltd

... Financial Creditor

Versus

Bhattad Brothers Realty Private Limited

...Corporate Debtor

Order Delivered on 16.12.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Sh Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Anirutha Purusshotaman, Ld. Counsel

ORDER

Per: Justice P.N. Deshmukh, Member (Judicial)

1. The present Interlocutory Application is filed by Mr. Raj Kumar Dad ("the Applicant/Resolution Professional") on the orders of COC, seeking initiation of Liquidation of the Corporate Debtor under Section 33 of the Insolvency Bankruptcy Code, 2016 (hereinafter referred to as "the Code". Along with the above, the Applicant prays for the following reliefs:

A. Pass an order directing the initiation of Liquidation of the Corporate Debtor in accordance with Chapter III of Part II of the IBC, 2016;

B. Appoint Mr. Raj Kumar Dad having IBBI Registration No: IBBI/IPA-001/IP-P00537/2017-18/10962 as the liquidator of Corporate Debtor in accordance with provisions of Section 34 of the IBC 2016.

C. Pass ad-interim and interim reliefs in terms of Clause A and B.

D. Pass such other order/directions as this Bench may deem fit and proper in the facts and circumstances of the case.

2. It is the case of the Applicant that the Financial Creditor viz. Rangbarshi Projects Private Limited, had filed a Company Petition no. CP(IB)/4172/2019 against the Corporate Debtor under Section 7 of IBC 2016, for initiating a Corporate Insolvency Resolution Process against the Corporate Debtor, claiming a total default of Rs 1,62,13,611/- (Rupees One Crore Sixty-Two Lakh Thirteen Thousand Six Hundred Eleven only). This Tribunal, vide order dated 15.12.2021, was pleased to initiate Corporate Insolvency Resolution Process (referred to herein-

after as "CIRP") against the Corporate Debtor and appointed the Applicant in the present case as the Interim Resolution Professional of the Corporate Debtor. The copy of the order of this Tribunal dated 15.12.2021, initiating CIRP against the Corporate Debtor and appointing the Applicant as the IRP of the Corporate Debtor is annexed and marked as Exhibit B to the Application.

3. The Applicant submits that he had constituted the Committee of Creditors (hereinafter referred to as "CoC") of the Corporate Debtor and accordingly submitted the first list of creditors in terms of Regulation 13(2) (d) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 along with a report certifying the Constitution of CoC on 07.012022. The copy of the first list of creditors along with a report certifying the Constitution of CoC is hereto annexed and marked as Exhibit-C.
4. The Applicant caused a public announcement inviting claims from the creditors of the Corporate Debtor which was published in Financial Express newspaper (English), Mumbai edition and in Navrashtra newspaper (Marathi), Mumbai edition and on the website of the Insolvency and Bankruptcy Board of India (hereinafter referred to as "IBBI") on 18.12.2021 in accordance with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the "CIRP Regulations"). The copy of the said public announcement made in Financial Express newspaper (English), Mumbai edition and in Navrashtra newspaper (Marathi), Mumbai edition on 18.12.2021 and on the website of IBBI on 18.12.2021 is annexed and marked as Exhibit-D Colly to the Application.

5. The First meeting of the CoC was held on 14.01.2022 wherein the CoC resolved to Applicant apprised the members of the CoC regarding the steps taken by him in the CIRP of the Corporate Debtor. The CoC in the said meeting further resolved to continue the Applicant as the Resolution Professional of the Corporate Debtor. The Applicant also apprised the CoC members that two valuers were required to be appointed for determining the fair market value and liquidation value of the corporate debtor. The applicant submits that Vayam Valuers & Advisors (OPC) Private Limited, Ramesh Kumavat was appointed with 100% voting. The Copy of the minutes of the 1st meeting of the CoC held on 14.01.2022 is annexed and marked as Exhibit-E to the application.
6. The Applicant convened the Second meeting of the CoC on 22.02.2022. In the said meeting, the Applicant apprised the members of the CoC that Form G- Invitation for Expression of Interest has to be published on or before 28.02.2022. Further, the Applicant requested the CoC members to approve the Eligibility Criteria, Evaluation Matrix and RFRP. The copy of the minutes of the 2nd meeting of CoC held on 22.12.2022 and Form G- Invitation for Expression of Interest for Resolution Plan dated 28.02.2022 is annexed and marked as Exhibit-F Colly to the application.
7. During the 2nd CoC meeting held on 22.02.2022 a discussion pertaining to appointment of transaction auditor took place to which approval/confirmation received from the CoC members regarding appointment of Transaction Auditor on 02.03.2022. Furthermore, the Applicant issued an appointment letter dated 02.03.2022 to Darshan M. Pathak. Co. Chartered Accountant (Referred to herein as Transaction Auditor).

8. It is submitted that Vayam Valuers & Advisors (OPC) Private Limited, Ramesh Chand Kumawat was appointed for conducting the Valuation of Securities and Financial Asset of the Corporate Debtor. The Applicant submits that the following Fair Value and Liquidation Value asset of the Corporate Debtor have been provided by the Valuers.

Name of Valuer	Area	Fair Value (Amount in Rupees)	Liquidation Value (Amount in Rupees)
Vayam Valuers & Advisors (OPC) Private Limited	Non-Current Asset & Current Assets	1,97,05,583/-	1,00,72,311/-
Ramesh Kumavat	Non-Current Asset & Current Asset	2,09,21,018/-	1,06,55,029/-

9. It is submitted that the 3rd CoC meeting was held on 03.06.2022. The Applicant apprised the CoC that he had received the claims from 4 Financial Creditors, thus the Constitution of the Committee had been changed. The applicant further apprised the CoC that after various opportunities and efforts there was persistent non co-operation from erstwhile management, thus an application u/s 19(2) read with Section 70 and Section 60(5) of the Code was filed by the Applicant on 10.05.2022. In the said meeting, the members of the CoC resolved to seek necessary directions from the Tribunal to seek extension of 90 days for completion of CIRP of the Corporate Debtor. Pursuant to this, this

Tribunal vide order dated 20.06.2022 was pleased to extend a period of 90 days for completing the CIRP of the Corporate Debtor. The copy of minutes of the 3rd meeting of the CoC held on 03.06.2022 along with scrutinizer's report, revised list of creditors and report certifying re-constitution of the CoC dated 01.06.2022 and order dated 20.06.2022 passed by this Tribunal is annexed and marked as Exhibit-G Colly to the application.

10. The 4th CoC meeting was held on 17.08.2022. The Applicant apprised the CoC members that a claim was received from City Gold Investments Private Limited amounting to Rs.1,48,81,096 and the same is admitted by the Resolution Professional. Thus, City Gold also forms part of the CoC. The Applicant requested the CoC members that entire CIRP tenure has almost come to an end however only one CoC member has made reimbursement. Further, the applicant also mentioned that there are various third party vendors who need to be paid therefore it is important for the CoC members to reimburse their share at earliest. The Applicant informed the COC members that the Expression of Interest in Form G has been published twice i.e., on 28.02.2022 and 04.07.2022. However, none of the Prospective Resolution Applicant showed interest and as a last resort, it was further decided to liquidate the Corporate Debtor. The Applicant submits that the Resolution for liquidating the Corporate Debtor was passed by 86.34% of the members of the CoC. In the said meeting, the Applicant also apprised the members of the CoC that the transaction audit report has been received and the avoidance transactions have been identified by the Transaction Auditor. The Copy of the minutes of the 4th meeting of the CoC held on 17.08.2022 along

with Scrutinizer's Report, Form G dated 04.07.2022 is annexed and marked as Exhibit-H Colly to the application.

11. The Transaction auditor after going through books of the Corporate Debtor, prepared the Transaction Audit Report dated 18.08.2022. The Copy of Transaction Audit report dated 18.08.2022 is annexed and marked as Exhibit I to the application.
12. The Applicant has preferred an Application under Sections 43, 44, 45 and 50 read with Section 60(5) of the Insolvency and Bankruptcy Code read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking necessary directions against the Respondents for indulging in Preferential Transactions and Reversal of the same, which is pending for adjudication.

GROUND FOR SEEKING LIQUIDATION OF THE CORPORATE DEBTOR:

13. Applicant submits that he has duly carried out his duties in accordance with the provisions of the IBC 2016 as well as the regulations framed thereunder and has conducted the CIRP of the Corporate Debtor in good faith and in the best interests of all the stakeholders.
14. The Applicant had caused to publish Form-G Inviting Expression of Interest on 28.02.2022 and 04.07.2022. However, he did not receive any interest from any Prospective Resolution Applicant and hence it was decided to liquidate the Corporate Debtor which was approved by 86.34% of the members of the CoC in its 4th meeting held on 17.08.2022. Therefore, as per the provisions of section 33 of the IBC 2016, an order of liquidation is required to be passed against the Corporate Debtor.

15. The Applicant proposed himself to act as the Liquidator of the Corporate Debtor and accordingly the proposed Liquidator has given written consent to act as the Liquidator of the Corporate Debtor. The Copy of the written consent dated 05.09.2022 of the proposed Liquidator, Mr. Raj Kumar Dad is hereto annexed and marked as Exhibit-J.
16. Taking into consideration the provisions of Section 33 of the Code and also guided by the decision of the Hon'ble Supreme Court in the matter of *Mr. K. Sasidharan Vs. Indian Overseas Bank (2019) SCC OnLine SC 257*, this Tribunal orders for the liquidation of Corporate Debtor. This is in terms of prayer which is made in clause (A) of the prayer clause by the Resolution Professional.
17. Having considered the facts stated as aforesaid and totality of the circumstances this Bench is of the view that there is no alternative but to order that the Corporate Debtor to be liquidated.
18. The Resolution Professional has given his consent to act as liquidator in Form 2, the same is on record. Therefore, we hereby appoint **Mr. Raj Kumar Dad**, having IBBI Registration No. IBBI/IPA-001/IP-P00537/2017-18/10962 as the Liquidator of the Corporate Debtor in accordance with Section 34 of the Code.
19. This order for liquidation shall deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator.
20. The fees payable to the Liquidator shall be in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016. The

Liquidator shall submit progress reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016.

21. The Liquidator is hereby authorized to represent the Corporate Debtor before the Government Authorities, if need be.
22. The Liquidator shall pursue and represent the Corporate Debtor in all the ongoing applications as and when required.
23. With the aforesaid observations Application IA No. 2529 of 2022, u/s 33 stands disposed of as Allowed.
24. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

16.12.2022
DSB

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item 41

IA 1645/2022 IN C.P. (IB)/4172/(MB)2019

CORAM:

SH. SHYAM BABU GAUTAM
HON'BLE MEMBER (T)

JUSTICE P.N. DESHMUKH (Retd.)
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING ON **16.12.2022**

NAME OF THE PARTIES: - **Rangabarshi Projects Pvt Ltd V/s Bhattad
Brothers Realty Pvt Ltd**

Appearance (via video-conference):

For the Applicant : None present
For the Respondent : None present

Section 60(5) & 7 of the Insolvency & Bankruptcy Code, 2016

ORDER

Due to paucity of time, the matter could not be taken up today. Accordingly, list this matter on Board on 01.02.2023, for further consideration and hearing.

Sd/-

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

JUSTICE P.N. DESHMUKH
Member (Judicial)

Vedant Kedare