

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
NEW DELHI, (Bench-IV)**

**IA NO. 3339 OF 2021**

**IN**

**COMPANY PETITION NO.(IB)/1581/(ND)/2019**

[An application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor]

**IN THE MATTER OF:**

MR. PRADEEP UPADHYAY

... Applicant/ Resolution Professional

**IN THE MATTER OF:**

ROOFS AND CEILINGS (I) PVT.LTD.

... Operational Creditor/Applicant

**Vs.**

DUGAL ASSOCIATES PVT. LTD.

... Corporate Debtor /Respondent

**Order Pronounced on: .01.2022**

**Coram:**

**Dr.DEEPTI MUKESH  
HON'BLE MEMBER (JUDICIAL)  
SUMITA PURKAYASTHA  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

Mr. Pradeep Upadhyay ...Applicant/Resolution Professional  
B-2/42, Sector-18, Rohini, Delhi-110089  
Mobile:9811130194  
E-mail: [pradeepupadhyayibbi12233@gmail.com](mailto:pradeepupadhyayibbi12233@gmail.com)

Vs.

1. Devyani Dugal  
A-22, Westend Colony,  
Rao Tula Ram Marg, Delhi-110021  
Email: [devyanidugal@gmail.com](mailto:devyanidugal@gmail.com)
2. Anil Dugal  
A-22, Westend Colony,  
Rao Tula Ram Marg, Delhi-110021  
Email: [freelander7462@gmail.com](mailto:freelander7462@gmail.com), [anil@dugalassociates.com](mailto:anil@dugalassociates.com)
3. Aman Tripathi  
Flat No.D-12, Seema Apartments,  
Sector-11, Dwarka, Plot No.7,  
Dwarka, Sector-6, Delhi-110075  
Email: [aman\\_tripathi93@hotmail.com](mailto:aman_tripathi93@hotmail.com) ...Respondents



Present:

For COC:

For RP: Mr. Sumit Shukla, Adv. along with Mr. Sanjeev Panda, Adv.

For Respondent:

**ORDER**

**Per: Dr. Deepti Mukesh, Member (Judicial)**

1. This is an application filed by the Resolution Professional (hereinafter referred to as "RP") under Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) for passing an order of liquidation of the Corporate Debtor, Dugal Associates Pvt. Ltd.
2. The facts, in brief, are that the Operational Creditor, Roofs and Ceilings (I) Pvt. Ltd. had filed an application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor, Dugal Associates Pvt. Ltd, which was admitted vide order dated 11.12.2019 and Mr. Pradeep Upadhyay was appointed as Interim Resolution Professional (IRP).
3. The IRP under Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on 09.01.2020.
4. In terms of Section 18(1)(a) of the code, the RP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the COC) on 28.01.2020 which comprised of two members, (Financial Creditors) viz; Federal Bank Ltd. having 96.42% voting share and Punjab National Bank having 3.585 voting share. In the 1<sup>st</sup> meeting of COC held on 05.02.2020, the IRP was appointed as RP on 17.02.2020.

5. Further, the applicant submits that in the 3<sup>rd</sup> COC meeting proposed to publish Form G(Invitation for EOI) in the first week of April 2020 but could not be published due to Covid -19 pandemic lockdown. However, in its 4<sup>th</sup> COC meeting held on 10.06.2020, approved the publication of Form G and authorised the RP to publish the same on 15.06.2020.
6. That the COC in its 5<sup>th</sup> meeting held on 09.07.2020, was of the opinion that the responses received from the interested parties, were not adequate and again the fresh invitation for the EOI was proposed to be issued and the FORM G was published again on 15.07.2020.
7. That the COC in 7<sup>th</sup> meeting held on 21.04.2021, it was noted that the prospective resolution applicant after studying the Request for Resolution Plan (RFRP) and Information Memorandum had refused to participate in Resolution Process as they did not find it feasible in the current scenario. However, the COC members decided publication of Form G again which was published on 23.04.2021 with the last date of submission being 22.06.2021.
8. The applicant submits that pursuant to Invitation of EOI published on 23.04.2021, two eligible prospective resolution applicants had shown their interest. However, no resolution plan was received by RP. Hence, the COC in its 8<sup>th</sup> meeting held on 07.07.2021, was of the view that there is hardly any chance of receiving any resolution Plan and it was recommended that an application be made u/s 33(2) of the code for liquidation of the Corporate Debtor. The said

resolution was passed with 96.42% voting share. Further decided to appoint RP as Liquidator and RP has given consent vide Form AA to act as Liquidator dated 07.07.2021 along with authorization for assignment in Form B issued by IBBI are annexed with this application.


9. Two valuation reports filed by the respective registered valuers were placed before the COC. The RP has filed the Compliance Certificate in Form H wherein as per both valuation reports, the average fair value is Rs.9,41,88,027/- and average liquidation value is Rs.6,21,30,842/- of the Corporate Debtor.
10. It is further submitted by the applicant that vide orders dated 03.09.2020 and 01.04.2021 the exclusion of 108 days and 216 days from the calculation of the CIRP period was allowed respectively. An extension of 90 days of the CIRP period, was also granted.
11. The provision of section 33 of the IB Code is reproduced hereunder:
- (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, it 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 creditors [approved by not less than 66% 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).

[ Explanation: for the purposes of this sub-section, 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]

- (3) Where the resolution plan approved by the Adjudicating Authority [under Section 31 or under sub-section (1) of Section 54L] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for liquidation order as referred to in sub-clause (i), (ii) and (iii) of Clause (b) of sub-Section (1).
- (4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-section (i), (ii) and (iii) of Clause (b) of sub-Section (1).
- (5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator, on behalf of the corporate debtor with the prior approval of the Adjudicating Authority.

- 
- (6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
  - (7) The order for liquidation under this section shall be 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.

12. Considering the documents and submission made, since the COC in

its commercial wisdom has decided to take the corporate debtor in

liquidation, we are of opinion that the decision of COC should not be interfered. The present application seeking liquidation of the corporate debtor Dugal Associates Pvt. Ltd., in the manner laid down in the Chapter-III of the Insolvency and Bankruptcy Code, 2016 is allowed.

13. We appoint RP Mr. Pradeep Upadhyay who has also consented to act as a Liquidator and filed his consent Form AA, having registration no. IBBI/IPA-001/IP-P01415/2018-19/12233, having an address at B-2/42, Sector-18, Rohini, Delhi-110089, as liquidator in terms of Section 34(1) of the Code with the following directions:

- a) The liquidator to issue a Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- b) The liquidator 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.
- c) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions etc.

d) This order is 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 to 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.

14. As a consequence of the application being admitted the moratorium as envisaged 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.

15. A copy of the order shall be communicated to the applicant and the corporate debtor as well as to the liquidator above named and intimate of the said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send a compliance report to the Registrar, NCLT.

-Sd-

**(SUMITA PURKAYASTHA)**  
**MEMBER (TECHNICAL)**

Rahul/LRA

-Sd-

**(DR. DEEPTI MUKESH)**  
**MEMBER (JUDICIAL)**

Page 8 of 8