

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**IA NO.201/2021
IN
CP (IB) NO.381/ALD/2018**

In the matter of

*An application under Section 33(2) of the Insolvency & Bankruptcy
Code, 2016*

In the matter of:

ASHOK KUMAR JUNEJA

M/s Aftek Infrastructure Private Limited,
1203-1205, Vijaya Building,
17 Barakhamba Road, Connaught Place,
New Delhi-110001

..... Applicant/ Resolution Professional

In the matter of:

PANKAJ SINGH & ANR.

..... Financial Creditor

Versus

M/S AFTEK INFRASTRUCTURE PRIVATE LIMITED

.....Corporate Debtor

Order pronounced on 25th July, 2023

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearance:

For Applicant/ Resolution Professional

: Sh. Sumit Virmani, Adv.

ORDER

- 1.** The present application (IA No.201/2021) has been filed by the Resolution Professional (RP) of the Corporate Debtor M/s Aftek Infrastructure Private Ltd, seeking direction for initiating liquidation proceedings of the Corporate Debtor in terms of Section 33(2) of the Code and to appoint Mr. Anil Kumar Mittal, as the Liquidator of the Corporate Debtor.
- 2.** Briefly stated facts of the case are that in pursuance of an application filed U/s 7 by the Financial Creditors, the application was admitted *vide* order dated 23.10.2019 passed by this Tribunal and an Interim Resolution Professional (IRP) was appointed to conduct the CIRP of the Corporate Debtor. In pursuance of the admission order, the public announcement of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, appointment of IRP and invitation of claims from the creditors was made in FORM-A on 27.10.2019 in two newspapers namely 'Financial Express' in English and 'Jansatta' in Hindi.
- 3.** It is stated that the Form-G could not be published for inviting Expression of Interest from the Prospective Resolution Applicants due to non-availability of sufficient

information, on the basis of which the PRA could have submitted their Resolution Plan.

4. Therefore, the RP informed the CoC that there is no possibility of receiving of any Resolution Plan from any Resolution Applicant, thus, the CoC in its 6th meeting dated 21.05.2021 approved a resolution with 100% voting share *vide* agenda item no.14 to file an application with this Tribunal U/s 33(2) of the Code for initiation of liquidation of the Corporate Debtor. The minutes of the 6th CoC meeting has been attached as Annexure-15 with the present application. The relevant part of the agenda item no.14 passed thereon is as under :-

“Item No. 14 : To consider the filing of an application under Section 33 of Insolvency and Bankruptcy Code, 2016 for liquidation of the CD.

The Chairman informed the CoC that the CIRP of the CD commenced on 23.10.2019. Though more than 575 days has passed as on 20th May, 2021 since the commencement of CIRP but no significant activities could be taken up during these 575 days due to following reasons:

A. Non-updation of Information Memorandum due to the below mentioned reasons :

- i) Non availability of assets and liabilities with such description, as on the insolvency commencement date, as are*

generally necessary for ascertaining their values;

- ii) Non availability of the latest annual financial statements;*
- iii) Non availability of audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;*
- iv) Non availability of book of accounts of the CD;*
- v) Non availability of particulars of a debt due from or to the corporate debtor with respect to related parties;*
- vi) Non availability of details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;*
- vii) Non availability of the number of workers and employees and liabilities of the corporate debtor towards them.*

B. No Form G could be published for inviting Expression of Interest from Resolution Applicants due to non-availability of the sufficient information on the basis of which the Resolution Applicants could have submitted their Resolution Plan.

C. Non handing over the possession of the project site to the RP as the possession of the project site is with the Lucknow Development Authority (LDA). The RP has filed an application with the Hon'ble NCLT on 16.06.2020 to take the possession of the said project site from LDA. The application is still pending for adjudication due to COVID-19 and lockdown conditions.

D. Non feasibility of the valuation of the Assets of the CD due to non-possession of the project site with the RP. The valuers cannot enter in the premises of project site for valuation as the premises is sealed by Lucknow Development Authority (LDA).

E. Non-co-operation of the suspended directors and personnel of the Corporate Debtor and non-adjudication of an application filed under section 19(2) of IBC, 2016 by the Hon'ble NCLT.

The RP further informed the CoC that in view of the above situation, there is no possibility of any Resolution Plan from any Resolution Applicant in respect of CD. Therefore, the CoC may decide to file of an application with the Hon'ble NCLT, Allahabad Bench under Section 33(2) of the IBC, 2016 for initiation of liquidation of the Corporate Debtor.

The following proposed Resolution was placed before the meeting to consider and, if thought fit, to pass with or without modification(s):

RESOLVED THAT *consent of the Members of the CoC of the Corporate Debtor be and is hereby accorded to proceed for Liquidation of the Corporate Debtor i.e., Aftek Infrastructures Private Limited under Section 33(2) of IBC, 2016 subject to the approval of the Adjudicating Authority.*

RESOLVED FURTHER THAT *an application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, before the Adjudicating Authority for imitiation of Liquidation of the Corporate Debtor i.e. Aftek Infrastructures Private Limited be filed by the Resolution Professional and he is hereby authorized to do all such deed(s)/act(s)/action(s) to give effect to the same."*

RESOLVED FURTHER THAT *the consent of the Members of the CoC of the Corporate Debtor*

be and is hereby accorded for continuation of payment of professional fee, legal fee and other expenses incurred by the Resolution Professional at the existing level and inclusion thereof in as CIRP Cost till liquidation order is passed by the Adjudicating Authority and the charge is handed over by the RP to the incumbent Liquidator.”

The Committee of Creditors with voting power of 72.06% is represented by their Authorized Representative, Mr. Anil Tayal. The minutes of the meeting held on 21st May, 2021 before e-voting were sent to Authorized Representative who sought the e-voting of the Class of Creditors.

The Authorized Representative has presented the e-voting results of Class of Creditors as mentioned below:

<i>Agenda item no.</i>	<i>Voting Resolution</i>	<i>Real Estate Allottees (Total No.)</i>	<i>Real Estate Allottees (Total Voting Share%)</i>	<i>Real Estate Allottees casted their vote (Voting Share%)</i>	<i>Real Estate Allottees voted in favour (Voting Share%)</i>	<i>Real Estate Allottees voted against (Voting Share%)</i>	<i>Real Estate Allottees who abstained from voting (Voting Share%)</i>	<i>Real Estate Allottees who did not vote (Voting Share%)</i>	<i>Vote of AR, Mr. Anil Tayal in terms of Section 25A (3A) of IBC, 2016</i>
14	<i>To consider the filing of an application under Section 33 of Insolvency and Bankruptcy Code, 2016 for liquidation of the CD</i>	13	72.06	21.07	21.07	0	0	50.99	<i>Approved with voting share of 72.06%</i>

The sole Financial Creditor Punjab National Bank representing 27.94% of the total Voting share has also voted in favour of the above resolution.

Thus, E-voting Results are as under:

VOTED IN FAVOUR: 100%

VOTED AGAINST: 0.00%

*The above Resolution is hereby **approved** with 100% voting in favour of Resolution.”*

- 5.** Therefore, in the 6th CoC meeting which was convened on 21.05.2021, the CoC decided to proceed with the liquidation of the Corporate Debtor with 100% voting share as there was no Resolution Plan. The RP also submitted to CoC that he was not willing to function as Liquidator and therefore proposed Mr. Anil Kumar Mittal, to act as Liquidator of Corporate Debtor, whose consent has also been attached in terms of Section 34(1) of the Code, which is annexed as Annexure 17 with the present application.
- 6.** As stated earlier, the present IA No.201/2021 has been filed by the Resolution Professional for seeking liquidation of the Corporate Debtor. Though, there was no respondents impleaded in this IA for seeking liquidation of the Corporate Debtor in view of the fact that this application is simplicitor moved by the Resolution Professional for seeking liquidation, however, the reply/objection was filed by one M/S Yazdan Constructions which is stated to be a partnership firm engaged in the business of real estate. It was stated in this reply/objection that they have entered into a builder agreement on 31st July 2015 with the Corporate Debtor whereby they undertook the responsibility of construction of the multistoried residential building on

the property owned by the Corporate Debtor. The relevant prayer sought in the said reply/objection is as under :-

- a) *Grant some time to the answering Respondent/ M/s Yazdan Constructions to complete the said project and hand over the possession to the homebuyers;*
- b) *Protect the interest of the answering Respondent/ M/s Yazdan Constructions and its homebuyers to the extent of their share of 55% of the flats in the said project and pass any order only in respect of the 45% share of the Corporate Debtor.*

7. We have perused the present application i.e. IA No.201/2021 as well as the reply/objection of the said construction company M/s Yazdan Constructions. It is found that the said construction was being done by M/s Yazdan Constructions in the premises which is stated to have been under the possession of Lucknow Development Authority. A separate Application No.143/2020 has been filed by the Resolution Professional under Section 19(2) read with 60(5) of the Code. Thus, invoking two different sets of provisions of the Code for different sets of the respondents. Whereas, the provisions of Section 19(2) of the Code were invoked qua Respondents No. 1 to 4, the provisions of Section 60(5) of the Code were invoked qua Respondents No.5 and 6 i.e. M/s Yazdan Constructions and Lucknow Development Authority respectively. It is under the later part

of the provisions i.e. Section 60(5) of the Code that the prayers in IA No.143/2020 have been sought against Respondent No.5 to provide requisite information and to stop construction at the premises by M/S Yazdan Constructions and the prayer against the Respondent No.6 i.e. Lucknow Development Authority has been sought to the extent of hand over the possession of the Corporate Debtor project site from the Lucknow Development Authority. The said application is already pending adjudication.

- 8.** However, the Lucknow Development Authority in their reply to this IA NO.143/2020 has filed reply to the extent saying that the Competent Authority of the Lucknow Development Authority has sealed the premises. In view of the stated averment made in the reply to the IA No.143/2020 made by the Lucknow Development Authority as well as the oral submissions made by the Ld. Counsel representing the Lucknow Development Authority during the course of hearing of the present IA No.201/2021, it was pointed out that the present premises are sealed. Moreover, the entire assets of the Corporate Debtor are therefore under the custody of the Resolution Professional who has moved the present IA for seeking liquidation of the assets of the

Corporate Debtor, in view of the circumstances already discussed hereinabove as well as the Resolution passed by the Committee of Creditors in its meeting held on 21st May, 2021.

9. In view of this, we are of the considered opinion that there is no merit in the reply/objection of the M/S Yazdan Constructions to be granted any relief with regard to continuing construction in the said premises, as the same is sealed and assets of Corporate Debtor are under CIRP for which RP is the custodian.
10. Now, coming back to the averments in the present application i.e. IA No.201/2021 for seeking liquidation of the assets of the Corporate Debtor, we have perused the record and also, we have heard the submissions made by the Ld. Counsel representing the RP.
11. Section 33(2) of the Code, under which the present application has been moved, is reproduced below :-

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 1 [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).

- 12.** In view of the stated position as averred in the application and submitted by the Ld. Counsel for the RP as well as the provisions of Section 33 of the Code, we are inclined to allow the present application. We have found that there is no Resolution Plan received as “Form-G” could not be published for inviting Expression of Interest from the Prospective Resolution Applicants due to non-availability of sufficient information. It was thereafter, only as per the commercial wisdom of the CoC in its 6th CoC meeting held on 21.05.2021, the conscious decision has been taken for initiating liquidation process and accordingly, the RP had been directed to move the present application. It has been stipulated U/s 33(2) as reproduced above that where the RP during the CIRP intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less than 66% (sixty-six) per cent of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order. In the present case, the Resolution to initiate the liquidation process has been taken by the CoC in its 6th CoC meeting as referred to above, by a majority of

100%, thus, meet the bench mark of percentage share of voting prescribed under the aforesaid provisions of the Code.

13. Section 33(2) of the Code empowers the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.

14. In view of our foregoing discussions, we pass the following orders :-

a. Prayers as sought for in IA.No.201/2021 filed by Mr. Ashok Kumar Juneja, RP of M/s Aftek Infrastructures Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

b. Mr. Anil Kumar Mittal [Reg No.IBBI/IPA-003/IP-N00305/2020-2021/13289], email:

fcs.akmittal@gmail.com, Phone: 9619773811, having address at House No.212/2, Street No.4, Padam Nagar, Kishan Ganj, Near Hindi Academy Padam Nagar, North, National Capital Territory of Delhi-110007, whose name has been proposed by CoC, is hereby appointed as Liquidator as provided under section 34(1) of the Code subject. The consent in "Form AA" of Mr. Anil Kumar Mittal to act as a Liquidator of the Corporate Debtor has been attached as Annexure No.17 with the present application. The credentials of the Mr. Anil Kumar Mittal, who would act as a Liquidator, have been verified by the LRA Ms. Aditi Kharbanda, from the IBBI website, and are found to be correct and valid and his AFA is also found valid upto 22.11.2023.

- c.** The Liquidator is directed to forthwith take into his custody all the assets, properties and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under Section 35(1)(b) & (d) of the Code and authority, if any having control over such assets/properties would

facilitate the Liquidator in getting custody of such property as per law.

- d.** The Liquidator shall first try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and (f) of IBBI (Liquidation Process) Regulations, 2016. The Liquidator shall initiate liquidation process as envisaged under Chapter- III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- f.** All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- g.** The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

- h.** On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- i.** In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continues during the liquidation process by the Liquidator as a going concern.
- j.** In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kanpur, Uttar Pradesh, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Uttar Pradesh, Kanpur.

- k.** The Stakeholder Consultation Committee (SCC) would be constituted as per Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 and the list of SCC would be filed before this Tribunal in accordance with the provisions of the Code and Regulations made therein.
- l.** Fees of the Liquidator are to be paid in accordance with Liquidation Process Regulations, 2016, and to be decided in the meeting of SCC.
- 15.** In view of the aforesaid order, the IA No.201/2021 stands disposed off accordingly.
- 16.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 17.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

-Sd-

(Ashish Verma)
Member (Technical)

25th July, 2023

-Sd-

(Praveen Gupta)
Member (Judicial)