



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-1526/2021

In

(IB) -297(ND)/2019

Order under Section 33 of the Insolvency and Bankruptcy Code, 2016.

**IN THE MATTER OF:**

**Ms. DIVYA SHARMA**

**..... Financial Creditor**

**VERSUS**

**M/s. EFFERENT REALESTATE PRIVATE LIMITED**

**..... Corporate Debtor**

**AND IN THE MATTER OF:**

**Mr. GAURAV KATIYAR**

Resolution Professional of M/s. Efferent Realestate Private Limited

**..... Applicant**

**VERSUS**

**Mr. PRATEEK SALUJA & Anr.**

**1. Mr. PRATEEK SALUJA**

Ex-Director and Shareholder in Corporate Debtor

**2. Ms. NEHA SALUJA**

Ex-Director and Shareholder in Corporate Debtor

**3. Mr. ANUBHAV MUNJAL**

Ex-Employee of the Corporate Debtor

**..... Respondents**

**Order Pronounced On: 31.10.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Rishabh Jain, Adv. for RP

**IA-1526/2021 In (IB) -297(ND)/2019**

**Date of Order: 31.10.2023**

For the Respondents :

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed by Mr. Gaurav Katiyar, the Resolution Professional of M/s. Efferent Realestate Private Limited, the Corporate Debtor on 20.03.2021 before this Adjudicating Authority under Section 33 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") seeking initiation of liquidation proceedings of the Corporate Debtor, for seeking the following relief:

*"a. pass the liquidation order u/s 33 of the Code for initiation of liquidation of the Corporate Debtor and appoint an Insolvency Professional, from the panel of this Hon'ble Tribunal, as Liquidator of the Corporate Debtor;*

*b. pass the order to the effect that the Professional Fee of Resolution Professional amounting to and CIRP Expenses of Rs. 7,52,147/- forms part of the Insolvency Resolution Process cost is to be paid in terms of section 53 of the Code;*

*c. pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

2. (IB) -297(ND)/2019 was filed by Ms. Divya Sharma ("Financial Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Efferent Realestate Private Limited ("Corporate Debtor") under Section 7 of the Code before this Adjudicating Authority (Court-III). This Adjudicating Authority (Court-III) vide order dated 20.12.2019 was pleased to admit the application and initiated CIRP against the Corporate Debtor and appointed the Interim Resolution Professional ("IRP"). Subsequently, the IRP was appointed as the Resolution Professional ("RP").

3. The IRP made a public announcement for the invitation of claims in Form-A dated 29.12.2019. The IRP/RP had received 1 claim from Financial Creditors aggregating Rs. 94 Lakhs



(Approximately). In compliance of Section 25(2)(e) of the Code, the Resolution Professional has maintained a list of creditors. The Resolution Professional has convened and chaired three meetings of the committee of creditors on 27.01.2020, 13.08.2020 and 03.03.2021 as contemplated by Section 25(2)(f).

4. Due to non-cooperation from ex-management, due to lack of credible financial information and in the absence of audited financial statements for the last two years and books of accounts of the Corporate Debtors, the information memorandum in accordance with Section 29 [contemplated by Section 25(2)(g)] could not be prepared by the Resolution Professional.
5. In the absence of any information memorandum, the Resolution Professional could not invite prospective lenders, investors and resolution applicants. Hence, Invitation of Expression of Interest, Publication of Expression of Interest in Form G, Preparation of Provisional list of Resolution Applicants, Preparation of Final list of Resolution Applicants, Issue of Request for Resolution Plan along with evaluation matrix and Submission of Resolution Plan was not done.
6. It is further submitted that due to non-cooperation from ex-management, due lack of credible financial information and in the absence of financial statements and books of accounts of the Corporate Debtors, the resolution professional could not examine any avoidance transactions in accordance with chapter-III of the Code.
7. The Corporate Insolvency Resolution Process (180 days), as given by Section 12 of the Code expired on 24.08.2020 and the Resolution Professional filed I.A. No-3427 (ND)/2020 before this Adjudicating Authority wherein the Corporate Insolvency Resolution Process period was extended by the 90 days. It is further submitted that the extended period of 90 days also expired on 22.11.2020 and no resolution plan was received during this period.



8. The sole member of the Committee of Creditors in their meeting dated 03.03.2021 with 100% voting (i.e. through e-mail), resolved to liquidate the Corporate Debtor.
9. Due to insufficiency of funds in the bank accounts of the Corporate Debtor, the Professional Fee and CIRP Expenses of Rs. 7,52,147/- of the Resolution Professional could not be paid. In this connection, it is submitted that the Professional Fee of the Resolution Professional forms part of the CIRP cost and must be paid to the Resolution Professional in terms of Section 53 of the Code and in case the aforesaid debtors did not fetch sufficient value to meet the CIRP cost, then either by the Ex-management or main petitioner.
10. In view of the above facts and circumstances, we are satisfied that since no Resolution Plan was received by the RP within the time period of CIRP of the Corporate Debtor, hence, there is no other way but to Liquidate the Corporate Debtor. It was submitted by the RP that during CIRP, the Corporate Debtor was not a going concern. There was no business in the Corporate Debtor, the name of the Corporate Debtor was struck off by the Registrar of Companies, Delhi & Haryana vide Notice No-ROC/DELHI/248(1)/STK-7/6217 dated 29.10.2019 (wherein the name of the Corporate Debtor was mentioned at Page Number 38 as entry Number 2071). Except for the statutory forms for incorporation of a company such as Form-1, 18 & 32, no Financial Statements, Balance Sheet and Annual return were filed by the ex-management on the MCA-21 portal.
11. Further, this Adjudicating Authority vide order dated 22.02.2022 directed the sole CoC member to appear and to ascertain the sources of funds to pay the CIRP expenses and Liquidation expenses. On 03.05.2023, Ms. Divya Sharma joined the court proceedings through VC wherein she submitted that she did not intend to continue with the liquidation proceedings and she did not have any means to pay the CIRP Expenses.



When this Adjudicating Authority asked her to file an affidavit to this effect she submitted that she didn't know the procedure to file an affidavit in this Adjudicating Authority and then she abruptly logged out from the VC. Thereafter, the Order was reserved on 03.05.2023. Subsequently, Ms. Divya Sharma sent an affidavit to the RP through speed post along with a request letter to RP to file the same before this Adjudicating Authority which was filed by the RP on 13.05.2023.

12. In the affidavit dated 09.05.2023, Ms. Divya Sharma categorically submitted that she is not in a position to continue with the liquidation process and there are no means to pay the CIRP Costs. Therefore, she intended to withdraw the present application of Liquidation.

13. The Resolution Professional under the peculiar circumstance of the case undertakes to waive off the entire CIRP Cost incurred during the CIR Process. A NoC issued by RP to waive off CIRP Costs is filed along with this application.

14. Having regard to the facts and circumstances of the case, we deem it appropriate to pass an order directing the termination of CIRP, in the exercise of powers under Rule 11 of the NCLT Rules, 2016 to meet the ends of justice and to prevent abuse of the process of the Adjudicating Authority.

For the sake of convenience Rule 11 of NCLT Rules is reproduced below:-

*“11. Inherent powers. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

15. The language used in Rule 11 of NCLT Rules, 2016 clearly shows that the Tribunal has the inherent power to pass such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Adjudicating Authority.



16. From the conspectus of the facts and circumstances of the case as discussed above, in the exercise of under Rule 11 of NCLT Rules, we direct termination of CIRP and discharge the Resolution Professional from his responsibilities.

17. In light of the above facts and circumstances, it is hereby ordered as follows:

- i.** The **IA-1526/2021** filed by Mr. Gaurav Katiyar, the Resolution Professional of M/s. Efferent Realestate Private Limited, the Corporate Debtor is **dismissed as withdrawn** and we direct termination of CIRP.
  - ii.** Mr. Gaurav Katiyar, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control to the Corporate Debtor forthwith.
  - iii.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect
  - iv.** 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.
  - v.** The Registry is further directed to send a copy of this order to the IBBI for their record.
  - vi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

Sd/-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**