

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**M.A. 2703 OF 2019**

**IN**

**CP (IB) – 3683/IBC/MB/2018**

Under Section 33 (1) of the Insolvency &  
Bankruptcy Code, 2016

Filed by

**Ms. Dipti Mehta**

Resolution Professional for:

Brajesh Constructions Private Limited

**...Applicant**

In the matter of

**Asit C. Mehta of Investment  
Intermediaries Limited**

**...Operational Creditor**

Versus

**Brajesh Construction Private Limited**

**...Corporate Debtor**

**Order delivered on: 10.05.2023**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

**Appearance:**

For the Applicant: Mr. Aniruth Purushothman, Advocate

1. The above application M.A. No. 2703/2019 is filed by Resolution Professional, Ms. Dipti Mehta (hereinafter referred to as the "Applicant") seeking liquidation of **Brajesh Construction Private**

**Limited** (hereinafter referred to as the “Corporate Debtor”) under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. To pass an order under Section 33 of the Insolvency and Bankruptcy Code, 2019 to initiate the Liquidation Process against Corporate Debtor.*
- b. To pass an order for appointment of Ms. Dipti Mehta as Liquidator of the Corporate Debtor.*
- c. To pass such other order as the Hon’ble Tribunal shall deem fit.*

2. The brief facts of the application are as follows:

- A. The Applicant mentions that this Tribunal vide its order dated 31.01.2019 in Company Petition No. 3683/IBC/MB/2018 admitted the petition under Section 9 of the Code, filed by Asit C. Mehta of Investment Intermediaries Limited (hereinafter referred to as the “Operational Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against the Corporate Debtor. The Applicant was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal.
- B. That the Public Announcement as per regulation 6 of Insolvency Process of Corporate Person published on 08.02.2019 under the English Newspaper viz., Free Press Journal and one Marathi News Paper viz., Navshakti inviting the creditors of the Corporate Debtor.
- C. After the public announcement only one claim from the above mentioned operational creditor's was received by the Interim Resolution Professional and based on the same the committee

of creditors was constituted and the report certifying the same was submitted before the Hon'ble NCLT on 28.02.2019.

- D. Thereafter, 1<sup>st</sup> meeting of the Committee of Creditors was held on 09.03.2019 and in that meeting it was decided by the committee that the Interim Resolution Professional is only continuing as a Resolution. Professional and the same was intimated and subsequently filed with the Hon'ble NCLT on 14.03.2019.
- E. The Applicant has also circulated the Information Memorandum to the committee of creditors and filed the Progress Report dated 08.03.2019 before this Tribunal.
- F. The Applicant has published the FORM-G i.e., inviting the Expression of Interest on 24.04.2019 in 2 (two) local newspapers i.e. one in Free Press Journal, in English language and other in Navshakti, in Marathi language: The last date of submission of expression of interest was 09.05.2019. However, no Expression of interest was received by the Applicant until the last date.
- G. The Applicant in the 1<sup>st</sup> COC meeting inquired with the representative of the Corporate Debtor i.e. Mr. Vijay Tiwari that, currently the Corporate Debtor is having any project live in its hands or any incoming projects are expected, for which the representative informed the Applicant that, the Corporate Debtor is not having currently any project, its only handling one TIVONA CITY project at Udaipur, Rajasthan which was stand still due to insufficiency of funds, also with respect to its registered office the representative informed that currently Corporate Debtor does not have any registered office and the registered office mentioned the MCA was already sold out to someone else, the same was already informed to the Applicant

by her representative at the time of visit of Corporate Debtor registered office.

- H. The Applicant has also filed the application under Section 19 against the erstwhile directors of the Corporate Debtor for non-cooperation to the Resolution Professional and not providing the necessary information to take the charge of the Corporate Debtor. The Applicant also tried to appoint the valuers at the Udaipur project site but due to unavailability of list of assets the Valuers not able to give the quotation for the valuation and Applicant unable to appoint the valuers.
- I. Further, the Applicant has received other claims from the operational creditors and this Tribunal has directed the Applicant to consider the entire claim submitted to her. The Applicant has verified the claim and admitted one more claim filed by M/s. Chejara Construction and the committee has reconstituted. The revised list of creditors along with constitution of committee was filed on 22.07.2019 before this Tribunal.
- J. The Applicant submits that, till the time of completion of Corporate Insolvency Resolution Process (CIRP) as on 07.08.2019 no expression of interest was received therefore, no resolution plan was submitted before this Tribunal. Also, in Seventh meeting of the Committee of creditors held on 24.07.2019 it was discussed and decided by the Committee instead of taking further extension of 90 (ninety) days for Corporate Insolvency Resolution Process (CIRP) they agreed unanimously to go under liquidation. The committee decided to file application under Section 33 for liquidation of company with the 100% voting.
- K. The Applicant states that, in the Seventh Committee of Creditors meeting dated 24.07.2019, it was informed by

Resolution Professional i.e., Ms. Dipti Mehta that, she is willing to act as a Liquidator and had given her consent in this regard and the same was agreed and accepted by the Committee members and it was decided by the members of COC that, the applicant will continue as the liquidator at the remuneration of Rs. 2,00,000/- per month.

- L. The Applicant most respectfully submits that COC members with 100% voting rights, after ascertaining the feasibility and viability of the corporate debtor, in their commercial wisdom decided to initiate liquidation process against the corporate debtor and instructed the applicant to approach this Tribunal seeking orders for commencing liquidation under Section 33 of the Insolvency & Bankruptcy Code 2016.
- M. The Applicant further states that in the 7<sup>th</sup> CoC meeting dated 24.07.2019 the CoC with 100% voting decided to liquidate the Corporate Debtor as well as appointing the Applicant as the Liquidator of the Corporate Debtor. The relevant extract of the resolution is reproduced herein below for ready reference:-
1. ***“RESOLVED THAT*** pursuant to the provisions of the Section 33 of Insolvency and Bankruptcy Code, 2016 the necessary application be made to the Hon’ble National Company Law Tribunal for the liquidation of Brajesh Construction Private Limited and Resolution Professional is authorised to appoint an Advocate and fix the remuneration for the same.”
  2. ***“RESOLVED THAT*** Ms. Dipti Mehta be appointed as the Liquidator of Brajesh Construction Private Limited at the remuneration of Rs. 2,00,000/- per month, and out of pocket expenses incurred from time to time, to be paid by the Committee of Creditors on time.”

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 7<sup>th</sup> CoC meeting that the CoC unanimously decided to liquidate the Corporate Debtor. The CoC has appointed the Applicant as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The Applicant has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator.
4. It is appropriate to mention here that three applications bearing no. I.A. No. 2800/2022, I.A. 1541/2021 and M.A. 2652/2019 were filed by M/s Asit C. Mehta Intermediates Ltd. and M/s Akme Sarvoday Dreamventures & Ors. respectively raising several allegations against the Resolution Professional and the above three applications were disposed of by this Tribunal vide separate order. The counsel appearing for the Resolution Professional also fairly conceded that without accepting the allegations he has no objection for the appointment of any other Liquidator as this Hon'ble Tribunal deems fit and proper. Under these circumstances, this Tribunal thought it fit to appoint an independent Liquidator from the panel of IBBI.
5. Therefore, allows the above Miscellaneous Application Number 2703 of 2019 and passed the following:

### **ORDER**

1. The above M.A. No. 2703/2019 is allowed and the Corporate Debtor **Brajesh Construction Private Limited** is ordered to be liquidated.
  - a. **Ms. Megha Agrawal**, having Registration No. IBBI/IPA-001/IP-P-01456/2018-2019/12272; having Email address: ip.meghaagrwal@gmail.com; having Contact No. (+91) 9922711112 is hereby appointed as the Liquidator from the IBBI Panel as provided under Section 34(1) of the Code.

- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. All 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 effect and shall be vested with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, 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.
- h. 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 continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. M.A. No. 2703 of 2019 is hereby **allowed and disposed of**.

**Sd/-**

**MADHU SINHA  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**