

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH COURT -III  
INTERLOCUTORY APPLICATION NO. 2067/2020  
IN  
COMPANY PETITION NO. CP (IB) 4719/MB/ 2018**



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

**Mr. Hemantprakash Shyamsunder Jain**  
Resolution Professional of AR Coating  
Solution (India)

.... Applicant

*In the matter of*  
**ABC Infra Equipment Private Limited**

.... Operational Creditor

Versus

**AR Coating Solution (India) Private  
Limited**

.... Corporate Debtor

**Order Pronounced on 21.05.2024**

**Coram:**

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)  
SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

**Appearances:**

For Applicant: Adv. Smita Durve i/b Arshil Shah through VC

**Per: MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)**

1. The above application has been filed by Resolution Professional, Mr. Hemantprakash Shyamsunder Jain, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (**'Code'**) seeking *inter alia* order for commencement of liquidation of the Corporate Debtor. We note that there is no Respondent in the present Application.
2. Though the present application is under section 33, however there are various prayers sought in this application which are reproduced below:-
  - a. *"the delay, if any, in filing the present Miscellaneous Application be condoned;*



- b. The COC members be directed to forthwith pay the outstanding amount of Rs. 9,41,889/- towards his professional fees to the Application;*
  - c. The Miscelllaneous Application be allowed;*
  - d. Order of liquidation of Corporate Debtor in the manner as provided in the IBC and IBC rules be passed;*
  - e. Direct the IBBI to appoint any fit and proper person as the liquidator for the purpose of liquidator of the Corporate Debtor;”*
3. The Corporate Insolvency Resolution Process (**‘CIRP’**) was initiated vide Order dated 20.09.2019 against AR COATING SOLUTIONS (INDIA) PRIVATE LIMITED, (**‘Corporate Debtor’**) in Company Petition No. 4719 of 2018 filed by M/S ABC INFRA EQUIPMENT PRIVATE LIMITED (**Operational Creditor**) under Section 9 of the Code. Tribunal declared moratorium in relation to the Corporate Debtor and appointed Mr. Hemantprakash Shyamsunder Jain as an Interim Resolution Professional (**‘IRP’**) of the Corporate Debtor.
4. The IRP made public announcement on 02.10.2019 in Financial Express, Mumbai edition (English Newspaper) and Navakal, Mumbai edition (Marathi Newspaper) as per section 15 of the IBC to invite proof of claims of the Creditors.
5. Pursuant to the said public notice, the Operational Creditors has submitted their respective claims forms along with documentary proof of claim before IRP.
6. Pursuant to the advertisement for collection of the claim from the Creditors, he has received four claims from the Operational Creditors against the CD. After receipt of the claim from the creditors, IRP has constituted a Committee of Creditors (COC). The final composition of the COC of the Corporate Debtor is as follow:

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Sr. No.	Name of the Creditor	Amount of Claim submitted	Claim approved by the Applicant	% of Claim
1	ABC Infra Equipment Pvt Ltd	11,34,230	11,34,230	15.82
2	Satguru Shuttering Pvt Ltd	1,06,53,449	35,00,849	48.83
3	Clean Coats Pvt Ltd	10,96,092	10,96,092	15.29
4	Jotun India Pvt Ltd	24,51,769	14,38,944	20.07
<b>Total</b>		<b>1,53,35,540</b>	<b>71,70,115</b>	<b>100.00</b>

7. After constitution of COC, on 21.10.2019, the First COC meeting was held on 26.10.2019 wherein COC ratified and approved the expenses towards Professional fees of Rs. 1.50 Lacs of IRP and of public announcement and other incidental expenses of Rs. 0.24 Lacs incurred till date of IRP. Hence, total Rs. 1.74 Lacs was approved by COC. Moreover, the COC gave consent under Section 22(2) of IBC for continuation of the Applicant as Resolution Professional (RP).
8. On Second COC Meeting dated 14.11.2019, the Applicant has intimated the COC that as per Regulation 27 of the CIRP Regulations, the Applicant being RP had appointed two registered valuers of Valuation of Securities and Financial Assets of CD on 02.11.2019 and provided for professional fees of the COC. The COC has ratified the appointment and professional fees of these two registered valuers as appointed by the Applicant.
9. On 06.12.2019, the Third COC Meeting was conducted wherein inter alia, the COC has approved draft of form G and draft of Expression of Interest (EOI) and gave approval for publication of Form G in newspaper and on the IBBI website as per Regulation 36A of CIRP Regulations.
10. The Forth COC meeting dated 31.01.2020 was conducted along with suspended director Mr. Ram Reddy Dnyandevreddy Macchapalle. In which inter alia, the Applicant has asked the ex-director to submit the complete list of receivable and payable of the Corporate Debtor.



Moreover, the ex-director requested the COC to withdraw the CIRP as he is getting new orders and he promised to pay all the outstanding, however, the COC has rejected the said request and asked to bring a concrete plan of repayment.

11. On 17.03.2020, the Fifth COC meeting was conducted, which was attended by the three COC members. In the said meeting, inter alia, the Applicant has informed to the COC that he has approached to the debtors of the Corporate Debtor from whom the amount is due and payable by the Corporate Debtor. He also submitted that since no resolution plan is received by the Applicant for the Corporate Debtor, the COC as per the provision of the Code and IB Rules through the Applicant apply for extension of 90 days for the CIRP process or liquidate the Corporate Debtor as per the section 33(2) of the Code. The Applicant states that after the discussion of the above option with the COC members, the COC members have decided to liquidate the Corporate Debtor. Accordingly, three out of four COC members who were present in the said fifth COC meeting consist of **79.94%** of total creditors, voted for liquidation of the Corporate Debtor.
12. The Applicant states that after the order dated 03.03.2020 of the Tribunal, the Applicant sent to COC members requesting outstanding remuneration of the Applicant, email on 20.04.2020, reminder dated 28.05.2020 and Request letter dated 16.07.2020. However, till date no fee has been paid by the COC members to the Applicant.
13. The Applicant states that the CIRP of the Corporate Debtor was commenced on 29.09.2019 and therefore insolvency resolution period of 180 days was expired on 19.03.2020.
14. The Applicant submit that as agreed and resolved by the COC members in the fifth meeting held on 17.03.2020 and since no resolution plan was received, the Corporate Debtor be liquidated in the manner as provided in the IBC.



15. The Applicant also states and submits that the Tribunal may pass necessary direction upon the COC members to pay the outstanding professional fees of the Applicant as the same is pending since long.
16. During the pendency of this application, an application bearing IA No. 983/2023 has been moved for dissolution of the corporate debtor.
17. In view of the facts of the case coupled with the resolution passed by the COC for liquidation of the Corporate Debtor under Section 33(2) of the Code this, Adjudicating Authority finds this case fit for ordering Liquidation of the corporate debtor by passing following order:-

**ORDER**

- a. The Corporate Debtor M/s A R Coating Solution (India) Private Limited is ordered to be liquidated.
- b. We hereby appoint the present Resolution Professional of the Corporate Debtor as the Liquidator of the Corporate Debtor who has already filed application for dissolution of the corporate debtor.
- c. The Liquidator for conduct of the liquidation proceedings would be entitled to the fees as per decision taken by COC/SCC.
- d. The Liquidator process to be conducted in the manner laid down under Chapter-III of the Part-II of Insolvency and Bankruptcy Code, 2016 by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34 of the Code will have all powers of the board of directors, key managerial personnel and the Board of the Corporate Debtor, the Key Managerial Persons, the Partners as the case may be, shall cease to have effect and shall be vested with the liquidator.



- f. 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.
  - g. 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.
  - h. 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.
  - i. 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.
18. As the present application has been under section 33 of IBC primarily for passing liquidation order, other prayers which are not being considered for the purpose of liquidation of the Corporate Debtor. The applicant is at liberty to move appropriate application against the parties against whom reliefs may be sought. At this stage, no order can be passed against any party who has not been made Respondent in the present application.
19. Registry is directed to send the copy of the order to the IBBI as well as Liquidator.
20. In the result, I.A. No. 2067 of 2020 is **partly allowed in above terms and stands disposed of.**

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MUMBAI BENCH COURT -III  
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Sd/-

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**  
(Saayli, LRA)

Sd/-

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**