

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 09/JPR/2023
In CP No. (IB)-22/9/JPR/2021

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Shri Vikas Maheshwari Prop.
Of M/s Vikas Trading Company

...Operational Creditor/Applicant

VERSUS

M/s Sanwariya Furnaces Private Limited

...Corporate Debtor/Respondent

MEMO OF PARTIES

Sh. Vikas Maheshwari
R/o C-2/2, Zakheera, Rohtak Road,
Amar Park, Delhi-110035.

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IA No. 09/JPR/2023
In CP No. 22/9/JPR/2021

... Operational Creditor/Applicant

VERSUS

M/s Sanwariya Furnaces Private Limited

R/o F-642-643, Industrial Area,
Khushkera Bhiwandi,
Rajasthan-301707.

... Corporate Debtor/Respondent

IA No. 09/JPR/2023

MEMO OF PARTIES

Mr. Jaiprakash Bansilal Somani,
Resolution Professional of
M/s Sanwariya Furnaces Private Limited
Address Registered with IBBI:
1st Floor, 2972, Lane No. 3, Chuna Mandi,
Pahargunj, New Delhi-110055.
Registration No.-
IBBI/IPA-003/IP-N00262/2019-20/12976

... Applicant

Versus

Mr. Amit Goyal,
Member of Suspended Board of Director of
Sanwariya Furnaces Private Limited
Address: 101/21 Gali No. 4, Rajnagar, Gurgaon,
Haryana-122001.

... Respondent No. 1

Mr. Jai Prakash
Member of Suspended Board of Director of
Sanwariya Furnaces Private Limited
Address: 565/1/22, Gali No. 6, Khandsa Road,
Gurgaon, Haryana-122001.

... Respondent No. 2

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For the Applicant/RP : Aditya Mishra Adv.

For the Suspended Directors : Non Appeared

Order Pronounced On: 31.10.2023

ORDER

Per: Mr. Rajeev Mehrotra, Technical Member

1. This Interim Application ('IA') has been filed by the Resolution Professional ('RP'), of M/s Sanwariya Furnaces Private Limited ('Corporate Debtor') under Section 19 of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC'). The Adjudicating Authority *vide* Order dated 28.07.2022 ('CIRP Order') admitted the application under Section 9 of the IBC, filed by the Operational Creditor against the Corporate Debtor in the above-mentioned matter and Mr. Jaiprakash Bansilal Somani was appointed as Interim Resolution Professional ('IRP/Applicant').
2. It has been submitted by the Applicant that in accordance with the provisions of the Code and regulation public announcement has been made in Form-A in two newspapers. As per public announcement the last date of the receipt of the claim was 21.08.2022. Accordingly, the claims were received and verified. Thereafter a notice of the 1st meeting of CoC was

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duly circulated and the said meeting was convened on 05.09.2022. Wherein the Applicant was confirmed as Resolution Professional ('RP')

3. Further it has been stated that a copy of the CIRP Order was sent *vide* a letter and an email dated 08.08.2022 and 09.08.2022 respectively intimating initiation of the CIRP and seeking requisite information regarding the affairs of the Corporate Debtor. A copy of the said communication is annexed as Exhibit-D of the Application.
4. The Applicant had sent an E-mail dated 17.08.2022 to the Suspended Board ('Respondents') of the Corporate Debtor for seeking all the documents, data and information. Copy of the said communication to the Respondents are annexed as Exhibit-E of the Application.
5. Further the Applicant intimated/reminded *vide* letter dated 25.08.2022 that no documents/information has been received from the Respondents. It is pertinent to note that that the Applicant had also attempted to reach out to the Respondents through telephonic calls however no response to the same has been received.
6. It is imperative to note that after the ample reminders given to Respondents, they have neglected to provide the requisite details to the Applicant and continued to evade their duties

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7. In the present application, it is stated that the direction passed in the CP No. 22/9/JPR/2021 could not be complied with as the personnel of the Corporate Debtor are not extending their assistance and cooperation to the RP and prayed that directions enumerated in the application may be given to the respondents including the following:

- I. *Direct the Suspended Directors, and personnel of the Corporate Debtor and other Respondents to assist and cooperate with the Applicant during the CIRP of the Corporate Debtor;*
- II. *Direct the Suspended Directors, and personnel of the Corporate Debtor to provide all the information and documents to the Applicant;*
- III. *Direct the Suspended Directors and personnel of the Corporate Debtor to handover any assets in their possession with the Applicant.*

8. Respondent Nos. 1 and 2, who are suspended directors of the Corporate Debtor filed their reply *vide* Diary No. 867/2023 dated 05.04.2023 and submitted that they have supplied the material information/documents to the Applicant/RP.

9. Section 19(1) of the IBC provides that the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the

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Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.

10. The Adjudicating Authority on receiving an application under Sub-section (2), shall by an order, direct such personnel or other persons to comply with the instructions of the Resolution Professional and to cooperate with him in the collection of information and management of the Corporate Debtor.
11. Considering arguments advanced, submissions put forth and documents placed on the record, application of the Resolution Professional is allowed and Respondents are directed to extend their full cooperation and support to Resolution Professional in handing over the possession of the assets along with providing all the documents and records enumerated in the application within fifteen days from the date of this order.
12. The RP shall be at liberty to move an appropriate application, in case of any breach of the direction given by this Adjudicating Authority. Furthermore, the non-compliance with the aforesaid direction would attract strict penalties and *Suspended Management* shall remain present in person either physically or through virtual mode to explain their non-compliances with the aforesaid directions.
13. Any non-conformity, shall result in the issuance of either a bailable warrant or a non-bailable warrant. The RP is directed to inform the *Suspended*

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Management. The Registry is directed to serve a copy of this Order to the *Suspended* Management.

Accordingly, IA No. 09/JPR/2023 stands disposed of.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,
TECHNICAL MEMBER**

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 485/JPR/2023
In CP No. (IB)-22/9/JPR/2021

**UNDER SECTIONS 33 & 34 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

IN THE MATTER OF:

Shri Vikas Maheshwari Prop.
Of M/s Vikas Trading Company

...Operational Creditor/Applicant

VERSUS

M/s Sanwariya Furnaces Private Limited

...Corporate Debtor/Respondent

MEMO OF PARTIES

Sh. Vikas Maheshwari

R/o C-2/2, Zakheera, Rohtak Road,
Amar Park, Delhi-110035.

... Operational Creditor/Applicant

VERSUS

M/s Sanwariya Furnaces Private Limited

R/o F-642-643, Industrial Area,
Khushkera Bhiwandi,
Rajasthan-301707.

... Corporate Debtor/Respondent

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AND IN THE MATTER OF
IA (IBC) No. 485/JPR/2023

Mr. Jayprakash Bansilal Somani

Address: B-851, 1st Floor, Shivaji Marg,
(Church Wali Gali), New Ashok Nagar,
Delhi 110096, East,
National Capital Territory of Delhi-110096.

... Applicant

For the Applicant/RP : Aditya Mishra, Adv.

Order Pronounced On: 31.10.2023

ORDER

Per: Mr. Rajeev Mehrotra, Technical Member

1. This Interim Application ('IA') bearing IA No. 485/JPR/2023 is filed by the Resolution Professional ('Applicant' / 'RP') for M/s Sanwariya Furnaces Private Limited ('Corporate Debtor') under Section 33 and Section 34(1) of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Regulation') for passing an order of Liquidation.
2. The Adjudicating Authority *vide* Order dated 28.07.2022 had admitted the Application filed by Mr. Vikas Maheshwari under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP')

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- of Corporate Debtor and as a consequence thereof appointed Mr. Jayprakash Bansilal Somani as Interim Resolution Professional ('IRP').
3. In compliance with provisions of the Code, the IRP issued a public announcement, under Form – A in Indian Express (English) and Pratahkal (Regional Language) in Jaipur Edition on 09.08.2022, for inviting claims from the creditors of the Corporate Debtor. Copies of the e-cutting of the said public announcement in Form-A are annexed as Annexure- 2 Colly of the IA. Consequently, the IRP constituted the Committee of Creditors ('COC') under Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and same was taken on record.
 4. In the view of the Public Announcement in Form-A, last dated for receipt of the claim was on 21.08.2022. Accordingly, the claims were received and verified to the extent of information available with the IRP. based on the same the IRP prepared report of certifying the constitution of CoC and placed before this Adjudicating Authority on 29.08.2022.
 5. The first meeting of the CoC was held on 05.09.2023, wherein the CoC deliberated on the agenda of appointing 'IRP' as the Resolution Professional of the Corporate Debtor. The CoC exercising its right under

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Section 22(2) of the Code unanimously confirmed the IRP as the Resolution Professional ('RP').

6. Consequently, the RP issued the Expression of Interest ('EOI') of the Resolution Plan in Form G under Regulation 36A of the CIRP Regulations on 18.01.2023 wherein the last date for receipt of the EOI was 03.02.2023. Further the Applicant/RP stated that the timelines of the Form-G were subject to extension provided by this Adjudicating Authority.
7. It is stated that in accordance with the approval of CoC in 4th meeting of COC the Applicant has filed one IA/116/JPR/2023 for seeking extension of CIRP for 90 days and the same was allowed *vide* order dated 15.03.2023. Copy of the order dated 15.03.2023 is annexed as Annexeure-3 of the IA.
8. It is submitted that in 5th meeting of CoC dated 07.02.2023 the Applicant informed the CoC that pursuant to the Invitation of EOI certain enquires were raised however no prospective resolution was received. Subsequently the CoC resolved to extent the timelines of Form-G and re-issue the same under Regulation 36 of the CIRP Regulations.



9. Consequently, the Applicant issued another Form-G under prescribed CIRP Regulation wherein the last date for the submission of the EOI was extended up to 01.03.2023.
10. Pursuant to that the Applicant received one (1) EOI from the Prospective Resolution Applicant ('PRA'). The provisional list and final list of PRAs was communicated to CoC and PRAs on 21.03.2023 and 11.03.2023 respectively. The Applicant also directed the PRAs to submit their resolution plans by 15.04.2023.
11. Further the Applicant submits that a request has been received from the PRA to extend the timeline for submission of the Resolution plan. The Applicant informed after the due consideration with CoC that it is advisable to file an Application under Section 12 of the Code, for seeking an extension of 60 days beyond 270 days for the completion of CIRP of the Corporate Debtor. The CoC inter alia resolved the same and directed the Applicant to file an Application under Section 12(3) of the Code. Nevertheless, no resolution plan has been received within the extended timeline.
12. The RP received neither the EOIs nor any resolution plan(s) under the Code's prescribed time. Therefore, in the 10th CoC meeting dated

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11.07.2023, the RP proposed the liquidation of the Corporate Debtor. By 69.07% voting, the CoC has resolved to liquidate the Corporate Debtor in 10th CoC meeting dated 11.07.2023. Copy of the minutes of the 10th meeting of CoC is annexed as Annexure - 4 of the IA. Moreover, the CoC has appointed the RP to act as the liquidator and has been accepted by the RP. A copy of the written consent of the RP to act as the liquidator are annexed as Annexure -5 of the IA.

13. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows:

“33. Initiation of liquidation. —

(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, if 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.

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(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 creditor 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-clause (i), (ii) and (iii) of clause (b) of sub-Section (l) ”.

14. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in

Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company

Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

15. The prescribed period for filing Application - In the present case,

the Application under Section 9 of the Code was admitted on 28.07.2022

and the date for completion of CIRP was 24.01.2023, within the 180 days

of the timeline prescribed under the Code, and an extension of further 90

days was sought. The extension was granted *vide* Order dated 15.03.2023.

Accordingly, the RP filed the present Application on 25.08.2023 in

accordance with Section 33(2) of the Code. Hence, the present application

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is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code.

16. Appointment of Liquidator and fee to be paid – Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”

17. The present RP, Mr. Jayprakash Bansilal Somani, is eligible as Liquidator. It is noted that liquidation proceedings herein, at the instance of the CoC, have given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any reason to replace the existing RP. Mr. Jayprakash Bansilal Somani, Resolution Professional with IBBI Registration No. IBBI/IPA-

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003/IP-N00262/2019-20/12976, who has filed his written consent dated 11.07.2023 to act as the Liquidator as Annexure – 5 of the IA. Thus, Mr. Jayprakash Bansilal Somani is appointed as the Liquidator.

18. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019* along with Regulation 39BA of the CIRP Regulations, 2016 inserted *vide Notification No. IBBI/2022-23/GN/REG093, dated 16.09.2022*. The relevant aspects in this respect are examined hereunder.

19. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** — The CoC has not decided on the estimated liquidation cost and decided that the liquidation costs will be taken on an actual basis which will be approved by the stakeholders' committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs. It is directed that Mr. Jayprakash Bansilal Somani may appoint two independent valuers for the assets of the Corporate Debtor following the provisions of the law. The Liquidator is directed to place on record the

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valuation reports along with the status report as provided under the concerned regulations and rules thereof.

20. *Assessment of Compromise or Arrangement (Regulation 39BA of CIRP*

Regulations, 2016) — The CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as referred to under Regulation 2B (1) of the Liquidation Regulations, 2016 and the RP should submit the CoC's recommendation to the Adjudicating Authority while filing an application under section 33.

21. *Assessment of sale as a going concern (Regulation 39C of CIRP*

Regulations, 2016) — Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lay down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by

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means of private sale with the prior permission of the Adjudicating Authority.

22. The COC in its 10th meeting has discussed selling the Corporate Debtor as a going concern, as the first option or selling the business(s) of the Corporate Debtor as a going concern, if the Adjudicating Authority passes an order of liquidation. With a 69.07% voting share, the CoC discussed that it is not possible to sell as a going concern, and they passed the resolution.

23. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)*** —

It is seen that the CoC, in consultation with the resolution professional, has resolved the fee payable to the liquidator as per following the resolution:

‘The RP expressed that, he shall be appointed as the Liquidator of the Corporate Debtor, in case the order u/s 33 of the Code is passed by Adjudicating Authority. The Liquidation fees for the same shall be paid in accordance with the Liquidation Regulation along with 3% of incentive of recovery made. The same shall be put for voting before the members of the CoC.’

Thus, the Liquidator shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 read with the aforementioned resolution passed by the CoC.

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24. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, M/s Sanwariya Furnaces Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

- (i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

- (ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- (iii) This order of liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees, and workmen of the Corporate Debtor;
- (iv) All the 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 an effect and shall be vested in the Liquidator;

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- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor, and provisions of Section 19 of the Code shall apply concerning the liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- (vi) The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date;
- (vii) Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

25. Pending Applications, if any, and its / their effect – The learned counsel for the Applicant has stated that there are no pending applications which have any bearing on the order of liquidation.



26. In view of the foregoing, IA No. 485/JPR/2023 is disposed of. A copy of this order is supplied to the counsel for the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**