# IN THE NATIONAL COMPANY LAW TRIBUNAL
# JAIPUR BENCH

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

SHRI VELAMUR G. VENKATA CHALAPATHY,
HON'BLE TECHNICAL MEMBER

*IA (IBC) (Liq.) No. 03/JPR/2024*
*In CP No. (IB)- 14/9/JPR/2020*

**IN THE MATTER OF:**

**RG COLONIZERS PVT. LTD.**

**...Operational Creditor**

**VERSUS**

**MACRO INFRA CONTRACTPRS PVT. LTD. & ANR.**

**...Corporate Debtor**

**MEMO OF PARTIES**

*IA (IBC) (Liq.) No. 03/JPR/2024:*
**Babu Lal Sharma,**
**RP of Macro Infra Contractors Pvt. Ltd.**
**306, 3rd Floor, Durga Business Centre (DBC),**
**Near Pink City Petrol Pump, M.I. Road,**
**Jaipur-302001.**

**...Applicant**

**FOR THE APPLICANT:** Mr. Prabhansh Sharma, Adv.

**Order Pronounced On: 11.12.2024**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present Application bearing *IA (IBC) (Liq.) No. 03/JPR/2024* has been filed by the *Mr. Babu Lal Sharma*, Resolution Professional ('Applicant'/ 'RP') for *M/s Macro Infra Contractors Pvt. Ltd.* ('Corporate Debtor')

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under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') seeking approval for Liquidation of the Corporate Debtor.

2. This Adjudicating Authority *vide* order dated 04.07.2023 had admitted the Application filed by *M/s RG Colonizers Private Limited* under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof, appointed *Mr. Babu Lal Sharma as* Interim Resolution Professional ('IRP').

3. Later, in the 1st meeting of the Committee of Creditors ('CoC'), the IRP was confirmed as the Resolution Professional ('RP') in terms of Section 22(3)(a) of the Code.

4. In the meantime, the Applicant has duly got approval from the CoC and the Expression of Interest ('EOI') was duly published in Form-G on 23.09.2023 for prospective resolution applicants to submit their Resolution Plans. In consonance of the same two prospective resolution applicants have participated namely, *M/s Galactico Corporate Service Limited* and *Shaleen Jain.*

5. Further, an e-mail dated 23.10.2023 was duly sent to the member of the CoC and to the eligible resolution applicant for issuance of the Information Memorandum, evaluation matrix and a request was made for submission of Resolution Plan from all the prospective resolution applicants.

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Thereafter, a provisional list was duly prepared however, no resolution plans were received from the prospective resolution applicants.

6. Since no resolution plans were received in the 1st round therefore the CoC decided to publish 2nd round of EOI and the same was published in Form-G on 27.12.2023. Pursuant to the publication of Form-G, only one formal EOI was declared as eligible prospective resolution applicant however, no resolution plan was submitted till the last date.

7. Thereafter, on 21.03.2024 another Form-G was published wherein the last date for inviting the resolution plans from the Prospective Resolution Applicant was 01.04.2024 nevertheless no resolution plans were finalized.

8. In the 10th CoC meeting an agenda was drawn as *"to be consider, approve and vote on liquidation of the corporate debtor under Section 33"*. The aforementioned agenda was approved by the CoC by 93.12% voting. In view of the decision made by the CoC the present Application has been filed for seeking directions under Section 33 of the Code, 2016.

9. Further, it is submitted the Resolution Professional is eligible to be appointed as Liquidator. It is also submitted that the RP has not yet received his professional fees and expenses from any of the creditor therefore, appropriate directions may be passed by this Adjudicating Authority.

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10. We have heard the parties and perused the averments made in the Application along with the documents enclosed therein. To determine the present Application seeking Liquidation of the Corporate Debtor, it is pertinent to mention the provisions of Section 33 of IBC, 2016 which reads as below:

*"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, it 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.*

*(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 (1).*

*[Explanation: For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1)of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]"*

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11. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in the matter of *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 while passing the Order for Liquidation.

12. ***The prescribed period for filing Application*** – In the present case, the Application under Section 7 of the Code was admitted on 04.07.2023. The Applicant presented the proposal for extension of 90 days in the CIRP of the Corporate Debtor as per Section 12(2) of the Code, as the prescribed period of CIRP was to conclude on 31.12.2023. The proposal seeking extension of CIRP Time period of 90 days was approved in the 7th meeting of the CoC dated 12.12.2023. The CIRP period concluded on 30.03.2024 and the CoC had resolved in the 9th CoC meeting to Liquidate the Corporate Debtor. The RP has filed the present application on 03.07.2011 in accordance with Section 33(2) of the Code. The agenda for the Liquidation of the Corporate Debtor was passed in the 9th Coc meeting dated 12.03.2024.

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13. ***Appointment of Liquidator and fee to be paid*** –The Applicant in the 9th meeting of the CoC dated 12.03.2024 presented the said agenda before the Committee for his appointment as Liquidator. The said resolution was approved by the CoC with 93.12% votes in favour of the same. 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)"*

14. Therefore, *Mr. Babu Lal Sharma* is eligible to be appointed as Liquidator and by virtue of Section 34(1) of the Code, shall be deemed to be the Liquidator in the present matter. *Mr. Babu Lal Sharma* with IBBI registration No. IBBI/IPA-001/IP-P01151/2018-2019/11832 has already filed its written consent in format/ Form-AA. Thus, *Mr. Babu Lal Sharma* is appointed as the Liquidator.

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15. 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 and Regulation 39BA of the CIRP Regulations, 2016 has been inserted vide *Notification No. IBBI/2022-23/GN/REG093*, dated 16.09.2022. The relevant aspects in this respect are examined hereunder.

16. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)***- As per Regulation 39BA of the CIRP Regulations, 2016, an opportunity to explore the compromise or arrangement may be explored by the Liquidator during the Liquidation of the Corporate Debtor. The Liquidator shall explore an opportunity to explore compromise or arrangement, if the same is presented during the Liquidation of the Corporate Debtor.

17. ***Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** – Under Section 35(1)(f) 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, subject to Section 52 of the Code. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by

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the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the Corporate Debtor by means of private sale with the prior permission of the Adjudicating Authority. In the current matter, the CoC resolved to authorise the Liquidator to explore the possibilities of sale of the Corporate Debtor as a going concern under Clause (e) or Clause (f) of Regulation 32 of Liquidation Regulations, 2016 and if he is unable to do the same, the Liquidator was further authorised to sell the assets of the Corporate Debtor on standalone basis/in a slump sale/ sale of assets collectively/ assets in parcels as deemed fit.

18. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)***– The committee is required to approve the fee of the proposed Liquidator in terms of Regulation 4 of the Liquidation Process Regulations, 2016.

19. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)***- The committee while considering the Liquidation of the Corporate Debtor shall consider the factors, including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and

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above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature.

20. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, *M/s Macro Infra Contarctors Pvt. Ltd.* is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

20.1. 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;

20.2. 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;

20.3. 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;

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20.4. 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;

20.5. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. Further, provisions of Section 19 of the Code shall apply concerning the liquidation process as they apply with Corporate Insolvency Resolution Process with the substitution of references to the Resolution Professional for the Liquidator;

20.6. The Liquidator shall publish a public announcement as 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;

20.7. 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.

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21. In view of the foregoing, *IA (IBC) (Liq.) No. 03/JPR/2024* stands disposed off. Copy of this order be supplied to the Liquidator as well as to 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.

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**DEEP CHANDRA JOSHI,**
**JUDICIAL MEMBER**

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**VELAMUR G. VENKATA CHALAPATHY,**
**TECHNICAL MEMBER**