

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – IV**



**IA No. 438 of 2022 and IA 1395 of 2022 and IA
2742 of 2021 In CP(IB) 3073/(MB)/2019**

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

IA 1395 of 2022

Supreme Transport Organisation Private Limited
...Applicant

Vs

**Mr. Bijendra Kumar Jha, Resolution Professional
of Sangeeta Aviation Services Private Limited**
...Respondent

IA No. 438 of 2022

Mr. Bijendra Kumar Jha

...Resolution Professional/Applicant

IA 2742 of 2021

**Mr. Bijendra Kumar Jha, Resolution Professional
of Sangeeta Aviation Services Private Limited**
... Applicant

H.E Captain Ammeet K Agarwal

...Respondent No. 1

Girish Mundada

...Respondent No. 2

In the matter of

Gannon Dunkerley & Co. Ltd.

...Financial Creditors

Vs

Sangeeta Aviation Services Private Limited

...Corporate Debtor

Ordered pronounced on: 20.10.2023



Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Resolution Professional : Mr. Manoj Kumar Mishra,
Advocate.
For the Applicant in IA-1395/2022 : Dr. S.K. jain Advocate.
For the Respondent in
IA-1 -2742/2021 : Dr. S.K. jain Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

IA 1395 OF 2022

1. The Present Application is filed under section 60(5) of Insolvency & Bankruptcy Code,2016 Read with Rule 11 of National Company Law Tribunal Rules 2016 seeking directions to the Respondents to allow the Applicant to submit Resolution Plan for Revival of the Corporate Debtor.
2. The last date for submission of Expression of Interest was 08.11.2021 and 180 days for completion of CIRP was to expire on 06.02.2022.
3. The Applicant company on 30.01.2022 expressed its intention by letter to submit the Resolution Plan with a delay of approximately 83 days.



4. This matter was placed before the CoC. The CoC have deliberated the said proposal in the 5th CoC meeting dated 06.02.2022. The CoC, in the said meeting decided that as the Applicant was related party the proposal of the Applicant would not be taken cognizance of and directed RP to file Liquidation Application. The relevant excerpts of Minutes of the meeting is reproduced:

“6. Noting the letter received from Supreme Transport Organization:

The RP apprised the members that vide email dated 31st January, 2022, he had received a letter from Mr. Kamal Agarwal of Supreme Transport Organization Private Ltd. (STO), expressing interest in submitting a resolution plan for Sangeeta Aviation Services Private Ltd. He further mentioned that vide email dated 2nd February, 2022, he has replied to STO that the last date for submission of EOI was 08.11.2021. Furthermore, he also mentioned that COC has already approved the filing of liquidation petition for Corporate Debtor. In furtherance they are of the that he has received a reply letter wide email dated 3 February 2022 requesting the RP to publish one more EOI so that a resolution plan can be submitted. The letter was circulated along with the notice of the meeting. The COC informed the RP that Mr Kamal Agarwal is the father of the suspended director Mr Amit Agarwal and hence, a related party. Further the COC mentioned that Mr Kamal Agarwal was also on the board of the CD at the time of advancing money to the CD. Furthermore, no cooperation has been



received till date from the suspended directors. In fact, by incorporating the new company of a name similar to the name of CD the group has already shown their fraudulent intention. Thus, the COC advise the RP not to take any cognizance of this letter and instructed to continue with the filing of liquidation application.”

5. This bench observed that the last date of submission of expression of interest was 08.11.2021. The Petitioner expressed his interest to submit a plan only on 30.01.2022 with a delay of 83 days. The matter was placed before the CoC and after deliberations, the CoC rejected the request of the Applicant on the grounds that the applicant was a related party being father of Suspended Board of Director as also a director of the Corporate Debtor when the money was advances and resolved to liquidate the Corporate Debtor.
6. In view of the above, the bench holds that the present application is devoid of merits and is liable to be rejected.
7. Therefore, the above application stands **disposed as dismissed**.

IA 438 of 2022

8. This is an application filed by the Interim Resolution Professional Mr. Bijendra Kumar Jha under Section 33(1) of Insolvency and Bankruptcy Code, 2016 ("the Code") for Liquidation of the corporate debtor.

Brief facts of the Application are as follows:



9. The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor under section 7 of Insolvency and Bankruptcy Code, 2016 vide order dated 10.08.2021 by this Tribunal. Mr. Modilal Dhanraj Pamecha was appointed as Interim Resolution Professional of Corporate Debtor. That, the Interim Resolution professional had issued advertisement for Invitation of claims on 14.08.2020 in two newspapers Free Press Journal (English) and Navakal (Marathi) and has received below claims from the creditors as on the date of admission of Corporate Insolvency Resolution Process.

SR. NO	CATEGORY	AMOUNT (Rs.)
1.	Financial Creditor	Rs. 71,96,33,470/-
2.	Unsecure Financial Creditor	Rs. 1,64,26,038/-
3.	Operational Creditor	Rs. 73,71,47,148/-

10. The claim of financial creditor of Rs. 71,96,33,470/- was under verification and could not be verified as the creditors did not provide sufficient document. The Interim Resolution Professional received the claim from Operational Creditor to be treated as Financial Creditor, without any substantial document to substantiate their claim. Against the action of Interim Resolution Professional, the said creditor had approached to the Hon'ble NCLT, wherein the Hon'ble Tribunal was of the opinion that the said creditor can submit their claim as Operational creditor. However, till the date of this application, no such claim has been received.



11. That after receiving claims from Creditors, the Interim Resolution Professional had formed the Committee of Creditors consisting of following members on the basis of claims received from the Creditors and formation of Committee of Creditors was also intimated to this Tribunal on 01.09.2021.

Sr. No.	FINANCIAL CREDITORS	AMOUNT CLAIMED & ADMITTED	VOTING %
1.	Unsecured Financial Creditor Dunkerley and Company Ltd. Gannon and	Rs. 1,64,26,038/-	100%
	TOTAL	Rs. 1,64,26,038/-	100.00%

12. Thereafter, the Applicant has been appointed as a Resolution Professional of the Corporate Debtor in place of the Interim Resolution Professional Mr. Modilal Dhanraj Pamecha vide order of this Adjudicating Authority dated 29.09.2021.

13. The Applicant had published advertisement for inviting expression of interest on 24.10.2021 in English and Vernacular newspapers namely Free Press Journal and Navkal. In response to publication of expression of interest dated 24.10.2021, following Prospective Resolution Applicant came forward:

- I) Kundan Care Products Limited (Kundan Group), New Delhi
- II) Pyramid Tie Up LLP, Kota, Rajasthan
- III) RKG Asset Management LLP, New Delhi



14. That all the three Prospective Resolution Applicants failed to submit the Resolution Plan till the last date as prescribed in Form G. That in view of no Resolution Plan in sight, the Applicant in 4th COC meeting suggested to the Committee of Creditors to consider the liquidation of the Corporate Debtor, in view of the section 33 and in view of time bound mechanism of CIRP process. The Committee of Creditors agreed to the same and gave their consent. The relevant extract of Fourth COC meeting in this regard is given below:

4. To approve the filing the filing of liquidation petition under section 33 of IBC and appointment of RE as liquidator:

In the last CoC meeting held on 20 November 2021, the RP had informed the members that pursuant to the publication of Form G, the had prepared and circulated the provisional list of PRAs as below:

- 1. Kundan Care Products Limited (Kundan Group), New Delhi*
- 2. Pyramid Tie Up LLP, Kota, Rajasthan*
- 3. RKG Asset Management LLP, New Delhi*

In this regard, he informed that the same three PRAS were also included in the final list of PRAS circulated on 03/12/2021. As per Form G, the last date for receipt of resolution plans was 23/12/2021. None of the above three PRAs submitted their resolution plan till the last date.



Thus, the RP suggested the CoC to proceed towards filing of liquidation petition as per the provisions of Insolvency and Bankruptcy Code, 2016. The CoC gave their consent to the same.

Further, the RP proposed his name for the appointment of liquidator at a fee of Rs. 1,00,000/- per month plus applicable taxes and out of pocket expenses on actual basis. Considering the fees proposed, COC did not approve the appointment of Mr. Bijendra Kumar Jha as the liquidator of Sangeeta Aviation Services Private Limited and requested the RP to file a liquidation application without the consent of insolvency professional to act as liquidator.

The RP then apprised the members that as per Regulation 31 and 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the expense of filing the liquidation petition shall constitute a part of insolvency resolution process costs and thus, the members are requested to ratify the same.

The matter was deliberated in detail and the following resolution was passed with voice vote:

"Resolution No. 4(a)

RESOLVED THAT filing of liquidation petition under section 33 of the Insolvency and Bankruptcy Code, 2016 for the Corporate Debtor - Sangeeta Aviation Services Private Limited be and is hereby approved'

Approved	Rejected	Abstained
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100%

None

None

Resolution No: 4(b)

“RESOLVED FURTHER THAT a maximum expense of Rs. 50,000/- (Rupees Fifty Thousand Only) including counsel charges, filing of replies/rejoinders, etc. be and is hereby approved as legal cost towards filing of liquidation petition and the same shall be treated as CIRP Cost.”

15. The application for Liquidation is preferred in view of the fact that there are no chances of revival of the corporate debtor and therefore can be liquidated. Further, the COC has also resolved to liquidate the corporate debtor. Therefore, this application under section 33(1) is preferred.

16. The application is based on the reliance of section 33 of Insolvency and Bankruptcy Code, 2016 which reads as:

"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 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."*

17. Pursuant to this application, the Committee of Creditor in its 6th Meeting held on 23.06.2022 has passed resolution to appoint Mr. Bijendra Kumar Jha to act as a liquidator of the Corporate Debtor.

18. We heard the Counsel and perused the records.

19. Considering above facts and circumstances, this Bench hereby Orders that:

- a. The Process of Liquidation of the Corporate Debtor '**Sangeeta Aviation Services Private Limited**' shall commence as per the Chapter III of the I&B Code from date of this Order.
- b. **Mr. Rajesh Ramesh Kamath, having IBBI Registration No: IBBI/IPA-001/IP-P-01606/2019-2020/12481** is hereby appointed as a "Liquidator" as per the provisions of Sec. 33 of the I&B Code.
- c. The Liquidator shall advertise in two Newspapers, one in English language and one in Regional Language about the Liquidation of the Corporate Debtor as per the provisions of the I&B Code.
- d. Copy of this Order shall be forwarded to the Registrar of Companies with which the Corporate Debtor is Registered.



20. This order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.
21. The fees payable to the Liquidator shall be in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.
22. The Liquidator shall submit progress reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016.
23. The Liquidator is at liberty to seek any directions, if need be, from this Adjudicating Authority during the Liquidation Process.
24. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
25. Ordered Accordingly. Application for U/s. 33 (1) (a) is Allowed and with the aforesaid observations the present IA No. 438 of 2022 is stand disposed of.

IA 2742 OF 2021

26. The Present Application is filed under section 19(2) of Insolvency & Bankruptcy Code,2016 to seeking co-operation from suspended board of directors.
27. It is brought to our attention that suspended board had already provided details as sought by the Applicant vide email dated 18.08.2021 & 27.08.2021.

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28. In view of the above and the fact that the CoC has resolved to liquidate the Corporate Debtor, IA-2742 of 2021 is **disposed of as infructuous.**

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

20.10.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)