

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. 640/JPR/2022
In CP No. (IB)- 158/9/JPR/2020

IN THE MATTER OF:

BALAJI LIFESTYLE TECHNOLOGIES PVT. LTD.

...Operational Creditor

VERSUS

EXCEL TECHNOVATION PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

IA (IBC) No. 640/JPR/2022:

M/S EXCEL TECHNOCATION PVT. LTD.

Through its RP Mr. Prashant Agrawal

Office at: F-106, First Floor, Sumer
Complex, Gautam Marg, C-Scheme,
Jaipur- 302001 (Rajasthan)

E-mail: ipppagrawal@gmail.com /
cirp.excel@gmail.com

...Applicant

FOR THE APPLICANT: Prashant Agrawal, RP *present in person*

Order Pronounced On: 31.10.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

- The present Application bearing *IA (IBC) No. 640/JPR/2022* has been filed by the *Mr. Prashant Agarwal*, Resolution Professional ('Applicant'/'RP')

for *M/s Excel Technovation Pvt. Ltd.* ('Corporate Debtor') under Section 33 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 30.09.2021 had admitted the Application filed by *M/s Shri Balaji Lifestyle Technologies 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. Prashant Agrawal* as Interim Resolution Professional ('IRP').
3. It is seen that the CIRP of the Corporate Debtor commenced *vide* Order dated 30.09.2021. Later, the time period from 30.09.2021 to 28.02.2022 was excluded from the CIRP of the Corporate Debtor *vide* Order dated 02.06.2022. Thereafter, the period of CIRP was extended for a period of 90 days *vide* order dated 09.11.2022. Hence, the time period for of CIRP was to conclude on 26.11.2022. It is pertinent to note that the Application seeking Liquidation of the Corporate Debtor was filed on 25.11.2022.
4. In the 1st meeting of the Committee of Creditors ('CoC') held on 30.10.2021, the CoC appointed the Applicant as the Resolution Professional in terms of Section 22(3)(a) of the Code. The Applicant has received and collated the claims of all the creditors of the Corporate Debtor

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pursuant to public announcement in compliance with Section 13 and 15 of the Code. An updated list has been presented of the claims of various creditors along with the updated constitution of CoC members in accordance with Regulation 16 of the IBBI (Insolvency Resolution Process of Corporate Person) Regulations, 2016 ('CIRP Regulations').

5. During the process of CIRP, in compliance of Section 36A of the CIRP Regulations, the Applicant published Form-G for seeking Expression of Interest ('EOI') on 14.12.2021. In response, only one prospective resolution applicant, *Mr. Amit Agarwal*, expressed his interest and completed all the prerequisites to be included in the provisional and final list of resolution applicant. However, no resolution plan was received by the Applicant. Subsequently, based upon the decision of the Committee of Creditors in 5th meeting, the Applicant re-published Form-G on 17.08.2022, however, no EOI was received during the second round of invitation.
6. The Applicant had made an observation for suspicious transactions and appointed a transaction auditor to determine the quantum of transactions falling under the Sections 43,45,50 and 66 of IBC. Due to unavailability of the records of the Corporate Debtor, the transaction auditor could not qualify the transactions under periphery of the mentioned Sections. An

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application was filed in this regard numbered as *IA No. 81/JPR/2022* dated 11.02.2022 under section 66 of the Code wherein the observations of the Applicant were presented; the same is pending adjudication.

7. During the 6th meeting of the CoC held on 03.10.2022, *Energy Efficiency Services Limited* ('EESL') being the member of COC holding 91.11% insisted upon appointing another transaction auditor. The Applicant received an e-mail dated 09.09.2022 by *EESL* wherein it was stated that *M/s Tattvam & Co.* was appointed for conducting the forensic audit of the Corporate Debtor and certain documents were sought. The details sought were provided to *EESL* via e-mail dated 14.09.2022. If the report of the Forensic Audit has not been provided to the Applicant, the same shall be provided at the earliest to identify transaction under Sections 43, 45, 50 and 66 of the IBC, 2016.
8. Since, no EOI was received after publishing Form-G for the second time; no independent forensic report was received from EESL and the period of extension of CIRP was to conclude on 26.11.2022, the Applicant in the 7th CoC meeting dated 03.11.2022, put forth the agenda to Liquidate the Corporate Debtor. The Applicant also put forth the agenda to consider the liquidation cost, assessment of compromise or arrangement, assessment of sale as a going concern, fee of the liquidator in compliance with Regulation

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39B, 39BA, 39C and 39D of the CIRP Regulations, 2016. The minutes of the 7th meeting of the COC has been placed on record.

9. Upon declaration of result, it was found that the resolution for Liquidation of the Corporate Debtor along with other related resolutions including appointment of Liquidator, Remuneration of Liquidator, etc., have not been voted upon and no resolution has been passed to this regard.
10. We have heard the parties and perused the averments made in the Application along with the documents enclosed therein. 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, 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

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Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of sub-Section (1).”

11. 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.

12. ***The prescribed period for filing Application*** – In the present case, the application under Section 7 of the Code was admitted on 30.09.2021. The RP apprised in the 7th Meeting dated 03.11.2022 that since no resolution plan has been received till the last date of submission of the Resolution Plan and the CIRP period was to conclude on 26.11.2022, therefore, the resolution for alternative resolution for liquidation of the Corporate Debtor was proposed. The CIRP period concluded on 26.11.2022 and no resolution plan was received under Section 30(6) of the Code, hence, the RP has filed the present application on 25.11.2022 in accordance with Section 33(1)(a) of the Code. Thus, the present application is filed within the prescribed

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period. In view, the Application under consideration is taken up under Section 33(1)(a) of the Code.

13. *Appointment of Liquidator and fee to be paid* –The RP in the 7th meeting of the CoC dated 03.11.2022 presented the said agenda before the Committee for appointment as Liquidator. The CoC abstained from voting upon the Resolution. 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. *Mr. Prashant Agarwal* 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. Prashant Agarwal* with IBBI registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 is directed to file his written

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consent in format/ Form-AA within 7 days from the date of this Order.

Thus, *Mr. Prashant Agarwal* is appointed as the Liquidator.

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 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.
16. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** – The estimated liquidation expenses were not voted upon. The estimated liquidation cost as presented by the Applicant is Rs. 16,00,000/- plus GST, if any, excluding Liquidator's remuneration. The aforementioned estimated Liquidation Cost shall be presented before the Stakeholder Creditors Committee for due consideration. The Liquidator is directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.
17. ***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.

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18. *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 lays 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 means of private sale with the prior permission of the Adjudicating Authority.
19. *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. The remuneration of the proposed liquidator was not approved by the CoC till the date of filing of Liquidation application. Therefore, the fees of the Liquidator shall be in accordance with the limit prescribed under the Regulations.
20. *Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)*– The committee 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 above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature. Since, no resolution plan was received and the CIRP period concluded on 26.11.2022, therefore, the Order of Liquidation is being passed as per the mandate of law.

21. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, *M/s Excel Technovation 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:

21.1. 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;

21.2. The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be

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notified by the Central Government in consultation with any financial sector regulator;

21.3. 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;

21.4. 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;


21.5. 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, and 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;

21.6. 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;

- 21.7. 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.
22. In view of the foregoing, *IA No. 640/JPR/2022* is disposed of. Copy of this order be supplied to the Liquidator as well as to the Registrar of Companies forthwith.
23. 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**