



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI SPECIAL
PRINCIPAL BENCH**

**ITEM No. 7
(IB)-353(PB)/2022**

IN THE MATTER OF:

Bank of Baroda

.... Petitioner

v.

IBD Universal Pvt Ltd Corporate
Guarantor of M/s. NIIL Infrastructure
Private Limited Principal Borrower

.... Respondent

Order U/s. 7 of (IBC) CIRP

Order delivered on 22.05.2024

CORAM:

**SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (JUDICIAL)**

**SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

(HEARING THROUGH PHYSICAL MODE & VC) PRESENT:

For the RP : Mr. Sajjan Kumar Dokania, RP in Person

For the Respondent

ORDER

IA-12/2024 Liq

The present application has been filed under Section 33(1) (b) (i) to (iii) of IBC, 2016. The prayer made in this application reads thus:-

- a) Allow the present Application for liquidation of the Corporate Debtor and pass appropriate orders under the IB Code, 2016; and*
- b) Pass such further order(s) /direction(s) as this Hon'ble Adjudicating Authority may deem necessary in the facts and circumstances of the present case.*

The RP could draw our attention to the resolution dated 08.02.2024 passed by the CoC in its 10th meeting. The relevant excerpt of the resolution dated 08.02.2024 reads thus:-

Resolutions Discussed and resolved:

1. Noting of minutes of 9th COC meeting.

The Financial Creditors noted the minutes of 9th COC Meeting held on 04.01.2024 later adjourned to 08.01.2024 without any observations.



2. Discussion on current status of the CIRP Process.

RP informed the house about the physical and legal status of the Corporate Debtor. He also informed that though timeline of CIRP expired as such it will go for automatic liquidation, but some approval for Liquidation process require approval of COC as such this meeting is convened.

3. Liquidation of Corporate Debtor :

After discussions the above position COC approved and **Resolved for Liquidation** of Corporate Debtor with **100% vote of present members (99.08%)** and advised RP to file the application for liquidation with Hon'ble NCLT at the earliest.

As can be seen from the aforementioned resolution, the CoC has taken a decision with 100% voting share to liquidate the Corporate Debtor. In terms of the provision of Section 33 (2) of IBC, 2016, on being informed by the RP about the decision taken by the CoC to liquidate the Corporate Debtor, with minimum 66% voting share, this Tribunal should order liquidation of the Corporate Debtor in terms of the provisions of Section 33 (1) of IBC, 2016.

The provisions of Section 33 (1) and (2) of IBC, 2016 reads thus:-

Section 33: Initiation of liquidation

33 (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.

33 (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 creditors ¹[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-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)

In view of the aforementioned Sections particularly in the wake of the resolution passed by the CoC with 100% voting share deciding to liquidate the Corporate Debtor, we are left with no option but to order liquidation of the Corporate Debtor.

In paras 24 & 25 of the application, the RP has espoused the steps taken by him/CoC to ensure that the insolvency of the Corporate Debtor is resolved.

Paras 24 & 25 of the application read thus:-

24. That the Corporate Debtor has following 4 projects:

a) IBD Royale, Hoshangabad, MP:

Nature of Project	Residential
Total No. of Plots	215
No. of Registered Plots	184
Payment Received from No. of Plots	7
Total No. of Plots Mortgaged with Govt. Authorities	15
No. of Plots for EWS (1046.89 Mtr) for Construction of 42 DU	1 (Neither Constructed nor Booked)
No. Vacant Plots	8
Present Status of Project	No further progress is going on

b) IBD Hallmark Citii, Kolar Road, Bhopal, MP:

Phase Three: Two plots for construction of 16 Units each (2 BHK) total 32 Units. It is mortgaged to Govt. Authority and no construction started.

Nature of Project	Residential
Total no. of Plots	2
Total no. of Plots Mortgaged with Govt. Authorities	2 (For Construction of 16 Units each total 32 Units. No Construction Started)
Present Status of Project	No further progress is going on

Phase Four: Land and Building for phase four is mortgaged to Union Bank. Phase 4 has 13 towers out of which 6 are completed, 1 partially completed slab up to 4th floor, 1 has plinth level and for the remaining no construction has commenced.



Nature of Project	Residential
Total No. of Plots	240
No. of Registered Plots	119
No. of Plots Booked	12
No. Vacant Plots	109
Present Status of Project	No further progress is going on

c) IBD- Total Glory Citii, Bhourli, MP (Near Bhopal):

Nature of Project	Residential
Total No. of Plots	336
No. of Registered Plots	260
Payment Received from No. of Plots	25
Present Status of Project	No further progress is going on

d) IBD Kings Park, Bawadia, Kalan, Bhopal, MP:

It is having two projects Pearl & Onyx. Project Pearl is Constructed, whereas for Onyx, no construction commenced till date.

Pearl: Total 48 plots, where 16 out of 48 are vacant (10 flat of landowners share, but decision on these will be looking into mortgage to Canara Bank).

Nature of Project	Residential
Total no. of Plots	48
No. of Registered Plots	3
Possession Taken	0
Total no. Vacant Plots	16
Present Status of Project	No further progress is going on

Onyx: Total 36 plots, 29 out of 36 are vacant (7 flat of landowners share, but decision on these will be looking into mortgage to Canara Bank).

Nature of Project	Residential
Total No. of Plots	36
No. of Registered Plots	0
Possession Taken	0
Total no. Vacant Plots	29
Present Status of Project	No further progress is going on





25. It is submitted that only one resolution plan was submitted i.e. by M/s Tanya Construction in consortium with M/s Rajendra Singh Kiledar Construction Pvt Ltd however, COC were of the view that the Resolution

Amount offered by the PRA is way too less than the valuations of the assets of the corporate debtor and also the outstanding dues of the Corporate Debtor. As such COC has not approved the Resolution Plan and decided to proceed for liquidation. As the Corporate Debtor was moving for Liquidation, the RP was of the view that no further extension is required and hence not applied for extension of CIRP period. However, compliances if any required for extension of CIRP period, which is not being done, may be condoned.

In terms of the IBBI circular dated 18.07.2023, after order of liquidation of the Corporate Debtor the RP should not be appointed as liquidator and another IP from the panel made available by the IBBI to this Tribunal needs to be appointed as liquidator to carry out the process in terms of the extant provisions of IBC, 2016 read with IBBI (Liquidation Process Regulations, 2016). The RP who is present in person drew our attention to the interim order passed by the Hon'ble High Court of Karnataka dated 09.01.2024 in **WP-27043/2023 in the matter of Ravindra Beleyur Vs. Insolvency and Bankruptcy Board of India** in terms of which the RP was allowed to continue as liquidator till the disposal of the petition. The order passed by the Hon'ble High Court of Karnataka is extracted below:-

Status: Pending		
Case Number: WP 27043/2023 (KAHC010632182023)	Classification: GM RES	Date of Filing: 28/11/2023 15:16:28
Petitioner: RAVINDRA BELEYUR	Pet. Advocate: JAYASREE NARASIMHAN	
Respondent: ISOLVENCY AND BANKRUPTCY BOARD OF INDIA	Resp. Advocate:	
Filing No.: WP 27119/2023	Judge: M.NAGAPRASANNA	
Last Posted For: FRESH MATTER/S	Last Date of Action: 09/01/2024	Last Action Taken: ADJOURNED
Next Hearing Date:		



Daily Orders: WP 27043/2023

1	M.NAGAPRASANNA	09/01/2024
<p>Heard the learned counsel for the petitioner and the learned Additional Solicitor General of India, Sri.Aravind Kamath representing the Insolvency and Bankruptcy Board of India (the Board' for short).</p> <p>The petitioner calls in question a Circular dated 18.07.2023 issued by the Board, which directs that the Resolution Professional should not continue as a Resolution Professional in the event the Company is said to be put in to Liquidation or act as a Liquidator for the process of liquidation of the said particular Company.</p> <p>This the learned counsel for the petitioner submits is a sweeping direction, which disturbs the petitioner to act as Liquidator on the strength of him being appointed as a Resolution Professional and therefore submits that his rights are taken away of acting as a Liquidator. He would further contend that such sweeping directions cannot be given by the Board, invoking its power under Section 34(4)(b) of the IBC.</p> <p>The matter would require consideration.</p> <p>Learned ASGI seeks two weeks time to justify the issuance of the general directions by the Board.</p> <p>Till such time, the petitioner insofar as he is appointed as Resolution Professional/Liquidator in the subject liquidation shall not be precipitated.</p> <p>Registry to print the name of the learned counsel Smt.Anupama Hegde as appearing for respondent/Board.</p> <p>Last Updated On: 2024-01-10 12:00:33</p>		
	M.NAGAPRASANNA	08/01/2024
<p>List the matter on 09.01.2024 in the 'fresh matters list'.</p> <p>Last Updated On: 2024-01-09 10:42:41</p>		
	M.NAGAPRASANNA	05/01/2024

11.33	High Court of Karnataka Official Web Site	
<p>The petitioner shall serve the respondent by way of hand summons and through e-mail as well, and file acknowledgment in the next 24 hours.</p> <p>List this matter in the fresh matters list on 08.01.2024.</p> <p>Last Updated On: 2024-01-08 10:44:23</p>		
4	K V ARAVIND	19/12/2023
<p>Issue emergent notice to respondent.</p> <p>Last Updated On: 2023-12-20 10:29:23</p>		

After taking note of the circular issued by the IBBI, the Hon'ble High Court of Karnataka has taken a particular view, may be interim in nature and that



order was passed in the facts of that case and it may not be appropriate to apply the same in the facts of this case. Accordingly, in the light of the circular issued by IBBI, we deem it appropriate to replace the RP and appoint **Mr. Rajeev Khurana** as Liquidator.

ORDER

- 1.** In view of above, the application bearing IA 12/2024 is hereby ALLOWED by ordering **Liquidation of the Corporate Debtor, namely M/s IBD Universal Private Limited.**
 - i.** Prayers as sought for in **IA 12/2024** filed by **RP of M/s IBD Universal Private Limited**, the Corporate Debtor, is **ALLOWED** and the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code.
 - ii.** The Order of Moratorium passed under Section 14 of the IBC shall cease to have its effect and a fresh Moratorium under Section 33(5) of the IBC shall commence;
 - iii.** **Mr. Rajeev Khurana** with **Reg. No: [IBBI/IPA-001/IP - P- 02760/2022-2023/14230]** (**E-mail ID: rk.rajeevkhurana@outlook.com**), (**Mobile No. 7045756965**) is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process inter alia in terms of the following directions:
 - iv.** Mr. Rajeev Khurana is directed to file his written consent in accordance to the provisions of the code as well his valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member within 3 days from today.
 - v.** The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. He is to be strictly informed that he should not delay the process. He will maintain timelines.
 - vi.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, in Financial Express (English), all India edition, Dainik Bhaskar (Hindi), all India edition and Website / Portal maintained by the Insolvency and Bankruptcy Board of India stating that the Corporate Debtor is in liquidation.



- vii.** All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- viii.** The personnel of the Corporate Debtor are directed to extend all assistance and full co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor. They will do so without demur and promptly.
- ix.** On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
- x.** In accordance with section 33(7) of the Code, 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 to be continued during the liquidation process by the Liquidator.
- xi.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code and seek and get assistance from all persons connected with Company in liquidation.
- xii.** The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law in a time bound manner.
- xiii.** The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. He shall refrain from filing frivolous, time consuming applications. All steps to speed up the liquidation proceedings to be taken by the Liquidator. If there is any deliberate delay in action and if there is inaction causing loss of value of Liquidation Estate and



unnecessary expenditure, he will be subject to appropriate action as per law including removal.

- xiv.** In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, NCT of Delhi & Haryana i.e. within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Insolvency and Bankruptcy Board of India.
- xv.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xvi.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

-Sd/-

**(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)**

-Sd/-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (JUDICIAL)**

22.05.2024
Lalit