IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.304

IA(Plan)/33(AHM)2024 in CP(IB) 561 of 2018

Orders under Section 30 IBC

IN THE MATTER OF:

Arvind Gaudana RP of Vrundavan Cerenic Pvt. Ltd .....**Applicant**

Order delivered on: 27/09/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

SD/-

SAMEER KAKAR
MEMBER (TECHNICAL)

SD/-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH COURT-1

IA(Plan)/33 (AHM)/2024 in
CP(IB)/561(AHM)/2018

[An application under Section 30(6) & 31 of the Insolvency and Bankruptcy Code,2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India, Regulations, 2016]

In the matter of ***Vrundavan Ceramics Private Limited***

Shri ArvindGaudana,
Resolution Professional of
Vrundavan Ceramics Private Limited
Having registered address at:
307,Ashiravad Paras, Nr. Prahladnagar Garden
Corporate Road, Prahladnagar
Satellite, Ahmedabad - 380015

... Applicant

Order Pronounced On: 27.09.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLEMEMBER (TECHNICAL)

APPEARANCE:

For Applicant(s) : Ravi Pahwa, Advocatea.w.
: ArvindGaudana, RP in person

O R D E R
[*Per:*Bench]

1. This application is filed by the Resolution Professional of Vrundavan Ceramics Private Limited (Corporate

Debtor)under Section 30(6) andSection 31 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) r.w. Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 seeking the following prayers:

a. *Allow the present application;*

b. *Pass an order approving the Resolution Plan annexed at Annexure-A which has been duly approved by the CoC pursuant to its meeting held on 03.08.2021 for which e-voting was concluded on 07.08.2021 in accordance with Section 30(4) of the IB Code, such that pursuant to Section 31(1), the same shall be binding on the corporate debtor and its employees, members, creditors including the central government, any state government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authority to whom statutory dues are owed, guarantors and other stakeholders in the corporate insolvency resolution process of the Corporate Debtor;*

c. *Grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice.*

2. It is submitted by the applicant that the State Bank of India, a Financial Creditor filed an application u/s. 7 of the IB Code being CP (IB) No.561 of 2018. The said petition was admitted for commencement of CIRP by this Adjudicating

Authority vide order dated 21.01.2020. By the said order, Mr.ArvindGaudana was appointed as an Interim Resolution Professional (hereinafter referred to as '**IRP**').

3. The applicant submitted that thereafter, CIRP of the Corporate Debtor progressed in accordance with the provisions of Code and CIRP Regulations. As a first step, the IRP made public announcement of initiation of Corporate Insolvency Resolution Process on 30.01.2020 in Indian Express & Financial Express, and invited claims along with relevant proof in respect thereof from the creditors to be submitted in the prescribed format on or before 12.02.2020. A copy of Public Announcement dated 30.01.2020 is annexed in the application and marked as **Annexure-D**.

4. The applicant submits that thereafter, the IRP received claims from State Bank of India in Form-C, SMV Cera Private Limited in Form-B and Intec Capital Limited in Form-C (subject to verification). (A copy each of the claims received by the IRP is annexed in the application and marked as**Annexure-E**.) The applicant submits that on

receipt of the claims from the creditors, the IRP validated and consolidated all the claims and prepared the list of creditors who had submitted the claims. The IRP also constituted CoC comprising of State Bank of India as the sole Financial Creditor of the Corporate Debtor. M/s. Intec Capital Limited has preferred an appeal before Hon'ble NCLAT.

5. It is stated that the IRP thereafter convened the first meeting of CoC on 20.02.2020 wherein, the COC inter alia, resolved to appoint IRP as the Resolution Professional of the Corporate Debtor, amongst other resolutions passed in the meeting. (A copy of Minutes of first Meeting of COC held on 20.02.2020 is annexed in the application and marked as **Annexure-F**).

6. The applicant submits that in accordance with the provisions of Code and Regulation 27 of CIRP Regulations, the Resolution Professional also appointed two registered valuers viz. Pranav Parekh & Associates and Shree DattValuers& Associates for valuation of land, building, plant and machineries and for valuation of Financial

Assets. The applicant submits that Mr.Pinakin Shah and Mr. Keyur J Shah were appointed for determining the liquidation value of the Corporate Debtor who completed the valuation and submitted their valuation reports. The fee payable to them was approved by the CoC in their first meeting held on 20th February, 2020. The Applicant craved leave of this Tribunal to refer and rely upon the aforesaid Valuation Reports when produced.

7. The applicant submits that as per the order of admission dated 21.01.2020, the CIRP period was to expire on 18.07.2020. The applicant thereafter filed IA No.604 of 2020 seeking exclusion/extension of the CIRP period.The applicant submits that this Adjudicating Authority vide order dated 21.09.2020 allowed the IA No.604 of 2020 extending the period of CIRP for 90 days beyond 180 days i.e. upto 15.10.2020. A copy of the order dated 21.09.2020 made by this Adjudicating Authority in IA No.604 of 2020 at **Annexure-G**of the application.

8. The applicant submits that in the meanwhile, one Intec Capital Limited filed IA No. 340 of 2020 praying before this

Adjudicating Authority to direct the applicant to admit the claim of the said applicant as a Secured Financial Creditor of the Corporate Debtor. The applicant submits that this Adjudicating Authority vide order dated 21.09.2020 passed in IA 340 of 2020 directed the applicant not to proceed with the approval of Resolution Plan. A copy of order dated 21.09.2020 made by this Adjudicating Authority in I.A. No.340 of 2020 at **Annexure-H**of the application.

9. The applicant submits that thereafter, this Adjudicating Authority vide order dated 11.11.2020 made in I.A. No. 340 of 2020 directed that the Resolution Plan shall proceed with CIRP only after disposal of I.A. No.340 of 2020 and CIRP stands extended to that extent. A copy of order dated 11.11.2020 made by this Adjudicating Authority in I.A. No.340 of 2020 is annexed at **Annexure-I**of the application.

10. The applicant submits that this Adjudicating Authority vide order dated 05.02.2021 dismissed and disposed of IA No.340 of 2020 filed by Intec Capital Limited while observing that the interim order passed by the Adjudicating Authority on 11.11.2020 stands vacated. This Adjudicating

Authority further directed the applicant to proceed withthe CIRP as per the Rules. A copy of order dated 05.02.2021 made by this Adjudicating Authority in I.A. No.340 of 2020 at **Annexure-J**of the application.

11. The applicant submits that Form-G seeking Expression of Interest (EoI) under Regulation 36A of the CIRP Regulations was published in English daily "***Economic Times***" and Gujarati daily "***DivyaBhaskar***" on 11.06.2020 as resolved in the 3rd CoC Meeting held on 10.06.2020. As per Form-G, the last date of submission of Resolution Plan was on or before 04.08.2020. A copy of the Form-G and a copy of the minutes of 3rd CoC meeting held on 10.06.2020are annexed at **Annexure-K Colly** of the application.

12. The applicant submits that however, no plan was received due to pandemic situation and few of the prospective applicants had requested for extension of time for submitting their EoIs so that they can visit the factory and assess the value of the corporate debtor. The said issue was deliberated in the 4th CoC Meeting held on 05.09.2020. In this meeting, it was resolved that the revised Form-G be

published in English daily "***Economic Times***" and Gujarati daily "***Sandesh***". Accordingly, revised Form G was published on 15.09.2020. A copy of revised Form-G along with the minutes of 4th CoC Meeting held on 05.09.2020 is annexed at **Annexure-L** of the application.

13. The applicant submits that it is relevant to mention at this stage that the applicant had received three resolution plans after second attempt. However, in view of the order dated 21.09.2020 made by this Adjudicating Authority in I.A. No.340 of 2020, the applicant could not proceed with the placing of Resolution Plan before the CoC for approval. The applicant submits that immediately upondisposal of I.A. No.340 of 2020 by judgment and order dated 05.02.2021, a meeting of CoC was held on 12.02.2021 wherein the three Resolution Plans were placed before the CoC for consideration. The CoC passed a resolution that the resolution plans be opened and directed the applicant to submit a report on such verification as early as possible. The applicant annexed copy of the minutes of 6th CoC Meeting dated 12.02.2021 at **Annexure-M**.

14. The applicant submits that, the 7th CoC Meeting was held on 04.03.2021 to consider resolution plan received from three prospective resolution applicants. However, as one of Resolution Applicant namely Shri VishramAkhai Patel raised objection against another Resolution Applicant. After detailed deliberations, the CoC adjourned the meeting while directing the applicant to seek legal opinion in the matter. The applicant annexed a copy of minutes of 7th CoC Meeting dated 04.03.2021 at **Annexure-N**.

15. The applicant submits that the applicant filed IA No.205 of 2021 before this Adjudicating Authority inter alia praying to order exclusion of the period between 25.03.2020 and 31.05.2020 from the CIRP period and thereby extending further period of 67 days of CIRP of the Corporate Debtor. This Adjudicating Authority vide order dated 23.03.2021 was pleased to allow IA 205 of 2021 and directed that period of 68 days stands excluded from total period of CIRP from the date of order. This Adjudicating Authority directed the applicant to complete the process. A copy of order dated 23.03.2021 made by this Adjudicating Authority in IA

No.205 of 2021 is annexed at **Annexure-O**of the application.

16. The applicant submits that thereafter, the 8th CoC Meeting was held on 13.04.2021. The CoC discussed various issues including taking note of 6th CoC Meeting, 7th CoC Meeting and actions taken by the applicant, taking note of status for CIRP, to review resolution plan received and presentation by prospective Resolution Applicant and to fix and approve CIRP expenses incurred by applicant. The members of CoC along with other participants approved the CIRP expenses and authorised the applicant to make payment for the same. The CoC directed the applicant to send intimation by email to all the prospective resolution applicantsto submit affidavit latest by 17.04.2021 regarding their eligibility as resolution applicant, hence COC decided to postponevoting. The applicant annexed a copy of minutes of 8th CoC Meeting dated 13.04.2021 at **Annexure-P**.

17. The applicant submits that thereafter, the 9th CoC Meeting was held on 22.04.2021. The CoC after considering the

status of affidavit, requested all the three prospective Resolution Applicants to give their presentation on Resolution Plan and revise the bid amount offer. The CoC resolved that the ResolutionApplicants to submit their financial offer either by email or courier/ speed post to applicant on or before 27.04.2021, since the CIRP is to be completed in time bound manner. The applicant annexed a copy of minutes of 9th CoC Meeting dated 22.04.2021 at **Annexure-Q**.

18. The applicant submits that thereafter, the 10thCoC was held on 03.05.2021. In this meeting, the CoC called all the three resolution applicants through online mode to ascertain whether they can increase their offer further or not. After discussions with all the three resolution applicants, the CoC ultimately suggested that all thethree applicants will submit their revised offer/ plan duly signed and scanned by email to RP and thereafter, the applicant as RP will have to place the same before CoC.The applicant annexed a copy of minutes of 10th CoC Meeting dated 03.05.2021 at **Annexure-R**.

19. The applicant submits that in pursuance to the resolution passed in 11th CoC Meeting, Lorenzo Vitrified Tiles Pvt. Ltd. submitted its revised resolution plan on 07.05.2021 whereas, VishramAkhai Patel submitted his resolution plan on. 08.05.2021 and Mr. PurshottamLalji Patel along with six consortiums did not provide any revised resolution plan.

20. The applicant submits that after a period of about 18 months from the date of public announcement dated 30.01.2020 in leading newspapers, one Arrow Digital Private Limited vide letter dated 02.07.2021 submitted its claim. The Applicant vide letter dated 09.07.2021 replied that the claim of said entity cannot be accepted after delay of 18 months.

21. The applicant submits that the entire CIRP period of 330 days after above exclusion stood expired on 11th May 2021. The applicant submits that there were three prospective resolution applicants, whose plans were being actively considered by the members of CoC since all the prospective Resolution Applicants substantially increased their offers. The applicant therefore filed IA 529of 2021 before the

Adjudicating Authority seeking to extend the CIRP. This Adjudicating Authority vide order dated 10.08.2021 allowed IA 529 of 2021thereby extending the CIRP period for further 15 days from 10.08.2021 i.e. the date of the order. Annexed here in the application and marked as **Annexure-W** is the copy of order dated 10.08.2021 passed by the Adjudicating Authority in IA 529 of 2021.

22. The applicant submits that in the meanwhile, 13th CoC Meeting was held on 03.08.2021 wherein amongst others, agenda item no.13/4 was with respect to consider and approve the Resolution Plan. Accordingly, the CoC in the e-voting at the 13th CoC meeting held on 03.08.2021 approved the Resolution Plan of Lorenzo Vitrified Tiles. The applicant annexed a copy of the Minutes dated 04.08.2021 of 13th CoC Meeting held on 03.08.2021 at **Annexure-X**.

23. It is pertinent to note that one Intec Capital Limited filed IA 340 of 2020 before this Tribunal for treating itself to be a Financial Creditor of the Corporate Debtor. This Tribunal vide order dated 05.02.2021 rejected the application. Being aggrieved by the order dated 05.02.2021, Intec Capital

Limited filedCompany Appeal No.220 of 2021 before the Hon'ble National Company Law Appellate Tribunal. The Hon'ble NCLAT vide order dated 07.02.2022 was pleased to allow the appeal and set aside the order of this Tribunal and remanded the matter back to this Tribunal. The applicant then treated Intec Capital Limited as unsecured Financial Creditor. Thereafter Intec Capital Limited again raised grievance before this Tribunal stating that it should be treated as secured Financial Creditor. This Tribunal vide order dated 13.03.2023 was rejected the said request. Being aggrieved, Intec Capital Limited has filed Company Appeal No.771 of 2023 before the Hon'ble NCLAT and the said appeal is pending adjudication. The applicant annexed a copy of order dated 13.03.2023 passed by thisTribunal in IA No. 340 of 2020 at **Annexure-Y**.

24. The applicant submits that the applicant filed IA 638 of 2021 before this Tribunal for approval of resolution plan submitted by Lorenzo Vitrified Tiles. This Tribunal vide order dated 08.11.2023 (wrongly mentioned as 11.01.2023)remanded the matter back to the CoC for reconsideration of the resolution plan keeping in mind the

judgment of the Hon'ble Supreme Court in the case of *Rainbow Papers (supra).* The applicant has annexed copy of order dated 08.11.2023 at Annexure -B.

25. The applicant submits that in pursuance to the order of remand, the applicant convened three CoC Meetings. In the 19th Meeting of CoC held on 04.12.2023, the order of this Hon'ble Tribunal was discussed by the members of CoC and the Resolution Professional was requested to revise the distribution as proposed in the Resolution Plan. The applicant annexed a copy of minutes of 19th CoC Meeting held on 04.12.2023 at **Annexure-Z**.

26. The applicant submits that thereafter, 20th Meeting of CoC was held on 06.01.2024 wherein the Resolution Applicant reiterated that it was not ready to revise theresolution plan. The applicant placed on record the revised distribution, if the State Tax Officer is considered to be a secured creditor and the said table containing the distribution was put for e-voting. The applicant annexed a copy of minutes of 20th CoC Meeting held on 06.01.2024 at **Annexure-AA**.

27. The applicant submits that thereafter, 21st Meeting of CoC was held on 25.01.2024 wherein the revised distribution was rejected by the CoC. The State Bank of India noted that the State Tax Department may be treated as a Secured Creditor, but the distribution ofproceeds will be as per Sec.53 of the IB Code. The applicant annexed a copy of minutes of 21st CoC Meeting held on 25.01.2024 at **Annexure-AB**.

28. **Background of the Resolution Plan**:

The summary of the payments proposed to be made under the Plan by Lorenzo Vitrified Tiles are as follows:

Sr. No.	Description	Amount (in INR)
1.	CIRP Cost	51,47,112.00
2.	Proposal for Financial Creditor	An amount of INR 12,40,00,000 ("FC Consideration")
3.	Proposal for Operational Creditors (Workmen and Employees)	NIL
4.	Proposal for Operational Creditors (Statutory dues,liabilitiesincluding outstandingGovernmental Authority dues,Taxes, etc.)	NIL

5.	Proposal for Operational Creditors (Other thanWorkmen andEmployees andStatutory Dues)	NIL
6.	Proposal for unsecured financial creditors	NIL
7.	Proposal for share application money	NIL
8.	Proposal for existing shareholders	NIL
9.	Proposal for refurbishments/ repair/ operations of the factory and working capital	6,75,00,000
	Total Discharge	**19,66,47,112**

29. The following were the **timelines** followed in the CIRP as submitted by the applicant in the application:

Sr. No.	Event	Date
1.	Commencement of CIRP and appointment of interim resolution professional.	21.1.2020
2.	Public announcement	30.01.2020
3.	Appointment of Valuer	20.02.2020
4.	First meeting of COC and appointment of IRP as resolution professional	20.02.2020
5.	Invitation for expression of interest in Form G	15.09.2020 (Revised as extension of 90 days)
6.	Last date for receipt of EoI	03.10.2020
7.	Issue of provisional list of resolution applicants	03.10.2020

8.	Issue of RFRP and evaluation matrix	09.10.2020
9.	Last date of submission of objections to provisional list	09.10.2020
10	Issue of final list of prospective resolution applicants	19.10.2020
11	Submission of IM to CoC	09.10.2020
12	Last date for submission of Resolution Plan	09.11.2020
13	Date of receipt of Resolution Plan	07.05.2021
14	Submission of 1st revised Resolution Plan by the Resolution Applicant (By E-mail & Incl. CIRP Cost of Rs. 30.00 Lakhs)	03.05.2021 (Rs. 11,40,00,000)
15	Submission of 2nd revised Resolution Plan by the Resolution Applicant (By Submitting Physically & Incl. CIRP Cost of Rs. 30.00 Lakhs)	05.05.2021 (Rs.11,70,00,000)
16	Submission of 3rd revised Resolution Plan by the Resolution Applicant By Submitting Physically & Incl. CIRP Cost of Rs. 30.00 Lakhs)	07/05/2021 (Rs.12,70,00,000)
17	Approval of the Resolution Plan by COC	13th COC on 03.08.2021

30. Further, an additional affidavit was filed by the Applicant vide Inward Diary No. D6822 on 04.09.2024, stating the reasons for the delay in filing the application and requesting to condone the delay of more than 8 months in filing of the application, stating the reasons that the appropriate actions could not be taken due to the delay by the Financial Creditor SBI and that it was holiday from 11.11.2023 to 19.11.2023.

31. **OBSERVATION AND DIRECTIONS BY THIS TRIBUNAL**

I. It is seen from revised Form – H that the Fair Value Liquidation value of the Corporate Debtor is arrived at:

-

22	**Fair Value :**	
	1. Land & Building	
	i. Shree Dutt Valuer & Associates	15,04,00,000.00
	ii. Mr. Pranav Parikh	15,82,00,000.00
	2. Plants & Machineries	
	i. Shree Datt Valuer & Associates	3,85,00,000.00
	ii. VR Vishah Shah	4,05,65,250.00
	3. Financial Assets	
	i. Mr. Keyur J.Shah	3,73,86,806.00
	ii. Mr. Pinakin Shah	3,75,41,000.00
23	**Liquidation value :**	
	1. Land & Building	
	i. Shree Dutt Valuer & Associates	10,53,00,000.00
	ii. Mr. Pranav Parikh	11,00,00,000.00
	2. Plants & Machineries	
	i. Shree Datt Valuer & Associates	2,70,00,000.00
	ii. VR Vishah Shah	2,43,39,150.00
	3. Financial Assets	
	i. Mr. Keyur J.Shah	1,93,06,875.00
	ii. Mr. Pinakin Shah	1,92,17,000.00

II. It is seen that the present application before this Tribunal has been subject to extensive litigation, filing of several Interlocutory Applications and appeals having been considered by this Tribunal, the local District Court and the Hon'ble NCLAT.

III. The present matter originates from an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by the Financial Creditor against the Corporate Debtor in 2018, with the CIRP commencing only in 2020. Subsequently, multiple extensions and exclusions were granted by this Tribunal, taking into account the substantial prospects of resolving the insolvency through a Resolution Plan. The Resolution Plan was even remanded back for further consideration of the CoCkeeping in mind the principles of equity and natural justice and more importantly the mandate of the Code that resolution is always preferable as compared to liquidation.

IV. One of the orders from the history of the orders in this extensive litigation is the order dated 08.11.2023 which is reproduced below: -

> ***"This application is remanded back to the RP and dismissed with the liberty to re-file the same again in view of the position of the claims and the distribution amount is crystallized by the Successful Resolution Applicant in the next CoC meeting taking into consideration Rainbow Paper judgment of the Hon'ble Supreme Court. Application for approval, if any, to be filed not later than 30.11.2023.***
>
> ***Accordingly, IA/638(AHM) 2021 is dismissed."***

V. It is noted that this Tribunal specifically directed the RP to complete the process latest by 30.11.2023. Hence, it is the view of this Tribunal that the CIRP period of the Corporate Debtor came to an end on **30.11.2023.**

VI. However, it is seen that the ***present application for approval of plan has been filed on 05.07.2024, i.e. more than 8 months post the date which was directed to the applicant in the previous order of this tribunal.***

VII. Moreover, the non-adherence of the parties in this matter be it the applicant RP or the CoC, is to such

extent that notably, ***the first meeting post the Tribunal's order dated 08.11.2023 was convened only on 04.12.2023, which itself is beyond the stipulated date as per the order dated 08.11.2023 for the filing of the application.***

VIII. The Applicant has further convened several meetings of the CoC without proper authorisation and outside the mandate of the Insolvency and Bankruptcy Code. Moreover, it is noteworthy that the ***Applicant has neither sought condonation of the delay in filing the present application nor provided any reasonable explanation for the cause of such delay.***

IX. Based on the foregoing observations, it is evident that the RPand the CoC have demonstrated a grossly negligent and lackadaisical approach in the conduct of this matter, thereby failing to uphold the provisions and objectives of the Code. Such conduct not only reflects a disregard for the timelines and procedural mandate stipulated by this Tribunal but also

undermines the very essence of the Insolvency Resolution Process.

X. The indifference exhibited by the RP and CoC towards their statutory duties is not only condemnable but also warrants serious censure. This Tribunal views their actions as bordering on dereliction of duty, and their failure to act with diligence and expediency as required under the law. The evident lethargy and non-compliance with the legal framework have delayed the resolution process, which is against the spirit of the IBC. Such behavior is not only subject to criticism but may also attract penal consequences under the law, as it has significantly hindered the timely and efficient resolution of the corporate debtor's insolvency.

XI. This Tribunal is fully conscious of the need to keep judicial intervention or innovation from NCLT at its bare minimum and should not disturb the foundational principles of the IBC, as the law laid down in catena of rulings of Hon'ble Supreme Court of India, however at the same time we cannot overlook or brush aside this

glaring breach of compliance of a statutory mandatory provision by the parties when noticed.

XII. Reliance in this regard can be placed on the ruling of Hon'ble Supreme Court of India, in***State Bank of India v. M/s. Manibhadra Polycot***, Order dated 9th August 2019 in Civil Appeal Nos. 4656-4657 of 2019, wherein Hon'ble apex court set aside the order of Hon'ble NCLAT which allowed the exclusion of 21 days from being counted as a part of 270 days period.

XIII. On the aspect of adherence of timelines given in the provisions of the Code, the Bench observed that:

> *"**1.** The National Company Law Appellate Tribunal in the impugned order dated 01.05.2019 has excluded a further 21 days from being counted as part of the 270 days period which is otherwise over in the facts of this case. These 21 days are divided into 3 groups. A cluster of 7 days from 17.11.2017 to 23.11.2017; another cluster of 11 days between 06.03.2018 and 17.03.2018; and a third cluster of 3 days between 08.08.2018 and 10.08.2018.*
> ***2.** We are of the view that the first two sets of days, namely, 7 days and 11 days, cannot be excluded for the simple reason that they are not incurred in Reason: any litigation process. Even assuming that the last cluster, namely 3 days between 08.08.2018 and 10.08.2018 are to be excluded, and we add these days to 01.05.2019 when the litigation process has*

come to an end, we still reach 04.05.2019. The Resolution plan in question is submitted only on 08.05.2019, and is therefore clearly beyond the mandatory period laid down in the Insolvency Code, 2016.

3.*The impugned order dated 01.05.2019 is set aside and the appeals are accordingly allowed. C.A. Nos. 4392-4393/2019*

4. *The appeals are disposed of in terms of the order passed above."*

XIV. Section 12 of the Code is reproduced below:

12. Time-limit for completion of insolvency resolution process. -

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of ***1[****sixty-six****]*** *per cent. of the voting shares.*

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:

[*Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under*

this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor: Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]

XV. Section 33(1)(a) of the code states that:

> ***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;*
> ***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.***

XVI. Following the ruling in ***State Bank of India v. M/s. Manibhadra Polycot***, supra, this Tribunal hereby hold that the resolution plan of the applicant as submitted before us, being in breach of the statutory provision and timelines, is liable to be rejected.

XVII. Accordingly and in view of the discussion above, the relying on the provisions of Section 33(1)(a) of IBC, 2016, the Resolution Plan in question is hereby **rejected** by this Adjudicating Authority.

XVIII. The provisions under Section 33(1)(b) of the Code are reproduced below:

> ***33. Initiation of liquidation. -***
> *(1) Where the Adjudicating Authority, -*
>
> *(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.*

XIX. As a consequence to rejection of the application by this Adjudicating Authority and as the CIRP period of the Corporate Debtor has expired on 30.11.2023**,** the Tribunal relying on the provisions of Section 33(1)(b) is forced to order for Liquidation of the Corporate Debtor.

XX. In terms of the above, **we hereby order for liquidation of the Corporate Debtor**.

XXI. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under section 34(4)(b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (*read liquidation*) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **M/s. RRR Insolvency Service Experts LLP** an IPE having registration no. IBBI/IPE-0131/IPA-2/2023-2024/50046, as per the panel suggested by IBBI for this Bench for the period 1st July 2024 to 31stDecember 2024, as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions: -

a) The Corporate Debtor **M/s. Vrundavan Ceramics Pvt. Ltd.** shall be ordered for liquidation in terms of the provisions of section 33(1)(b) of the Code r.w. Regulations made there under which shall be effective from the date of this order.

b) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.

c) As per section 34(4)(b) of the Code, **M/s. RRR Insolvency Service Experts LLP** an IPE having registration no. IBBI/IPE-0131/IPA-2/2023-2024/50046is hereby appointed as a Liquidator of the Corporate Debtor I.e. Vrundavan Ceramics Private Limited. The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d) All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.

e) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

f) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.

g) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the

Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

h) This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

i) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.

j) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations,and also file its

response for disposal of any pending Company Applications during the process of liquidation.

k) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.

l) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the resolution professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

32. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

33. **IA(Plan)/33/AHM/2024** shall stand **disposed off** accordingly.

34. TheRegistryis directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.

SD/-

SAMEER KAKAR
MEMBER (TECHNICAL)

SD/-

SHAMMI KHAN
MEMBER (JUDICIAL)

HG