

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI COURT – VI**

**ITEM NO. 3**

**IA/2348/2023 In IB-429/ND/2022**

**IN THE MATTER OF:**

M/s. Achiever Infratech Pvt. Ltd.

...Financial Creditor

Versus

M/s. Banyantree Infradevelopers Pvt. Ltd.

...Corporate Debtor

**Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.**

**Order delivered on 13.07.2023**

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

IA/2348/2023 stands allowed.

**SD/-**

**(Rahul Bhatnagar)**  
**Member (Technical)**

**SD/-**

**(Bachu Venkat Balaram Das)**  
**Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 2348/2023**

**IN**

**Company Petition No. (IB) – 429/(ND) /2022**

*Under Section 33(2) of the Insolvency and Bankruptcy  
Code, 2016 for liquidation of the corporate debtor*

**In the matter of:**

M/s. Achiever Infratech Pvt. Ltd.

...Financial Creditor

Versus

M/s. Banyantree Infradevelopers Pvt. Ltd.

...Corporate Debtor

**And in the matter of:**

Devendra Umrao

Resolution Professional

...Applicant

**Order Pronounced on: 13.07.2023**

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**


**SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

For the Applicant: Mr. Abhishek Parmar

**ORDER**


**PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

1. This is an application filed by the Resolution Professional, under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) for issuance of directions for liquidation of Corporate Debtor, M/s. Banyantree Infradevelopers Pvt. Ltd.
2. The facts in brief are that the Financial Creditor of the Corporate Debtor, M/s. Achiever Infratech Pvt. Ltd. had filed an application under Section 7 of the Code, bearing number IB-429/(ND)/2022, for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by



this Tribunal on 21.10.2022, thereby initiating CIRP against the Corporate Debtor and therein, appointing Mr. Devendra Umrao as the Interim Resolution Professional (IRP).

- 3.** Thereafter, the IRP had issued a public announcement in Form-A, which was published in the 'Times of India' in English edition and in 'Janhit Darshan' Hindi edition both dated 02.11.2022, calling on the creditors to submit their claims along with proofs. On receipt of claims and their verification/collation, the Committee of Creditors (CoC) was constituted by the IRP.
- 4.** The IRP prepared a List of Creditors after verification of claims received pursuant to the Public Announcement dated 02.11.2022 in which the last date of receipt of claims was 15.11.2022, filed the List of Creditors along with the Report certifying constitution of the Committee of Creditors with this Adjudicating Authority.
- 5.** That in terms of Section 18(1)(a) of the Code, the Interim Resolution Professional collated all claims submitted by




creditors pursuant to the Public Announcement and after the determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors comprising of all financial creditors of the Corporate Debtor within the time provided under the Code and scheduled the First Meeting of the Committee of Creditors (hereinafter, the "CoC") on 22.11.2022 and accordingly the Interim Resolution Professional issued notice of meeting to the sole creditor with respective voting rights:

1. M/s. Achiever Infratech Pvt. Ltd. - 100%

- 6.** The IRP convened the first meeting of Committee of Creditors on 21.05.2021. In the said meeting he placed the agenda for the appointment of IRP as the Resolution Professional or to replace the IRP with another Resolution Professional in terms of the Section 22 (2) of the Code, before the members of Committee of Creditors. That the Committee of Creditors discussed the proposal of the IRP and confirmed the appointment of the IRP as

the Resolution Professional of the Corporate Debtor with 100% voting shares.

- 7.** That the Applicant issued notice of the second meeting of the CoC of the Corporate Debtor which was to be scheduled and convened on 19.12.2022. That in the said CoC meeting, the members of the CoC after due deliberations approved the remuneration of registered valuers, approved the draft detailed expression of interest pursuant to the provisions of Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 read with section 25(2)(H) of the Insolvency & Bankruptcy Code, 2016, and the publication of Form-G for inviting Expression of Interest.
- 8.** That the Applicant, in accordance with Section 25(2)(h) of the IBC, 2016 read with Regulation 36A of CIRP Regulations, 2016, published Form G in four newspapers namely Janhit Darshan, Jansatta, Financial Express and Times of India (English and Hindi) Delhi edition and



Jhansi edition, Uttar Pradesh on 20.12.2022 inviting the Prospective Resolution Applicants (“PRA”) for submitting resolution plan for resolution of Corporate Debtor.

- 9.** That in response to the aforementioned Form G, the Applicant received Expression of Interest (“EoI”) from three prospective parties and after examining the EoI of the PRAs, the Applicant as per Regulation 36A (10) of the CIRP Regulations, issued the provisional list of eligible PRAs and circulated the same to the CoC.
- 10.** That the third meeting of the CoC of the Corporate Debtor was scheduled and convened on 18.01.2023, wherein the members of the CoC approved the draft for Request for Resolution Plan (RFRP) and appointment of transaction auditor to conduct the transaction audit as per the provisions of the Code.
- 11.** That the applicant, in accordance with Regulation 27 read with Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, had appointed registered valuers to carry out valuation of the



assets of the corporate debtor.

**12.** That since no resolution plans were received from any of the PRAs before due date i.e. 18.02.2023, the Applicant issued the notice of fourth meeting of the CoC of the Corporate Debtor which was scheduled to be convened on 06.04.2023. In the said meeting, the Applicant informed the CoC that since no resolution plan was received as per the timeline of the Form G, therefore in view of the same, CoC can either deliberate its decision to extend timeline for submission of resolution plan or may recommend for the liquidation of the corporate debtor.

**13.** That during the course of the fourth meeting of the CoC, the representative of M/s. Achiever Infratech Private Limited informed that since the company is inoperative and no resolution plan has been received from any prospective resolution, there is no reason to re-publish Form G. The members of the CoC after discussion and deliberation were of view to initiate liquidation process of

the Corporate Debtor and asked the Applicant about the estimation of the amount to meet the liquidation cost as required under Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the assessment of sale as going concern as required under regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and fee of the Liquidator.

- 14.** That in the 4<sup>th</sup> CoC meeting held on 06.04.2023, the agenda for approval of the liquidation of the Corporate Debtor under Section 33 of IBC, 2016 was put before the CoC members. The Committee of Creditors approved the following Resolution unanimously with 100% voting rights:

*"RESOLVED THAT pursuant to Section 33(2) of the Insolvency & Bankruptcy Code, 2016 and the rules made thereunder, the consent of the members of the CoC be and is hereby accorded to approve the filing of an application before the Hon'ble Adjudicating Authority, regarding initiation of liquidation proceedings of the Corporate Debtor and to appoint the existing Resolution Professional as the liquidator,*

*subject to given consent to act as liquidator of the Corporate Debtor.*

*RESOLVED FURTHER THAT pursuant to Regulation 4(2) of the IBBI (Liquidation Process) regulations, 2016 the liquidator shall be entitled to a fee of Rs.1,00,000/- p.m. exclusive of taxes and out of pocket expenses.*

*RESOLVED FURTHER THAT the RP be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."*

**15.** Pursuant to the provisions of Section 34 of the IBC, 2016, the Resolution Professional has submitted his written consent to act as the Liquidator.

**16.** Thus from the facts of the present case, it is seen that the present case is a case where the Resolution Professional is seeking Liquidation of the Company u/s 33(2) of the IBC, 2016 on the ground that no Resolution Plan has been received from any Prospective Resolution Applicant and the Company has already become inoperative.

**17.** The Hon'ble NCLAT vide order dated 25.11.2021 in *Company Appeal (AT) (Insolvency) No.470 of 2019 in the matter of Innovative Construventures Private Limited and Anr. Vs Brainer Trade and Fin-Tech Private Limited and Ors.* held that the IBC empowers the Committee of Creditors to liquidate the Corporate Debtor any time after its constitution under Section 21 and before confirmation of Resolution Plan including any time before the preparation of Information Memorandum.

**18.** In the matter of *Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors.*, the Hon'ble NCLAT in para 7 stated as under: -

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate***


**Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs.** We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. **CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see no good ground to interfere at the instance of the Appellant.** However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.

**19.** It is well settled that decision taken by CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority. In the present situation extension of time will only result in unnecessary expenses. Further the resolution for liquidation of CD was approved by COC with 100%

voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC.

**20.** In view of the above, the application is allowed by ordering liquidation of the Corporate Debtor, namely M/s. Banyantree Infradevelopers Pvt. Ltd. with following directions:

- a. That Mr. Devendra Umrao, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
- b. That Mr. Devendra Umrao, holding Registration No. *IBBI/IPA003/IPA-N00223/2019-20/12640*, is appointed as the Liquidator in terms of Section 32(1) of the Code;
- c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. The Order of Moratorium passed under Section



14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

- e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g. 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.
- h. 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.

- i. 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;
- j. Copy of this order be sent to the Financial Creditor, Corporate Debtor and the Liquidator for taking necessary steps;
- k. I.A. 2348/2023 filed in IB- 429/ND/2022 is disposed of in terms of the aforesaid terms.

**SD/-**

**(Rahul Bhatnagar)**

**Member (Technical)**

**SD/-**

**(Bachu Venkat Balaram Das)**

**Member (Judicial)**