



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
*(Exercising powers of Adjudicating Authority under*  
*The Insolvency and Bankruptcy Code, 2016)*  
*(Through Virtual/ Physical Mode)*

**IA No.374/2023**  
**In**  
**C.P. (IB) No.112/BB/2019**  
**Under Section 33(2) of the**  
**Insolvency and Bankruptcy Code, 2016**  
**Read with Rule 11 of the NCLT, Rules 2016**

**In the matter of I.A. No. 374/2023:**

Mr. Ravindra Beleyur,  
*Resolution Professional of*  
Bharath Infra Exports and Imports Limited ...Applicant

**In the decided matter of:**

State Bank of India .....Petitioner/ Financial Creditor

**Versus**

Bharath Infra Exports and Imports Limited .....Respondent/Corporate Debtor

**Order delivered on: 26/03/2025**

**Coram:** 1. Shri. K. Biswal, Member (Judicial)  
2. Shri. Ravichandran Ramasamy Member (Technical)

**Parties/Counsels Present:**

Resolution Professional : Shri Ravindra Beleyur  
For the RP : Shri T. Ravichandan  
For Suspended Board  
Of Directors : Shri A. Murali with  
Shri Atul Madhavan



## **ORDER**

1. This Application has been filed by **Shri Ravindra Beleyur, Resolution Professional** of M/s. Bharath Infra Exports and Imports Limited ('Corporate Debtor') (hereinafter referred to as the Applicant) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules 2016 for liquidation of the Corporate Debtor.
2. CP (IB) No.112/BB/2019 was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "State Bank of India" to initiate Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP') against the Corporate Debtor, was admitted on 19.12.2022 and Interim Resolution Professional (hereinafter referred to as the IRP) was appointed.
3. Pursuant to the order dated 19.12.2022, the IRP issued a Public announcement in Form A dated 28.12.2022 in two newspapers viz., Deccan Herald (English) and Prajavani (Kannada) and invited claims from the stakeholders which included financial creditors, operational creditors and other creditors as per the provisions of the Code read with Regulations.
4. In the first meeting of Committee of Creditors (hereinafter referred to as the CoC) held on 18.01.2023 it was resolved to appoint the IRP as RP and appoint a Counsel to represent the matter before the Chief Judicial Magistrate with regard to taking custody of the assets of the Corporate Debtor. However, the resolutions at first meeting of the CoC were stayed by the Hon'ble High Court of Karnataka vide order dated 18.01.2023 in W.P No.1277/2023. Later vide order dated 09.02.2023, W.P No.1277/2023 was disposed of declining to extend the stay granted on 18.01.2023. In the 2<sup>nd</sup> meeting of the CoC held on 20.02.2023, it was resolved to file application before this Hon'ble Tribunal seeking exclusion of period of stay



by the Hon'ble High Court of Karnataka i.e., from 18.01.2023 until the date of receipt of judgement dt. 09.02.2023.

5. In the 3<sup>rd</sup> meeting of the CoC held on 08.03.2023, it was resolved as per Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, to appoint two registered valuers to determine the fair value and liquidation value of the Corporate Debtor. Pursuant to the Public Announcement in Form A dated 28.12.2022, the summary of the claim received by the Applicant are as follows:

Claim Summary			
Sl. No.	Category	Claim submitted (Rs.)	Claim admitted (Rs.)
1.	Financial Creditors	246,66,28,044	2,46,50,67,337
2.	Operational Creditors	Nil	NA
3.	Statutory Authorities	71,52,101.00	2,059
4.	Workmen	Nil	NA
5.	Employees		
	<b>Total</b>	<b>2,47,37,80,145</b>	<b>2,46,50,69,396</b>

6. The Applicant prepared the information memorandum as contemplated under Section 29 (1) of the Code and the same was circulated to the CoC upon receipt of confidential undertaking from the CoC Members. Further, stated that in response to the advertisement as per Form-G the Applicant received three Expression of Interest (s) as follows:

Sl.No.	Name of Entity/Applicant
1.	Sri. Naveen Srinivasa Yalamanchili in consortium with Shri. Rajendra Kumar Goel (Lead Member Shri Naveen Srinivasa Yalamanchili)
2.	Sri. Sandeep Gupta in consortium with Shri Anoop Kumar Mittal and Vission Distribution Private Limited (Lead Member Sri. Sandeep Gupta)
3.	M/s. Shree Balaji Overseas

7. Since none of the Resolution Applicants fulfilled the eligibility criteria fixed by the CoC, therefore no Resolution Plan being placed for approval. In the



5<sup>th</sup> CoC meeting held on 13.05.2023, the CoC opted for liquidation of Corporate Debtor and the same is as under:

*“RESOLVED THAT Committee of Creditors of Bharath Infra Exports and Imports Limited under CIRP (the Corporate Debtor) be and is hereby decided to initiate the Liquidation Process of the corporate Debtor in accordance with the provision of Insolvency and Bankruptcy Code, 2016 and Regulation thereunder in view of the following reasons:*

- a) The Company has not been operative since FY 2018-19 since there is no significant turnover for the said year and no turnover for the subsequent years;*
- b) The turnover is NIL as per the GST Filing done by the Company since the month of April 2019 which is more than 4 years as on date*
- c) There are no employees on the rolls of the company;”*

8. The CoC has approved a sum of Rs.15,78,866/- towards the CIRP cost incurred from 12.12.2022 to 30.04.2023 and have also approved further expenses to be incurred from 01.05.2023 for an amount of Rs.59,72,693/- till the date of order from Hon’ble Tribunal. Hence the application.

9. On 16.01.2024, the RP was directed to file a Memo stating the position of the proceedings before the CBI/ED as averred in arguments and implication of the same on the liquidation. Pursuant to the same, the RP/Applicant has filed a Memo vide Dy. No.592 dated 29.01.2024 stating as under:

- a. The State Bank of India has filed compliant before the Central Bureau of Investigation (CBI) with regard to fraud on State Bank of India causing wrongful loss of Rs.151.88 crores and the CBI had registered FIR bearing No. CBI/BSFB/BLR 2019/10 on 29.08.2019. Recently, CBI has filed a charge sheet against 18 accused persons in this matter and the Hon’ble 17<sup>th</sup> Additional Chief Metropolitan Magistrate, Bengaluru has issued summons to all the accused to present before



the court 20.02.2024. The Applicant/Liquidator to be appointed need to represent the Accused No.1, the Corporate Debtor and assist Hon'ble ACMM by providing true facts connected with the matter. CBI's petition is criminal proceedings under Indian Penal Code which is very much unrelated to IBC 2016 proceeding which necessarily would be independent of IBC 2016 proceeding as such. These criminal proceedings do not bar the Hon'ble Adjudicating Authority to pass Liquidation order under Section 33 (2) of IBC 2016.

- b. Proceedings before Enforcement Directorate (ED): The Directorate of Enforcement had initiated the investigation on the basis of FIR registered by CBI under several of section of IPC 1860 and Prevention of Corruption Act, 1988. The Directorate of Enforcement, Bengaluru Zonal Office, has issued a Provisional attachment order on 04.09.2023 under Section 5 of Prevention of Money Laundering Act, 2002, wherein 2 properties of the Corporate Debtor are provisionally attached. The said facts have been brought to the notice of this Hon'ble Tribunal vide Dy. No.5317 dated 17.10.2023. The RP had submitted the statement of objection before the PMLA court, New Delhi to remove provisional attachment order in respect of 2 properties of the Corporate Debtor, since it was not acquired from the proceeds of crime and also the provisional attachment order is violative of Section 14 of the I & B Code, 2016. The RP has filed a separate application before this Hon'ble Tribunal seeking a direction to declare the provisional attachment is illegal and violative of Section 14 and to quash the same which is numbered as I.A No.873/2023.
- c. In the instant case the proceeds of crime of Rs.113.37 crores accrued during October 2016 to December 2016 whereas the assets mortgaged to SBI were purchased in the year 2007 and 2010 and the Liquidator to be appointed has a duty to get all the assets of the Corporate Debtor attached by Enforcement Directorate to be released as per law and make sure value maximization of the Corporate Debtor is done by



performing duties of RP/Liquidator to realise the assets and distribute the proceeds of assets as per IBC, 2016. So, the Applicant is of the firm view that provisional attachment or confirmed attachment of the properties by the Enforcement Directorate does not stop any activities to be done as per IBC, 2016 including passing of Liquidation order as per Section 33) (a) (i) of IBC 2016. The Applicant has also relied on the following orders:

- i. *Special Civil Application No.808 of 2023 in AM Mining India Private Limited vs Union of India passed by Hon'ble High Court of Gujarat on 24.08.2023.*
- ii. *CA(AT) Ins. No.575 of 2019 in the matter of Directorate of Enforcement vs. Manoj Kumar Agarwal dated 09.04.2021 passed by Hon'ble NCLAT;*
- iii. *In the matter of Nathella Sampath Jewellery Private Limited dated 03.01.2020 passed by NCLT Chennai;*

10. The Suspended Board of Directors have filed their comments to the above Memo vide Dy.No.932 dated 09.02.2024 stating as under:

- a. It is stated that the submissions of the RP in the memo are not supported by any provision of Law and as per the order of this Hon'ble Tribunal; the RP is to provide the implications of these proceedings on the liquidation.
- b. Regarding Para 4 of the Memo: it submitted that the Adjudicating Authority under the Prevention of Money Laundering Act, 2002 vide order dated 05.02.2024 has confirmed the order of provisional attachment and has stated that the attachment shall remain in force for a period 365 days. The attachment order clearly states that the attachment is for a period of 365 days and as on date the order of the Adjudicating Authority is in force. Further considering the undisputed fact that the provisional attachment order has attained finality and the



- admission of the RP that the same has to be released as per law, this Hon'ble Tribunal will not be able to pass an order of Liquidation.
- c. Regarding Para 5 & 6 of the Memo: It is stated that the position of law by the RP is not correct. Since the provisional attachment order has attained finality and the RP has admitted that it is his duty to get the property of the Corporate Debtor released as per law, this Hon'ble Tribunal does have the power to consider the application for liquidation at this stage. In addition, the judgement referred by the applicant the Ld. Adjudicating Authority also relied upon the judgment of the Hon'ble Punjab and Haryana High court in the case of *Deputy Director Directorate of Enforcement Jalandhar vs. PNB Housing Finance Limited*.
- d. Regarding Para 7 of the Memo: It is submitted that since the order of attachment has attainment finality and as admitted by the RP, it is the duty of the RP to get all the assets of the corporate Debtor attachment by the ED to be released as per law. Further till such time the RP does not get the assets released no effective order can be passed by this Hon'ble Tribunal on the liquidation application. In words of the RP itself it is clear that no order of liquidation can be made by this Hon'ble Tribunal till such time the RP has been able to get assets of the Corporate Debtor attached by the ED released.
11. In response to the comments made by the Suspended Board of Directors, the RP/Applicant has filed a memo dated 12.02.2024 diary no. 948. The RP/Applicant relying on the order passed by the Hon'ble NCLAT, Chennai in Company Appeal (AT)(CH)(Ins.) No. 464/2023 in the matter of *M/s. Green Gateway Leisure Limited*, submits that there is no locus for the Promoters even to raise an objection or be furnished with an opportunity to express their views, at the time of passing the Liquidation order. Copy of said order is attached as **Annexure-1** to the memo.



12. We have carefully considered the submissions made in the application by the Interim Resolution Professional and also perused material available on the records.

13. On perusal of the records, it is noticed that the assets of the Corporate Debtor are attached by the Enforcement Directorate vide order dated 05.04.2024 under Prevention of Money Laundering Act, 2002. It is also stated by the Applicant Counsel that the CBI/ED proceedings are criminal in nature and nothing to do with the IBC and also the provisional attachment order violates Section 14 of the I & B Code, 2016.

14. Further, the Hon'ble National Company Law Appellate Tribunal, New Delhi, in ***The Directorate of Enforcement v. Manoj Kumar Agarwal & Ors.***, Company Appeal (AT) (Ins) No.575/2019 & Company Appeal (AT) (Ins) No.576/2019, dated 09 April 2021, wherein it was held as follows:

*"42. In our view, there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfil objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A."*

It is clear from the above rulings that there is no conflict between PMLA and IBC and even if a property has been attached under the provisions of PMLA Act belonging to the Corporate Debtor, the same should be available for fulfilling the objects of IBC.

15. The CoC in its 5<sup>th</sup> CoC meeting held on 13.05.2023 by 100% majority has approved to liquidate the Corporate Debtor. The relevant provisions of Sections 33(1) and 33(2) of the Code 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 creditors 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).”*

**16.Prescribed period for filing application-** In the present case, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 19.12.2022. The present Application is filed on 29.05.2023 i.e., before the expiry of the CIRP period. Hence, this application shall be considered under section 33(2) of the Insolvency and Bankruptcy Code, 2016.

**17.Appointment of Liquidator-** Appointment of Liquidator – As Per 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 CIRP subject to submitting the written consent in Form-AA, to act as the Liquidator for the purpose of Liquidation. The RP has submitted his written consent at Page-31 of the application as **Annexure-9**. The RP has also filed affidavit vide Dy. No.5616 dated 06.11.2023 along with recent liquidation orders passed by various benches with respect to IBBI recommendation letter dt. 18.07.2023 regarding appointment of Resolution Professional as Liquidator. Shri Ravindra Beleyur, Resolution Professional with Registration No. IBBI/IPA-001/IP-P00189/2017-18/10368 has been proposed to be appointed as Liquidator and the same has been approved



by the CoC in its 5<sup>th</sup> CoC meeting dated 13.05.2023. In light of the same, **Shri Ravindra Beleyur**, Resolution Professional with Registration No. IBBI/IPA-001/IP-P00189/2017-18/10368 is appointed as a Liquidator of the Corporate Debtor.

18. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/201920/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

**a. Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016] –**

The members of the CoC in the 5<sup>th</sup> meeting held on 13.05.2023, resolved that the State Bank of India, the sole Financial Institution to contribute the excess of the Liquidation costs over the liquid assets of the Corporate Debtor, if any, as estimated by the Liquidator at Rs.1,00,35,099/- in proportion to the financial debts owed to financial institution by the Corporate Debtor as required under Regulation 2A of IBBI (Liquidation Process) Regulation, 2016. Therefore, the liquidator is directed to refer to Regulation 2A of IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

**b. Assessment of Sale as a going concern [Regulation 39C of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –**

The members of the CoC directed the Liquidator to primarily sell the Corporate Debtor as a going concern based under Section 230 of the Companies Act, 2013 or otherwise in pursuance of Regulation 32A of IBBI (Liquidation Process) Regulation 2016 and other applicable provisions. Therefore, the liquidator is directed to refer to Regulation 32A of



IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

**c. Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]**

-The CoC in their 5<sup>th</sup> meeting held on 13.05.2023 resolved that for Liquidator shall be paid 85% of the fees for amount realised and Liquidator shall be paid 75% of the fees payable as per Table under Regulation 4(2) of the Liquidation Regulation 2016.

19. **Pending applications, if any, and its effects** -The applicant has filed a Memo vide Dy.No.592 dated 29.01.2024 stating the position of the proceedings before the CBI/ED as averred in arguments and implications of the same if any on the Liquidation.
20. In view of the satisfaction of the conditions provided under Section 33 (2) of the Code, the Corporate Debtor **M/s. Bharath Infra Exports and Imports Limited is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:
- i. That 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 against the corporate Debtor;  
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
  - ii. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
  - iii. That this order of liquidation under Section 33 of the Code 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; and
- iv. That 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 effect and shall be vested in the Liquidator; and
  - v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
  - vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (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 stake holders 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.
  - vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
  - viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 thereafter.

21. Thus **I.A No. 374 of 2023 in C.P. (IB) No. 112/2019** stands disposed of.



22. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

**-Sd-**

**(RAVICHANDRAN RAMASAMY)**  
**MEMBER (TECHNICAL)**

**-Sd-**

**(K.BISWAL)**  
**MEMBER (JUDICIAL)**