

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

13. M.A. 135/2020

M.A. 393/2020

IN

C.P.(IB)-314(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **08.02.2022**

NAME OF THE PARTIES: Saraswati Marketing

V/s

H & V Engineering & Construction Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr.Sankalp Anantwar, counsel appearing for the liquidator along with
Liquidator Mr. Anish Gupta are present through virtual hearing

M.A. 393/2020

Heard the counsel appearing for the liquidator and I.A. No. 393/2020 is allowed
by ordering liquidation of corporate debtor. Detailed order follows:

List the Miscellaneous Application bearing No. 135/2020 along with main
company petition on 30.03.2022.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

Sd/-

H.V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

M.A. 393 OF 2020

IN

CP (IB) - 314/I&BP/2019

Under Section 33 of the Insolvency &
Bankruptcy Code, 2016

Filed by

Mr. Anish Gupta

Resolution Professional for:

H & V Engineering and Construction
Private Limited

...Applicant

In the matter of

Saraswati Marketing

D 404, Kailas Esplanade,

Opp. Shreyas Cinema, LBS RD,

Ghatkopar West, Mumbai - 400086

...Operational Creditor

Versus

**H & V Engineering and Construction
Private Limited**

**A-401, M.K. Plaza, Kasarvadavali Near
Hyper City Mall, Ghobunder Road,**

Thane - 400607

...Corporate Debtor

Order delivered on: 08.02.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Applicant: Mr. Sankalp Anantwar (Advocate)

a/w Mr. Anish Gupta (Resolution Professional)

1. The above application M.A. No. 393 of 2020 is filed by Resolution Professional, Mr. Anish Gupta (hereinafter referred to as the “Applicant”) seeking liquidation of H & V Engineering and Construction Private Limited (hereinafter referred to as the “Corporate Debtor”) under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. *This Hon’ble Tribunal is pleased to direct the order for initiation of Liquidation process under Section 33(2) of the Insolvency and Bankruptcy Code, 2019 read with relevant provisions of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
- b. *This Hon’ble Tribunal be pleased to confirm the appointment of Mr. Anish Gupta, existing Resolution Professional as the Liquidator (Registration No. IBBI/IPA-002/IP-N00285/2017-18/10843) under Section 34 of the IBC Code, 2016 on a monthly fee of Rs. 1,50,000 plus applicable taxes and out of pocket expenses and outsider professional services on actual which is approved cost by the COC member;*
- c. *This Hon’ble Tribunal be pleased to direct the COC Member to make full payment of CIRP Cost of Rs. 15,30,147/- to the Applicant, the other professionals and agencies as per the expense sheet and invoices;*
- d. *Any other direction as this Hon’ble Tribunal may deem fit in facts and circumstances of the present case;*
- e. *Cost of the present Application.*

2. The brief facts of the application are as follows:

- A. The Applicant mentioned that this Tribunal vide its order dated 12.04.2019 in Company Petition No. 314/I&BP/2019 admitted the petition under Section 8 and 9 of the Code, filed by Saraswati Marketing (hereinafter referred to as the “Operational Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against H & V Engineering and Construction Private Limited. The applicant herein was appointed as the Interim Resolution Professional (hereinafter referred to as the “IRP”) of the Corporate Debtor by this Tribunal vide Order dated 12.04.2019.
- B. The Applicant further states that on 19.04.2019 a public announcement was made inviting claims from the Creditors of the Corporate Debtor and 1st meeting of the Committee of Creditors (hereinafter referred to as the “CoC”) was convened on 17.05.2019, further in the 3rd meeting of the CoC which was convened on 01.08.2019 the Applicant was appointed as the Resolution Professional of the CIRP of the Corporate Debtor.
- C. The Applicant further states that on 20.08.2019, Form-G was published and the last date of submission of EoI was 05.09.2019 and no EoI were received till the last date of submission. However, an EoI was received by the Applicant on 11.09.2019 from M/s E-Homes Infrastructure Private Limited, Delhi who also requested to extend the last date of submission of the EoI/Resolution Plan, a reply was sent to the Proposed Resolution Applicant as the last date of the submission of EoI expired, necessary direction will be sought from the CoC and Adjudicating Authority. After due discussion of the CoC

decided to liquidate the Corporate Debtor and voted to proceed with the process of liquidation of the Corporate Debtor.

- D. The CoC in its 5th meeting which was held on 14.10.2019 decided to liquidate the Corporate Debtor as there is neither any EoI nor any Resolution Plan received from any Prospective Resolution Applicant. Therefore, the Committee of Creditors 100% voting unanimously approved initiation of liquidation of the Corporate Debtor by passing the resolution, in the same meeting of the CoC also decided to appoint the Applicant as the Liquidator of the Corporate Debtor. Thereafter, the CoC decided to put the following resolution, the relevant extract of the resolution is reproduced herein below for ready reference:-

“RESOLVED THAT *subject to such approval as may be required from the Adjudicating Authority under the IBC Act and Relevant Regulations, consent of the Member of the Committee of creditors is accorded to initiate the liquidation process under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with relevant provisions of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and all the applicable provisions of the Act and amendment thereof on the following grounds:*

- 1. The Corporate Debtor has no project in hand, existing projects are either completed or terminated or closed.*
- 2. The Corporate Debtor has no further business plan to continue the business.*
- 3. No Expression of Interest received on or before the expiry of 05th September, 2019, the period given as last date for submission of EOI.*

4. *One Expression of Interest received after the period fixed for receiving the EOI.*

RESOLVED FURTHER That consent of the COC is accorded to appoint Mr. Anish Gupta, existing Resolution Professional as the Liquidator (Registration No. IBBI/IPA-002/IP-N00285/2017-18/10843) under Section 34 of the IBC Code, 2016 on a monthly fees of Rs. 1,50,000 plus applicable taxes and out of pocket expenses and outsider professional services on actuals.”

The result of the voting on the resolution is as below:

<i>Particulars</i>	<i>Vote For</i>	<i>Vote Against</i>
<i>In Attendance by Voice Confirmation</i>	<i>100.00</i>	<i>0.00</i>

“The Resolution was passed with 100% voting in favour of the Resolution.”

It is submitted that in the Fifth COC Meeting the members considered and approved by 100% Vote Corporate Debtor for Liquidation under Section 33(2) of IBC, 2016 as well as resolved name of applicant as Liquidator on Monthly fees Rs. 1,50,000/-.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 5th CoC meeting that the CoC has with 100% majority decided to liquidate the Corporate Debtor, further the CoC has also approved the appointment of the Liquidator as well as the Liquidation Cost of the Applicant /Resolution Applicant Mr. Anish Gupta on a monthly fees of Rs. 1,50,000/- plus

applicable taxes and out of pocket expenses and outsider professional services on actuals. This bench has no option except to allow the above Miscellaneous Application Number 393 of 2020. Accordingly, we pass the following:

ORDER

1. The above M.A. No. 393/2020 is allowed and the Corporate Debtor H & V Engineering and Construction Private Limited is ordered to be liquidated.
 - a. **Mr. Anish Gupta**, having Registration No. IBBI/IPA-002/IP-N00285/2017-18/10843 and having office at: B – 413, Autumn Grove, Lokhandwala, Kandivali East, Mumbai - 400101 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for conduct of the liquidation proceedings would be entitled to a monthly fees of Rs. 1,50,000/- plus applicable taxes and out of pocket expenses and outsider professional services on actuals.
 - c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - d. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.
 - e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating

that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, 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.
- i. 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 continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. M.A. No. 393 of 2020 is hereby allowed and disposed of.

Sd/-

Chandra Bhan Singh
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)