

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH: C-IV**

IA(IBC)(LIQ)-03(MB-IV) 2024

Under Section 33 of Insolvency &
Bankruptcy Code, 2016.

Mrs. Neha Punit Agrawal

...Resolution Professional/
Applicant

In the matter of

IN C.P.(IB)/198(MB)/2023

Safal Africa Limited

...Financial Creditor

Vs.

Safintra Roofing (India) Limited

...Corporate Debtor

Ordered pronounced on: **13.03.2024**

Coram:

Smt. Anu Jagmohan Singh
Hon'ble Member (Technical)

Shri Kishore Vemulappalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant/RP/Liquidator : Mr. Prashant Thakre, Ld.
Authorised Representative.

ORDER

1. This is an application filed by Mrs. Neha Punit Agrawal, Resolution Professional of the Corporate Debtor seeking liquidation of *Safintra Roofing (India) Limited* under Section 33 of Insolvency and Bankruptcy Code 2016 (hereinafter called as the “Code”).
2. **Brief facts of the Application are as follows:**
 - a. This Tribunal vide an order dated 23.06.2023, in Company Petition bearing C.P.(IB)/198(MB)2023 filed under Section 7 of the Code, by Safal Africa Ltd (hereinafter referred to as the “Financial Creditor”), admitted the petition and Corporate Insolvency Resolution Process (CIRP) was initiated against *Safintra Roofing (India) Limited* [CIN: U74900MH2008PLC185250] (hereinafter called as the “Corporate Debtor”) and appointed Mrs. Neha Punit Agrawal as Interim Resolution Professional by this Tribunal and was confirmed as Resolution Professional in the 1st CoC meeting held on 01.09.2023 and vide order dated 18.09.2023.
 - b. Pursuant to the above said CIRP initiation order, the Applicant herein issued a Public Announcement in two Newspapers, on 27.06.2023, in FORM A, thereby calling upon the Creditors of the Corporate Debtor to file their

claims, along with proof. Pursuant to the same, the IRP has received 3 claims from the Financial Creditor (Related Party) i.e. Safal Africa Limited and two Operational Creditors i.e. Mabati Rolling Mills Limited and Employees State Insurance Commission (ESIC) of the Corporate Debtor.

- c. The Applicant herein had issued Form G - Invitation for Expression of Interest (EoI) dt. 11.10.2023; and the last date for submission of EOI was fixed on 26.10.2023. However, no EOIs were received.
- d. Ld. Counsel for the Applicant stated that in the 4th meeting of the CoC held on 11.12.2023, the agenda for the liquidation of the Corporate Debtor was discussed and noted that; the Corporate Debtor has not conducted any business activities since last few years; the Corporate Debtor is not having any immovable assets in its; there is no movable assets except a machine.
- e. Ld. Counsel for the Applicant stated that the agenda of the Liquidation of the Corporate Debtor was put up before the CoC, the same was approved with the majority of 98.55% of the votes to proceed with the liquidation of the Corporate Debtor. The relevant extract of the Resolution is reproduced below:

“RESOLVED THAT, in pursuance to Section 33(2) of IBC 2016 and the rules made thereunder, the consent of members of the Committee of Creditors be and is hereby accorded to approve filing of application with Hon’ble NCLT, Mumbai Bench, regarding the initiation of liquidation of Corporate Debtor and to appoint the existing Resolution Professional, subject to given his consent to act as a liquidator, as the Liquidator of the CD.”

3. Hence, the present Interlocutory Application has been filed for seeking Liquidation of the Corporate Debtor.
4. This Bench is vested with the powers to pass an order of Liquidation of the Corporate Debtor; since, no Resolution Plan could be brought forth and voted for, and in the absence of any Resolution Plan on the table, the order of liquidation shall be passed by this Adjudicating Authority under section 33 of the Code. The said Section is quoted below for the convenience and the ready reference:

“(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 subsection (1)”.*

5. In that view of the matter, having considered the submissions and on perusal of averments made in the present Interlocutory Application; this Bench is satisfied and is of the considered opinion that the present Interlocutory Application is in consonance with Section 33(2) of the Code. Accordingly, this Authority has left with no option except to pass an order for Liquidation of the Corporate Debtor Company in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration and CoC does not foresee any

possibility of getting Plans for the Corporate Debtor. Hence ordered.

ORDER

- a) The Application be and the same is allowed. The Corporate Debtor, **Safintra Roofing (India) Limited**, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) It is to be noted that, as per IBBI vide its Letter LIQ-12011/214/2023-IBBI/840 dated 18.07.2023 in the exercise of its powers conferred u/s 34(4)(b) of the Code had recommended that an IP other than RP/ IRP may be appointed as a liquidator in all the cases where the Liquidator (read liquidation) order is passed henceforth. In view of this circular of IBBI, we hereby appoints **Mr. Rakesh Nathwani**, having Registration No. **IBBI/IPA-001/IP-P-02058/2020-2021/13190** as the Liquidator to conduct liquidation process of “**Safintra Roofing (India) Limited**” as provided under Section 34(4) of the Code.
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

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- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case, he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- g) **Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.**
- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.

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- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order 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.
- l) The Liquidator shall submit Progress Reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and shall apprise the Bench about the Liquidation Process of the Corporate Debtor.
- m) **The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.**
- n) Registry shall furnish a copy of this Order to:
- i. **Insolvency and Bankruptcy Board of India, New Delhi;**
 - ii. **Regional Director (Western Region), Ministry of Corporate Affairs;**

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- iii. **Registrar of Companies & Official Liquidator,
Maharashtra;**
- iv. **Registered Office of the Corporate Debtor; and**
- v. **Liquidator, Mr. Rakesh Nathwani.**

6. With the aforesaid observations and directions, the Interlocutory Application bearing IA No. 03 of 2024 IN C.P.(IB)/198(MB)2023, stands disposed of as **Partly Allowed**. There would however be no order as to costs. Ordered Accordingly.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

/Dubey/

Sd/-
Kishore Vemulappalli
Member (Judicial)