



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IB) (LIQ) No. 10/KB/2025

In

CP (IB) No. 264/KB/2022

AN APPLICATION UNDER SECTION 33(2) OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016 FOR LIQUIDATION IN THE MATTER OF FORT PROJECTS PRIVATE
LIMITED

IN THE MATTER OF:

EMAMI REALTY LIMITED

Financial Creditor

Versus

FORT PROJECTS PRIVATE LIMITED

Corporate Debtor

AND

IN THE MATTER OF:

C.A KANNAN TIRUVENGADAM, RP

Applicant

Coram:

Shri Labh Singh, Member (Judicial)

Ms Rekha Kantilal Shah, Member (Technical)

Appearance (VC and Physical (hybrid) Mode)

Mr. Rishav Banerjee, Adv.

For RP

Date of Pronouncement: 20.06.2025



ORDER

Per: Rekha Kantilal Shah, Member (Technical)

1. This court convened *via* hybrid mode.
2. The I.A. (I.B.C) (LIQ) No. 10/KB/2025 is an Application filed praying for Liquidation of the Corporate Debtor.

Brief facts of the case:

3. This Adjudicating Authority vide its order dated **09 November 2023**, directed initiation of the Corporate Insolvency Resolution Process ('CIRP') of **FORT PROJECTS PRIVATE LIMITED**. ("Corporate Debtor"), on a Petition filed by **EMAMI REALTY LIMITED** ("Financial Creditor") against **FORT PROJECTS PRIVATE LIMITED** under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') and appointed **C.A KANNAN TIRUVENGADAM, Insolvency Professional having registration number as IBBI/IPA-001/IP-P00253/2017-18/10482** as the Interim Resolution Professional ('IRP').
4. In the 3rd CoC meeting held on 27th February 2024, the CoC appointed **C.A KANNAN TIRUVENGADAM** as the Resolution Professional.



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5. The Applicant Published Form G on 10.05.2024 and 01.07.2024. Pursuant to the Publication of Expression of Interest, the applicant received Expression of Interest from Priyanka finance private limited (Resolution Applicant).
6. The extended CIRP period was expiring on 18th February 2025 at which time CoC was in negotiations with PRA regarding commercial aspects of the resolution plan. After considering the CoC's resolution for further extension, the Adjudicating Authority granted 60 days extension in the CIRP, extending the process from 18th February 2025 vide order dated 4th March 2025 in I.A (IB) No. 378/KB/2025.
7. Since the extended CIRP period was expiring on 19th April 2025, the Applicant again sought for further extension. Again this Adjudicating Authority in I.A (IB) No. 663/KB/225 extended the time period to complete the voting on the Resolution plan and complete the process.
8. However, in the 11th CoC Meeting the CoC rejected the Resolution plan by 76.63% Voting Share.
9. In the 11th meeting of CoC, the CoC asked the RP to Proceed with the Liquidation of the Corporate Debtor under section 33(2) of the IBC Code 2016 and passed the Resolution to Liquidate the



Corporate Debtor 78.28% votes. The CoC has proposed the name of **C.A KANNAN TIRUVENGADAM**, Having registration Number **IBBI/IPA-001/IP/P00253/2017-18/10482**, as a Liquidator in terms of Section 34 of the Insolvency and Bankruptcy Code, 2016.

10. This is an Application filed by the RP seeking Liquidation of the Corporate Debtor, viz., **FORT PROJECTS PRIVATE LIMITED** , on the ground that there is no scope of Resolution.
11. The Applicant has filed Compliance Certificate in Form H as **Annexure H** of the application.
12. The Applicant has sought for the following relief:
 - a. To pass an order under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (IBC) for the Liquidation of the Corporate Debtor.
 - b. To Appoint **C.A KANNAN TIRUVENGADAM** having registration No. **IBBI/IPA-001/IP/P00253/2017-18/10482** as the Liquidator of the Corporate Debtor.
 - c. And/or to pass such other order or orders as this Adjudicating Authority may deem fit and proper.



Analysis and Findings

13. We have considered the submission made by the Ld. Counsel and perused the record.

14. Upon perusal of the record, we find that the Corporate Debtor was admitted into CIRP on 9th February 2023 and 330 days from the date of CIRP ended on 04 October 2024. Thereafter, the liquidator has taken extension of 197 days till 19th April 2025. Further the liquidator has filed an application being I.A (IBC) No 633/KB/2025 for enlargement of time, which is pending before this Adjudicating Authority. However, despite of the granting extension of 197 days no Resolution Plan came for resolution of Corporate Debtor.

15. The Resolution Plan submitted by the PRA proposed a total resolution of Rs 10.38 crore (Rs Ten Crore and Thirty-eight lakhs only), out of which Rs 9.25 Crore (Rs Nine Crore and twenty five lakhs only), which was for settlement of Financial Creditor claims (unsecured). However, the CoC in 11th meeting held on 16 April 2025, held that the amount proposed by the PRA did not ensure fair and equitable treatment to the creditor. Hence, the plan was



rejected by CoC with 76.63% voting share. Hence, the CoC by 78.28% passed a resolution for liquidation of Corporate Debtor.

16. The IBC 2016 envisages CIRP and liquidation as two distinct processes with distinct roles and responsibilities. Thus, IP undertakes two different assignments as RP and liquidator, separately. Segregating the dual role of IP in the same CD as RP and liquidator will foster an inbuilt system of check and balance in the process, thereby enhancing the accountability of each job and strengthening the stakeholder's trust in the code. The primary objective of the Code is resolution. Accordingly, in this case where the Corporate Debtor has not been successfully resolved, it is in the interest of the all stakeholders and the process, other Insolvency Professional is being appointed that will not only eliminate the chance of RP being securing the next assignment on ex-ante basis but also entrust the fair process to meet the objective of the Code.

17. In view of this, we are not appointing Liquidator as proposed by the CoC also the fee paid to the newly appointed liquidator fixed as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016. We refer to the judgement of Hon'ble NCLAT, in **Mr. Deverajan Raman vs. Bank of India Limited, Company Appeal**



(AT) **Insolvency No. 646 of 2020 dated 30th July 2020**, wherein the Hon'ble NCLAT while dismissing the appeal, observed that:

- (i) The appellant had worked for about three months as RP;
- (ii) The expenses has been allowed in full and the consolidated amount of Rs. 5,00,000 plus GST allowed as fee for the RP for the entire. Was not reasonable; and
- (iii) **Fixation of the fee is not a business decision depending on the commercial wisdom of the COC.**

The Hon'ble Supreme Court in the **Civil Appeal No 3160 of 2020**, in **the same matter**, remanded back to National Company Law Tribunal, for deciding the fee of the Resolution Professional in Corporate Insolvency Resolution Process.

We also refer to the judgement of Hon'ble Supreme Court, in **Alok Kaushik Vs. Mrs Bhuvaneshwari Ramanathan and others in Civil Appeal No 4065 of 2020** wherein the Supreme Court remanded back to National Company Law Tribunal, for deciding the fee of the Registered Valuer in Corporate Insolvency Resolution Process.

18. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for Liquidation of the Corporate Debtor when the CoC with 66% approves the Liquidation of Corporate Debtor.



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19. It has been observed that in 11th CoC meeting the members have made assessment of Sale as going concern as provided under Regulation 32A of IBBI (Liquidation Process) Regulation, 2016, and recommended by way of 78.28% voting to sale the Corporate Debtor as a going concern under clause (e) of Regulation 32 or the sale of the business of the Corporate Debtor under clause (f) of Regulation 32 of IBBI (Liquidation Process) regulation, 2016, in accordance with Regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
20. Hence, we do find merit in the prayers made in I.A. (I.B.C) No. 10/KB/2025, and deem it fit to order Liquidation of the Corporate Debtor.
21. This Bench, therefore, hereby orders as follows: -
- a. Prayers as sought for in I.A. (I.B.C) No. 10/KB/2025 filed by RP, is allowed and **FORT PROJECTS PRIVATE LIMITED.**, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;
 - b. *Shri Umesh Kumar, Having registration Number IBBI/IPA-001/IP-P01978/2020-2021/13152, (mobile no. 8210963736 and email id- umeshkr62@yahoo.com)* is hereby appointed as Liquidator is hereby appointed as Liquidator as provided



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under section 34(1) of the Code subject to a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member. The Liquidator is directed to submit his consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days.

- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Liquidator shall put his endeavour to sale the Corporate Debtor as going concern or business of corporate debtor as going concern as resolved in 11th CoC meeting.
- e. The Liquidator fee is fixed as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016.
- f. The Financial creditor being the financial institutions shall contribute towards liquidation cost as resolved in the 11th CoC meeting.
- g. Public Notice shall be issued in the newspapers stating that the Corporate Debtor is in Liquidation.



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- h. All the powers of the Board of Directors, and of key Managerial Persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- i. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- j. On initiation of the Liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
- k. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, within whose jurisdiction the Corporate Applicant is registered.
- 22. The application bearing I.A (IB)(LIQ) No. 10/KB/2025 shall stand disposed of in accordance with the above directions.**



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23. List the main CP (IB) No. 10/KB/2015 for reporting progress on 28.07.2025.
24. The Registry is directed to send e-mail copies of the order forthwith to all the parties including the liquidator appointed as above, and their Ld. Counsel for information and for taking necessary steps.
25. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

Order Signed On 20.06.2025