

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

I.A. 4058 OF 2023

Under Section 33(1) read with 33(2) of
Insolvency & Bankruptcy Code, 2016

Filed by

Mr. Shailesh Bhalchandra Desai

(Resolution Professional of Deogiri
Infrastructure Pvt. Ltd)

Having registered office at: 708, Raheja
Centre, 7th Floor, Nariman Point, Mumbai-
400021

...Applicant

In the matter of

C.P. No. 429 of 2022

State Bank of India

...Financial Creditor

Versus

Deogiri Infrastructure Private Limited

...Corporate Debtor

Order reserved on: 08.09.2023

Order delivered on: 05.10.2023

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Mr. Charanjeet Singh Gulati, Member (Technical)

Appearance:

For the Resolution Professional: Mr. Ayush J Rajani a/w. Ms. Khushboo Shah & Ms. Mitali Bhatt, advocates

Per: Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

1. This application is filed by the Resolution Professional, of M/s Deogiri Infrastructure Private Limited., (hereinafter referred as **Corporate Debtor**) seeking liquidation of Corporate Debtor under Section 33(1)(a) read with Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter "**IBC**") with consequential prayers like appointment of Liquidator and moratorium during liquidation under section 33(5).

The brief facts of the Application are as follows:

2. On an application filed by State Bank of India under section 7 of IBC, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) vide order dated 29.03.2023 and the Applicant was appointed as Interim Resolution Professional ("IRP").
3. In compliance with section 15 of the IBC, the IRP made a Public Announcement dated 05.04.2023 calling for submission of claims till 17.04.2023 in terms of Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
4. Based on the claims received, the Committee of Creditors was constituted. His appointment was confirmed from IRP to RP of

Corporate Debtor during the first meeting of the Committee of Creditors held on 03.05.2023 with 83.02% voting in favour.

5. **Members of CoC:**

(Rs. in Crores)				
Sl. No.	Name of Creditor	Amount Claimed	Claim Admitted	Voting (%)
1.	State Bank of India	50.44	50.44	65.23
2.	Bank of Baroda	13.82	13.76	17.79
3.	Indian Bank	13.13	13.13	16.98
	Total	77.39	77.33	100.00

6. A total of four (4) CoC meetings have been held during CIRP period.

7. The Applicant submits that apart from claims from financial creditors he has received claims from operational creditors as existing on the date of filing the present application which are as follows:

Claim of Operational Creditors

(Rs.)

Sr. No.	Name of Operational Creditor	Claim Amount	Claim Admitted	Under Verification
1	Samarth Enterprises	13,54,974	13,26,000	28,974
2	State Tax Department	15,44,996	15,44,996	..

3	Designer Concrete Pvt Ltd	10,620	7,080	3,540
4	V V Peddy Construction	44,64,054
5	Nitin S Sharma & Associates	25,500	25,500	..
6	Abhinav Construction	3,22,834	3,22,834	..
7	S. K. Industrial Corporation	3,34,373	3,25,717	8,656
8	Ali Explosive & Co.	18,69,568	4,99,298	13,70,270
9	Yash Engineers	6,77,360	6,77,360	..
10	Kalpesh Cable Industries Pvt Ltd	34,71,747	12,01,045	22,70,702
11	Shree Marketing & Distribution Services	6,77,333	1,33,472	5,43,861
12	Vishal Cable Industries Pvt Ltd	12,24,420	5,01,729	7,22,691
13	Lucky Electrical & Engg.	36,164	36,164	..

14	Bhoopati Ramsurat Chaudhary	8,78,454	..	8,78,454
15	Prabhunath Umashankar Vishwakarma	68,638	68,638	
16	Vishwanath Namdeo Danake	2,26,447	2,26,447	
17	Kanti Cables	2,71,965	1,51,656	1,20,307
	Total	1,74,59,447	1,01,71,476	72,87,971

8. He has also received claims from the employees. Since these claims were received without proper supporting documents, therefore they are kept under verification, which are as follows:

Sr. No.	Name of Operational Creditor	Claim Amount	Claim Admitted	Under Verification
1	Ravindra Kaduba Dahatonde	14,994	-	14,994
2	Raosaheb Gunderao Jakapure	44,688	-	44,688
3	Prashant R Deshpande	3,92,963	-	3,92,963
4	Suresh Manikrao Kulkarni	3,03,695	-	3,03,695
5	Ramesh Gunderao Jakapure	10,436	-	10,436

6	Prashant Bhagawandas Vaishnav	20,775	-	20,775
7	Roshan Komalprakash Khanna	10,219	-	10,219
	Total	7,97,770	-	7,97,770

9. The Applicant submits that during the course of the CIRP, he had appointed two registered valuers each for Plant & Machinery (Alok Kumar Gupta and Kedar Arvind Chikodi) and Security or Financial Assets (Alok Kumar Gupta and Jayeshkumar Parasmal Shah). All the valuers are registered with Insolvency and Bankruptcy Board of India.
10. The Applicant had issued Invitation for expression of interest ("Eol") on 26.05.2023 in Form G, and the last date for receipt of expression of interest was 15.06.2023.
11. The Applicant submits that during 3rd CoC meeting held on 21.06.2023, he has informed the CoC members that he had received the inquiries from nine (9) parties but did not receive a single Eol from any of the interested parties. Considering the situation of the Corporate Debtor, the CoC members deliberated about filing application for liquidation of the Corporate Debtor. The Applicant also informed the CoC members that the CoC has to decide on the provisions of Regulations 39B, 39C and 39D of CIRP Regulations, 2016 before passing the resolution for liquidation of the Corporate Debtor. The CoC members

requested the Applicant to defer this matter to the next CoC meeting.

12. During the course of the 4th CoC meeting held on 05.08.2023, the Applicant informed the CoC that, none of the interested party came forward with EoI, Pursuant to section 33(1)(a) read with section 33(2) of the Code, the CoC approved the resolution for liquidation of the Corporate Debtor.
13. The Applicant submits that considering the CoC Members approval with 83.02% voting shares, initiation of the liquidation of the Corporate Debtor, the Applicant has filed the present Application for Liquidation in terms of the provisions of section 33 of the Code.
14. The Applicant submits that the CoC members have also approved the Resolution put for appointment of the Applicant/ Resolution Professional to act as the Liquidator of the Corporate Debtor with 83.02%. The signed consent dated 29.08.2023 along with the Authorisation for Assignment is annexed to the application.
15. The Applicant prayed that since there are no resolution plans for consideration of the CoC, application is filed in terms of section 33(1) of the Code for liquidation of the Corporate Debtor with consequential reliefs.
16. Heard the submissions of the counsel appearing for the Applicant and perused the material available on record specifically the Minutes of the third and fourth meeting of CoC. In Item No. 5 of third CoC meeting held on 21st June 2023, it is

mentioned that RP observed that there is need of determination of the avoidance transactions subjected to the CD, therefore, he has appointed M/s Amit Ray & Company to conduct Transaction Audit. RP also informed all the CoC members that the Suspended Directors (SD) have not yet provided any books of accounts and tally data and requested the CoC members to provide the bank account statements since 01.04.2013 onwards so as to aid the auditor for conducting the transaction audit. The CoC passed the resolution ratifying the fee payable to Amit Ray & Company with 65.23% votes.

17. Another important agenda, relating to the valuation of Corporate Debtor is noticed in Item No. 6 of third CoC meeting held on 21st June 2023 extract of which is reproduced below:-

Item No.6. - To update on the information received/pending from the suspended Directors (SD)-

The RP informed that the suspended directors are yet to provide following information till date.

1. *Tally data*
2. *Books of accounts in in physical form*

RP informed that the SD has provided the agreement copies of two subcontractors namely Bharat Engineering and Aditya Enterprises. The SD has informed to RP that all the assets mentioned in the below lists are presently kept at Gut No. 1005 at Bidkin, Tal, Paithan, Aurangabad except one i.e., Caterpillar 320C which is located at Shop No.1, KM Stone 46, Near Gavli Tea Stall, Peth Road (NH848) Karanjali, Shivkar,

Nashik- 422211. The SD assured that all these assets will be made available to the Valuer for valuation purposes.

Details of assets & their location			
Sr. No.	Asset	WDV as on 29.03.2023	Location
1	Stone Crusher	27,28,284.00	<i>It was not in working condition for last five years. It was at site near village Peth, Dist. Nashik. The nearby villagers have stolen many parts and sold it as scrap. Hence at present, the stone crusher needs to be treated as scrap value.</i>
2	Centring Plates	5,58,193.98	<i>They were lying at different sites and stolen by nearby villagers.</i>
3	Tippers Old (6 No.)	5,27,429.32	<i>All vehicles are not in working condition & RTO tax for last five years along with fitness certificate is pending. They are lying at Gut No. 1005 at Bidkin, Tq. Paithan, Aurangabad.</i>
	MH 20 AT 4945 [Rs.87904.88]		
	MH 20 AT 3461 [Rs.87904.88]		
	MH 20 AT 3467 [Rs.87904.88]		

	MH 20 AT 3427 [Rs.87904.88]		
	MH 20 AT 3447 [Rs.87904.88]		
	MH 20 AT 3437 [Rs.87904.88]		
4	Site Equipment's centring Plates	4,38,473.31	They were lying at different sites and stolen by nearby villagers.
5	Caterpillar 320D	3,68,500.00	All vehicles are not in working condition & RTO tax for last five years along with fitness certificate is pending. They are located at Gut No. 1005 at Bidkin, Tq. Paithan, Aurangabad
6	Caterpillar 320C	2,57,490.00	
7	Bakhoe Loader JCB	77,051.00	
8	Tippers (MH20DE2405)	86,753.00	
9	Tippers (MH20DE1108)	65,262.00	
10	Excavator ZX-110	1,30,517.59	
11	Office Equipment's	38,042.00	These assets were not in good condition, at the time of vacating the rented office, hence were left there
12	Electric Installation	54,233.00	
13	Computers	85,648.61	
14	Furniture & Fixtures	3,40,739.00	
15	Lab Equipment	95,295.00	

16	Vehicles	1,97,427.25	Sold & Cash deposited in account
17	Concrete Mixer	41,710.00	At Gut no. 1005, at Bidkin, Dist. Aurangabad
18	Breaker SB 302	39,481.00	
19	Water Tanker	20,567.00	
Total		61,51,097.06	

The RP pointed out that, as per the above table, the SD has mentioned that the vehicles are sold off and the amount was deposited in the respective bank Account. RP requested the SD to provide the Bank Statements showing the amount credited towards the sale of vehicles.

The Representative of the SBI requested the SD to provide the ownership documents of all the assets. The SD informed that he is not having all the documents with him and thus have provided whatever was available with him to the RP such as RC book and/or invoices of few assets.

Thereafter, the RP discussed about the note received from the SD on the recovery of Security Deposits, where in SD stated that the chances of recovering of Security Deposits are NIL due to various reasons. CoC requested the RP to send email / letter to the relevant parties to get their feedback on the matter.

The RP inquired about the delay in submission of physical books of accounts, to which the SD informed that on account of death of the mother of one of his ex-employees, he was not able to send the same. The SD assured to provide the physical books of accounts within 7 days of time.

18. Item 6 of the fourth CoC meeting held on 05.08.2023 takes note of the status of CIRP of CD in following terms:-

“ Transaction Auditor

The RP informed that the transaction auditor, M/s. Amit Ray and Company has commenced their work and have sent certain observations/requested for documents/information from the Suspended Directors. However, the auditor has informed that the suspended directors has not provided the desired information/documents. The RP further informed that he has received the bank account statements from only Bank of Baroda and requested State Bank of India and Indian Bank to share the same promptly, to which the Rep. of SBI informed that they would be sharing the statements by today. The Rep. of Indian Bank did not provide any comments on the same.

Valuer

The RP highlighted that the suspended Director had provided the list of assets presently available with him, however, on the visit of the valuer, he found that few assets were not available on the site. The RP shared the queries as under:

Sr. No.	Asset	Valuer Query	Reply by Suspended Director	RP Comments
1	Back hole Loader JCB	Not found at site	This was in non-working condition and was sold out to Mr. Anil Chutter in the year 2018 against his USL of Rs 436410/-. It was pending in the company form 20/07/2017	Rajeshree Anil Chuttar and Anil Chuttar are shareholders in co. Anil is having unsecured loan of Rs.4,36,410/- in books. Still outstanding. Please provide Supporting document to verify this transaction.
2	Tipper MH-20- DE-2405	Not found at site	This was sold out to RJ Feeds Pvt. Ltd in the year 2018 as the outstanding payment of loan against this vehicle for Rs. 81635/- was paid by RJ Feeds Pvt. Ltd. the vehicle was transferred in the name of this company. But due to oversight, the entry was not taken in the BS of 2018. In the BS the payment received from RJ Feeds Pvt.	Rs. 81635/- is still showing in the name of RJ Feeds in the balance sheet under Unsecured Loan. Please provide Sale Certificate. Please provide Supporting document to verify this transaction.

			<i>Ltd. for Rs... is shown as USL</i>	
3	<i>Tipper MH-20- DE-1108</i>	<i>Not found at site</i>	<i>This was sold out to RJ Feeds Pvt. Ltd in the year 2018 as the outstanding payment of loan against this vehicle for Rs.81635/- was paid by RJ Feeds Pvt. Ltd. This vehicle was transferred in the name of this company. But due to oversight, the entry was not taken in the BS of 2018. In the BS the payment received from RJ Feeds Pvt. Ltd. for Rs... is shown as USL</i>	<i>Rs. 81635/- is still showing in the name of RJ Feeds in the balance sheet under Unsecured Loan. Please provide Sale Certificate. Please provide Supporting document to verify this transaction.</i>
4	<i>Excavator ZX- 110</i>	<i>Sold Out, as per information provided at site</i>	<i>This was in non-working condition and was sold out to Mr. Prashant Jagirdar in the year 2018 as his USL of Rs. 5.0 Lacs was pending in the company form FY 2010.</i>	<i>Rs.5 lacs is still showing in the name of Mr. Prashant in the Balance sheet. Please provide Supporting document to verify this transaction</i>

5	<i>Office Equipment</i>	<i>Office was closed during site visit, hence cannot be inspected</i>	<i>We have already informed you that, the office was in rented premises & we have vacated it in the year 2018. There were no any valuable office equipment.</i>	<i>Why is it still showing in Balance Sheet?</i>
6	<i>Electrical installation</i>	<i>Office was closed during site visit, hence cannot be inspected</i>	<i>We have already informed you that, the office was in rented premises & we have vacated it in the year 2018. The electrical installation had to be scraped, so it was left at that place.</i>	<i>Why is it still showing in Balance Sheet?</i>
7	<i>Computers</i>	<i>Office was closed during site visit, hence cannot be inspected.</i>	<i>We have already informed you that, the office was in rented premises & we have vacated it in the year 2018. The computers were in very old & in scrap condition, so it was left at that place.</i>	<i>Why is it still showing in Balance Sheet?</i>
8	<i>Fixtures & furniture</i>	<i>Office was closed during site visit, hence cannot be inspected</i>	<i>We have already informed you that, the office was in rented premises & we have vacated it in the year</i>	<i>Why is it still showing in Balance Sheet?</i>

			<i>2018. The furniture & fixture were scraped.</i>	
9	<i>Vehicle (Tata RX Pick up)</i>	<i>RC book was not available to us</i>	<i>We are trying to find it out.</i>	
10	<i>Breaker SB 302</i>	<i>Not found at site</i>	<i>It was laying at the site. During last inspection done by Valuer Mr. Bhusan, it was shown to him. It is a small attachment, which might have been missed by your valuer.</i>	
11	<i>Water Tanker</i>	<i>As per RC Book, Vehicle Reg. No. was MH-20-A-5551 & as on site, it was MH-20-A-5672. Chassis & Engine No. were the same.</i>	<i>The water tanker with Reg. number MH-20-A-5551 is on the site which was already seen by the valuer. Another tanker with Reg. No. MH20A5672 in scrap condition does not belong to DIPL. It was brought there by mistake.</i>	

The RP sought comments from the Authorized Representative of the Suspended Directors, Mr. Sudhir Laad. He sought 21 days

to provide the revised Balance sheet as on 29th March 2023 giving all the effects as per reply given by the Suspended Directors towards missing assets. The RP informed that both the valuers have completed the site visit for P&M and are in the process of providing the final report.

The RP informed that the SFA valuation is pending on account of non-submission of certain information by the suspended Directors.

19. Thereafter the CoC discussed the further course of action in the CIRP.

Item No. 8-

In the previous CoC meeting, the RP had informed that he did not receive any EoI in the Resolution Process. Thus, looking to the same and considering the present situation of the Company, the CoC members had deliberated and decided to file for Liquidation of the CD and accordingly, requested the RP to defer this matter to the next meeting. Accordingly, RP has taken this matter in the current meeting and has provided his consent to act as the liquidator. RP informed to CoC that in finalising the liquidation of the CD, COC needs to take the decisions under Regulations 398, 398A, 39C & 39D of CIRP Regulations, 2016, details as under:

- i. **Reg. 398- Meeting Liquidation Cost** - The RP informed that while deciding to liquidate the CD, the CoC may make a best estimate of the amount required to meet liquidation costs, in consultation with the RP. The CoC shall make a best estimate*

of the value of the liquid assets available to meet the liquidation costs. Where the estimated value of the liquid assets is less than the estimated liquidation costs, the CoC shall approve a plan providing for contribution for meeting the difference between the two. The RP shall submit the plan approved to the Hon'ble NCLT while filing the approval of Liquidation. RP stated that in current case the CD does not have any available liquid funds and thus, the CoC has to approve a plan for providing for the liquidation cost in the liquidation process. The RP shared an estimated liquidation cost in the meeting. The CoC discussed and calculated the estimated Liquidation Cost of Rs. 12 lacs and the same will be met as per the voting share as applicable in this CoC meeting. The CoC requested to put the same for voting.

- ii. Reg. 39BA - Assessment of Compromise or Arrangement** - *The RP informed that while deciding to liquidate the CD, the CoC shall examine whether to explore compromise or arrangement can be reached and the RP shall submit the CoC's recommendation to the Hon'ble NCLT while filing application under Liquidation. However, CoC stated that there is no chance of any compromise or arrangement.*
- iii. Reg. 39C- Assessment of sale as a going concern**- *The representative of the BoB advised to keep the both the options in the first Auction*

Process i.e. he has advised to keep Lot 1- Company as a Going Concern and Lot 2- Sale of Assets of the Company. CoC agreed for the same. CoC requested to put the same for voting.

*iv. **Reg 39D – Fee of the Liquidator** – CoC has discussed this matter with the RP and after due deliberation it was decided to pay a fixed Fee of Rs. 6 lacs plus taxes and out of pocket expenses at actuals to the Liquidator as the Liquidator Fee and the same will be paid on the sale of assets of the CD. CoC requested o put the same for voting.*

20. The Applicant put the resolution for voting to approve the liquidation of the CD. The relevant extract of the resolutions put for e-voting at the 4th meeting of the committee of creditors is reproduced below:

“Resolution No.3 – To approve the Liquidation of the CD

As discussed, vide item no.8, following Resolution may be passed by the CoC”

“RESOLVED THAT , pursuant to section 33(1)(a) read with Section 33(2) of the code, 2016, the CoC hereby approves the liquidation of the CD and hereby directs the RP to intimate the Adjudicating Authority of the decision of the CoC to liquidate the CD.”

Resolution No.4 – To appoint the RP to act as the Liquidator of the CD

As discussed, vide item no.8, following Resolution may be passed by the CoC

"RESOLVED THAT, pursuant to section 33(1)(a) read with Section 34(1) of the code, 2016, the CoC hereby approves the appointment of the existing RP, Mr. Shailesh Desai having IBBI/IPA-001/IP-P00183/2017-18/10362 to act as the Liquidator of the CD."

Resolution No.7 – To fix the fees of the Liquidator

As discussed, vide item no.8, following Resolution may be passed by the CoC

"RESOLVED THAT, pursuant to section Regulation 39D of CIRP Regulations, 2016, the CoC hereby approves a fixed fee of Rs. 6 lacs plus taxes and out of pocket expenses at actuals to be paid to the Liquidator on the sale of assets of the CD"

21. It is observed from the minutes of the 4th COC meeting dated 05.08.2023 that the COC has, with 83.02% majority, passed all the above quoted Resolutions being Resolution No. 3, Resolution No.4 and Resolution No.7 and thus decided to liquidate the Corporate Debtor. Relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby allow this Interlocutory Application Number 4058 of 2023 by passing the following:

ORDER

- a. The I.A. 4058 of 2023 is allowed and order is passed for liquidation of the Corporate Debtor M/s Deogiri Infrastructure Private Limited.
- b. **Mr. Shailesh Bhalchandra Desai**, the Resolution Professional of the Corporate Debtor, having Registration No. IBBI/IPA-

001/IP-P00183/2017-18/10362 is hereby appointed as the Liquidator under section 34(1) of the Code.

- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as approved by the CoC under regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- d. The Liquidator appointed in this case shall 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.
- e. All powers of the board of directors and key managerial personnel of the Corporate Debtor shall cease to have effect and shall be vested with the Liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Code including by issuing Public Notice stating that the Corporate Debtor is in liquidation.
- g. Liquidator to send this order to the ROC under which this Company has been registered.
- h. 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.
- i. 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.
- j. Liquidator is also directed to consider the Transaction Audit Report, Valuation Report and other relevant documents and if

deemed fit to initiate appropriate action against suspended directors.

- k. 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. I.A. No. 4058 of 2023 is hereby **allowed and disposed of**.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

--Rajeev kr--

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)