

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A No.12 of 2024

In

CP (IB) No.661/MB/2023

Under Section 33(1)(a) of The Insolvency and
Bankruptcy Code, 2016

In the Matter of

Shri.Pranav Damania,

Resolution Professional for Zenil
Traders Pvt. Ltd,
407, Sanjar Enclave, opp . PVR
Milap Cinemas'. Road, Kandivali(W)
Mumbai-400 067

... Applicant /Resolution Professional

In the matter of

Superways Enterprises Pvt . Ltd

...Operational Creditor

V/s

Zenil Traders Pvt. Ltd

....Corporate Debtor

Order Dated:05.04.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member (Technical)

For the Applicant:

Mr. Bhavesh N Desai, Advocate.

ORDER

1. This is an Application filed under Section 33 of the *Insolvency and Bankruptcy Code, 2016* (Hereinafter referred to as the Code) by the Applicant who is also the Resolution Professional (RP) of the Corporate Debtor seeking the following reliefs:

- a) *That this Hon'ble Tribunal be pleased to pass an order directing initiation of Liquidation of the Corporate Debtor under provision 33 of the Code and appoint the Applicant as the Liquidator of the Corporate Debtor.*
- b) *For such other and further reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*

Brief facts of the case:

- i. The Applicant submitted that the Corporate Debtor is presently undergoing Corporate Insolvency Resolution Process (CIRP) with effect from 06.10.2022 as per the order of the Hon'ble Tribunal. The aforementioned order appointed Mr. Pranav Damania, having Registration No. IBBI/IPA-001/IP-P00079/2017-2018/10164 as Interim Resolution Professional

(IRP) of the Corporate Debtor.

- ii. The IRP issued Public Announcement in Form A in accordance with Section 15 of the Code and Regulation 6 of the Insolvency Bankruptcy Board of India (*Insolvency Resolution Process for Corporate Persons*) Regulations 2016 dated 11.10.2022 in 2 newspapers namely in *Free Press Journal* (English Newspaper) and *Nav Kal* (Marathi Newspaper) for inviting claims.
- iii. In pursuance of the aforementioned Public Announcement, the IRP received various claims from the various creditors of the Corporate Debtor. Pursuant to verification of the claims, the IPR has prepared the list of creditors. An Interlocutory Application (IA) bearing No.3800 of 2022 was filed for seeking to take on record of the Hon'ble Tribunal the report certifying Constitution of CoC, under Regulation 17 of the *Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)* Regulations 2016. The same was allowed by this Hon'ble Tribunal vide an order dated 19.12.2022. Thereafter the CoC was formed consisting only of **one Operational creditor**. i.e. Supreways Enterprises Pvt Ltd.,

Sr. No	Name of the Operational creditor	Address	Amount claimed by the creditors (In INR)	Amount admitted (In INR)
	Supreways Enterprises Pvt Ltd(Through RP Devang	B-11.Sardar Patel Society, Nehru	10,09,60,000/-	10,09,60,000/-

	Thakar)	Road Vile Parle(E), Mumbai- 400 057		
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- iv. The Hon'ble Tribunal vide order dated 06.10.2022 in CP (IB)-661 of 2021 ordered the Applicant (Supreways Enterprises Pvt Ltd) to deposit as amount of 5,00,000/- with IRP .The CoC acting through its Resolution Professional Mr. Devang Thakar having IBBI Registration No IBBI/IPA-002/IP-N01024/2020-21/13288, in the first CoC meeting held on 04.11.2022, approved the CIRP cost. However, the meager funds/resource available with the Corporate Debtor were not sufficient to meet the CIRP costs.
- v. The 2nd Meeting of CoC held on 29.11.2022, CoC confirmed to publish EOI (Expression of Interest) in Form-G in 2 newspapers namely in *Free Press Journal* (English Newspaper) and *Nav Kal* (Marathi Newspaper). The IPR has appointed two registered valuers to carry out valuation of the assets of the Corporate Debtor in accordance with the Regulation 27 read with regulation 35 of the *Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016*, which are as follows:

Sr. No	Name of Valuers	Fair Value	Liquidation Value
1	Bhavesh M. Rathod	14,32,391/-	12,40,630/-
2	Fidem Corporate Advisors LLP	14,32,391/-	12,00,787/-

- vi. The applicant submits that, Form G as per the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 was published on 02.12.2022 by the Applicant for inviting Expression of Interests (EOIs) from various Prospective Resolution Applicants (PRA's). however, few inquiries had come in response to the EOI and no inquiry resulted into submission of EOI.
- vii. The applicant submits that, in pursuance of the non-receipt of any EOI or inquiry pertaining to the resolution plans for the Corporate Debtor, in 3th CoC meeting held on 10.01.2023, the CoC decided not to re-issue of Form-G and extending the CIRP Processes.
- viii. The Applicant further submits that in 4th CoC meeting held on 28.03.2023, the CoC again did not cast their vote on a resolution either to extend the CIRP processes or to initiate liquidation process against the Corporate Debtor.
- ix. The Applicant further submits that, the 180 days period of the CIRP process of the Corporate Debtor had come to an end on 04.04.2023. In view of no decision having been taken by the CoC, the applicant filed an Interlocutory Application having IA no. 3074 of 2023 filed on 19.06.2023 for seeking necessary directions in respect of the Corporate Insolvency Resolution Process of the Corporate Debtor. However, the Hon'ble Tribunal vide order dated 19.12.2023 granted liberty to the applicant to file a comprehensive Application before NCLT.

- x. In view of the order dated 06.10.2022 in CP (IB)-661 of 2021. A sum of only Rs.35580/- was deposited in the account of Corporate Debtor by one Prarthana Pvt. Ltd on 03.05.2023, which was confirmed by the Resolution Professional of Supreways Enterprises Pvt. Ltd. Prarthana Pvt. Ltd is one of the member of its CoC(Operational Creditor's CoC member i.e Superways Enterprises Pvt. Ltd) has contributed its share towards total of Rs. 5 lakhs towards CIRP expenses. However, after 5th CoC meeting the operational creditor gave payment of Rs. 3,00,000/- on 10.11.2023.
- xi. The applicant states that on 29.09.2023 received an email from the Mr. Prashant Jain having IBBI Registration No. IBBI/IPA-001/IP-P01368/2018-2019/12131 who replaced Mr. Devang Thakar as Resolution Professional of Superways Enterprises Pvt. Ltd. The replaced Resolution Professional confirmed that in the Eighth Meeting of the CoC of Superways Enterprises Pvt. Ltd. held on the 21.09.2023, the approval was granted for the CIRP expenses, encompassing IRP/RP fees. The CoC Member of the Corporate Debtor expressed a willingness to initiate the liquidation process for the Corporate Debtor, with the aim of expediting its dissolution at a liquidation cost Rs. 2,00,000/-.
- xii. During the 5th CoC Meeting held on 20.09.2023, the CoC Member unanimously concluded that the Corporate Debtor be liquidated, with the suggestion for its early dissolution. Subsequently, the CoC Member passed the necessary resolution to initiate the liquidation process of the Corporate Debtor. The CoC further resolved to appoint the applicant as

the liquidator of the Corporate Debtor during the said meeting. To facilitate a prompt approval, the applicant sought consent from the CoC Member for the proposed resolutions through e-voting via email.

xiii. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, the Counsel for the Applicant submits that no Expression of Interest (EOI) and Resolution Plan has been received and since the Corporate debtor is not operational and does not have assets that can be realised as observed from the Minutes of the 5th CoC Meeting, there is no option except to put the Corporate Debtor Company into Liquidation as per the Code. It is observed from the minutes of the 5th CoC meeting that the CoC with required mandate has approved to liquidate the Corporate Debtor in view of their not getting any Expression of Interest and Resolution Plan. This Tribunal has very limited judicial review in such matters of commercial wisdom Therefore there is no option except to allow the above Liquidation Application. This Bench, therefore feels this is a fit case for ordering Liquidation of Corporate Debtor.

xiv. Accordingly, the above Interlocutory Application 12 of 2024 is disposed of. Prayers made in the application are allowed, directing the Liquidation of the Corporate Debtor. Accordingly, we pass the following order:

ORDER

a. The above I.A. No.12 of 2024 is allowed and the Corporate Debtor is ordered to be liquidated.

- b. **Mr. Pranav Damania**, having IP Registration Number IBBI/IPA-001/IP-P00079/2017-201 8/10164, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees as per table mentioned in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case is 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.
- e. The Liquidator is appointed under section 34(1) of the Code. 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.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the IBC by issuing Public Notice stating that the Corporate Debtor is in liquidation with a further direction to the Liquidator to send this order to the ROC under whose jurisdiction this Company has been registered.
- 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 initiated liquidation process, 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 of 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.

Sd/-

MADHU SINHA
Member (Technical)

//Priyanka//

Sd/-

REETA KOHLI
Member (Judicial)