



NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

IA (I.B.C)/3465(PB)/2022

IN

CP (IB)/413(PB) /2019

In the matter of

M/s Reliance Commercial Finance Limited

...Financial Creditor

versus

M/s Rosewood Trexim Private Limited

...Corporate Debtor

and

In the matter of

M/s Rosewood Trexim Private Limited

... Applicant/RP

through

Mr. Shailendra Singh, Resolution Professional

REG. NO. IBBI/IPA-02/IP-NOO471/2017-18/11372

versus

Mr. Harsh Vardhan Bagaria & Ors.

...Respondents

Memo of parties

Mr. Shailendra Singh,

Resolution Professional

M/s Rosewood Trexim Private Limited

having its registered office at:

1201-A to 1201-C, 12th Floor, Ashoka Estate

Connaught Place, New Delhi-110001

Contact No: 9717575151

Email: shailendralaw@gmail.com

rosewoodcirp@gmail.com

...Applicant/RP

versus

Mr. Harsh Vardhan Bagaria

Director- power suspended

M/s Rosewood Trexim Private Limited

R/o H.No. 304, Royal Retreat, Charmwood Village

...Respondent 1



Surajkund Road, village Lakkarpur
Faridabad- 121009

and

Mr. Santosh Bagaria

Director- power suspended
M/s Rosewood Trexim Private Limited
R/o H.No. 304, Royal Retreat, Charmwood Village
Surajkund Road, village Lakkarpur
Faridabad- 121009

...Respondent 2

**Under Section 33 (1) of the Insolvency And Bankruptcy Code, 2016 For
Liquidation of the Corporate Debtor i.e. M/s Rosewood Trexim Private
Limited**

Order Pronounced On: 30 /01/2023

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar :Hon'ble President

**Shri Avinash K. Srivastava :Hon'ble Member
(Technical)**

Appearances :

For the RP : Mr. Gautam Singhal & Mr. Ravikant Sharma, Advs. with
Mr. Shailendra Kumar Singh, RP

For the Respondent : Ms. Amrita Singh, Advocate for HDFC Limited



ORDER

PER SH. AVINASH K. SRIVASATAVA, HON'BLE MEMBER (T)

1. The Present Application (**IA 3465/2022**) has been filed by the Applicant/RP of **M/s Rosewood Trexim Private Limited (CD)**, **CIN: L45201DL1996PLC080401** under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for liquidation order in respect of the CD. Applicant/RP has prayed for the following reliefs:

- a. Allow the instant application;
- b. Pass an order for liquidation of the Corporate Debtor
- c. Appoint Mr. Shailendra Singh having Registration No. IBBI/IPA-002/IP-NOO471/2017-18/11372 as the Liquidator of the Corporate Debtor I.e. **M/s Rosewood Trexim Private Limited** at mutually agreed fee as detailed in Para 57 of the present application;
- d. Pass an order that the order of Liquidation is a notice of discharge to the employees, officials, workmen etc. and;
- e. Allow the applicant to continue rendering his professional services as Resolution Professional "Functus Officio" till such time a final order of Liquidation is passed by this Hon'ble Tribunal
- f. Pass further order(s)/ direction(s) and other relief(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case and in the interest of justice;

2. **Brief facts submitted by Applicant/ RP in IA 3465/2022 are as follows:**

- Corporate Debtor, **M/s Rosewood Trexim Private Limited** was incorporated on **31.08.2007** under the provisions of the Companies Act, 1956. The Corporate Debtor was engaged in the business of offering



underground construction work including providing Horizontal Directional Drilling, installation of pipes and wires, etc. prior to the commencement of the Corporate Insolvency Resolution Process.

- Financial Creditor i.e. **Reliance Commercial Finance Limited** had filed an application under Section 7 of the Code, bearing number IB-413/(PB)/2019, for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on **10.10.2019** initiating CIRP against the Corporate Debtor wherein the applicant, namely **Mr. Shailendra Singh**, was appointed as the Interim Resolution Professional to discharge all the functions as per provisions of the Insolvency and Bankruptcy Code, 2016.
- The Applicant, after his appointment sent an email dated **11.10.2019** to the Respondents intimating them about the appointment of the applicant as Interim Resolution Professional and further informed them about the commencement of the Corporate Insolvency Resolution Process of the Corporate Debtor. The applicant vide email dated **11.10.2019** further sought all the necessary documents, records and information of the CD from the Respondents. That in response to the email dated **11.10.2019**, the respondents vide email dated 14.10.2019 informed the applicant that the Corporate Debtor was operating at “**25, First Floor, Charmwood Plaza, Charmwood Village, Surajkund Road, Faridabad, Haryana-121009**’. The Respondents further sought time till **16.10.2019** for providing the required details and information to the applicant as required vide email dated 11.10.2019.
- Further, **on 24.10.2019**, the applicant visited the premises located at “25, First Floor, Charmwood Plaza, Charmwood Village, Surajkund Road, Faridabad, Haryana-121009 in order to take possession of the assets and books of accounts of CD. However, after reaching the said premises the applicant discovered that all the assets and documents



stored therein were in respect of another company M/s **Rosewood Projects Private Limited.**

- Applicant/RP further submitted that Respondents failed to provide the requisite information. Even the status and location of the machineries hypothecated with the sole financial creditor i.e. M/s Reliance Commercial Finance Limited is not disclosed by the respondents and the applicant could not take the control and custody of the same. In these circumstances the applicant filed an application bearing **CA No. 2542/2019** under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 against Respondent No. 1 and 2 and Mr. Satya Prakash (CEO of Corporate Debtor) seeking issuance of appropriate directions against them.
- Applicant further submits that this Adjudicating Authority vide its orders dated **06.12.2019**, **18.12.2019** and **06.01.2020** passed in IA No. 2542/ 2019 gave repeated directions to the Respondents to provide the required details and documents the applicant. However, the Respondents failed to provide the required details, information and documents of the Corporate Debtor to the applicant.
- On **12.10.2019**, the Applicant/RP along with his team visited the registered office of the CD located at “C-110B, G.F., Kalkaji, New Delhi 110019” on 12.10.2019, where it was found that the office premises were locked.
- On **13.10.2019**, Applicant/RP caused a public announcement, in prescribed Form A, in accordance with Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) in newspaper Financial Express (English) and Jansatta (Hindi). The Public Announcement was uploaded on the website of the Insolvency and Bankruptcy Board of India on **16.10.2019**. The last date for filing of the claims was **25.10.2019**.



- That the applicant received only 1 claim pursuant to the Public Announcement. The applicant after collation of the claims constituted the Committee of Creditors in compliance with Regulation 17(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. That the applicant has not received any other claim from any operational creditor, workmen, employee or financial creditor except the aforesaid claim filed by M/s Reliance Commercial Finance Limited under the category of Secured Financial Creditor. The report certifying the constitution of the Committee of Creditors consisting a sole member was filed before this Hon'ble Tribunal, the details are given below :-

No.	Name of Creditors	Amount claimed	Amount of Claim Admitted {In INR}	Voting Share %
1.	M/s Reliance Commercial Finance Limited (Secured Financial Creditor)	2,16,18,013	1,54,25,121	100%

- As per Section 22(2) of the IBC, 2016 the Committee of Creditors in the 2nd meeting dated **03.12.2019** resolved to appoint the IRP as the Resolution Professional (RP) by 100% voting share. Vide order dated **03.12.2019, IRP was appointed as RP by this Adjudicating Authority.**
- In the third meeting of the COC dated **26.12.2019**, the Committee of Creditors was of the view that further course of the action can be decided only after receiving the complete information of the corporate debtor and ascertainment of state of machinery assets. The applicant shared the draft Information Memorandum with the Committee of



Creditors which was prepared on the basis of the available data and information.

- Applicant further submits that on **01.02.2020**, the applicant received an email from the Respondents informing that HDFC Ltd. has taken physical possession of the premises located at “**25, First Floor, Charmwood Plaza, Charmwood Village, Surajkund Road, Faridabad, Haryana-12100**” where necessary documents relating to the Corporate Debtor were lying. It is pertinent to mention over here that **M/s Rosewood Projects Private Limited**, a sister concern of Corporate Debtor was also operating from the premises bearing No. 25, First Floor, Charmwood Plaza, Charmwood Village, Surajkund Road, Faridabad, Haryana-121009.
- The Applicant/RP apprised the COC on 4th COC meeting held on **07.02.2020 that Mr. S.P Bagaria** Ex-CEO of the Corporate Debtor voluntarily proposed the settlement of the debt by giving an undertaking that the dues liable to be paid to the sole member of the Committee of Creditors shall be paid within 45 days from the date of the meeting.
- Applicant further submitted that Respondents did not provide the complete information and documents as assured and promised by them from time to time. It is further submitted that since inception of the CIRP the Respondents were requesting for time to settle the dues. However, no settlement terms were proposed by the Respondents. It was decided by the COC that since the documents of the Corporate Debtor are not complete, Forensic Audit must be carried out to find out the transaction details. The Committee of Creditors further decided that it would be appropriate to take up the issue of publication of Expression of Interest after audit has been conducted and assets and liabilities of the Corporate Debtor have been determined.



- The Sole Committee of Creditors member stated that since there was no business for more than three years, it would be advisable to conduct the audit from 2015. It was also decided that an application should be filed before the Hon'ble NCLT against the HDFC Bank Limited to de-seal the premises bearing No. 25, Charmwood Plaza, Charmwood Village, Faridabad. Further, IA 1784/2020 was filed by the applicant on **04.03.2020** seeking de-sealing of the office for the purpose of taking possession of documents and assets of the Corporate Debtor.
- In the 7th COC meeting held on **22.07.2020**, the Committee of Creditors was of the view that since the required details and documents were not provided by the Respondents, the appointment of Auditor and publication of EOI would be futile at that stage and directed the applicant to pursue the applications pending before the Hon'ble Tribunal expeditiously.
- In the 8th COC meeting held on **08.10.2020**, the Applicant/RP informed the COC that the time limit of 180 days for completion of Insolvency Process has lapsed on **08.04.2020** and no fruitful progress could be made due to the non-cooperation of CD and due to the outbreak of Covid-19 and suspension of the working of the Courts. Further, Applicant filed the application bearing **IA No. 4719/2020** for exclusion of the lockdown period and extension of the time period of 90 days under Section 12(2) & (3) of the Code. This Adjudicating Authority vide order dated **19.11.2020** was pleased to dismiss the said Application. Order dated **19.11.2020** is extracted below:

"It is an application (IA-4719/2020) filed for exclusion and extension of CIRP period taking lock down into consideration.

As per this application, it appears that CIRP period started running from 10.10.2019, so that 180 days period was over by 08.04.2020. Now, this Applicant/Resolution Professional filed this application based on the resolution passed by the CoC on



08.10.2020 seeking for exclusion and extension of CIRP period stating that since this company is situated at New Delhi and the New Delhi Government having announced restricted movement from 15.03.2020, the applicant has sought exclusion of time from 15.03.2020 to 15.08.2020.

Even if it is deemed that the above period is excluded from CIRP period, then also CoC ought have passed resolution at least or before 08.09.2020, but no resolution was passed. It is an application filed based on the resolution passed on 08.10.2020.

By the time resolution passed for extension of CIRP period, even after inclusion of excluded period as well as balance period is counted in, CIRP period being lapsed, CoC could not remain in existence. Therefore resolution passed on 8.10.2020 cannot be considered as valid resolution. Legally speaking, the CoC was not in existence as on the date this resolution was passed, this Bench has therefore no right to revive the CIRP period under the Code, hence this IA- 4719/2020 is dismissed holding that the CoC was not in existence as on the date resolution was passed.”

- The Applicant/RP preferred an appeal bearing Company Appeal (AT) Insolvency No. **1066 of 2020** before the Hon’ble National Company Law Appellate Tribunal, New Delhi against the order dated 19.11.2020 passed by this Hon’ble Tribunal dismissing the IA No. 4719/2020. The Hon’ble Appellate Tribunal vide its order dated 15.12.2020 was pleased to allow the appeal and granted an exclusion for the period of 15.03.2020 till 04.10.2020 and a further extension of 90 days to conduct the CIRP. Hence, the CIRP period was extended till **27.01.2021**.
- Applicant convened 9th COC meeting on 23.12.2020, wherein Committee of Creditors requested the applicant to include the agenda for voting for exclusion of certain period from CIRP to effectively carry out the CIRP. Accordingly, the applicant/RP filed an application bearing IA No. 385/2021 seeking exclusion of aforesaid period in computation of CIRP period. That this Hon’ble Tribunal vide order dated 09.07.2021 was pleased to partly allow the IA No. 385/2021. This Hon’ble Tribunal



vide order dated 09.07.2021 granted exclusion of the period of 27 days between 19.11.2020 and 15.12.2020.

- Thereafter, on instructions of the sole Committee of Creditors member/Financial Creditor vide email dated 21.09.2021, the applicant has preferred the appeal before the Hon'ble National Company Law Appellate Tribunal, New Delhi. The said appeal is registered as a Company Appeal (AT) (Ins) No. 846 of 2021. It is further submitted by Applicant that due to the pendency of the company appeal before the Hon'ble Appellate Tribunal no further progress could be made in the applications pending before this Adjudicating Authority.
- Applicant further submitted that in these circumstances he sought the legal opinion from his counsel with respect to future course of action to be followed. Relevant extract of the legal opinion is extracted as follows:

"the statutory period for conducting the CIRP proceedings had already expired on 27.01.2021 including the extension and exclusion granted by Hon'ble NCLT and Hon'ble NCLAT. There are no business operations in the CD since long. The assets of the CD could not be located due to non-cooperation by the management. Even the complete records, documents and information was not supplied to the RP. There are no workmen or employees working for the CD as on CIRP commencement date. Though the RP was continuously doing the need as permissible under the code, still the matter could not be resolved under CIRP and due to lapse of long time it is desirable that we should take appropriate necessary steps in the best interest of all.

Hence, in my opinion no useful purpose would be achieved by continuing with the CIRP process of the CD in view of passage of time due to pendency of various applications and appeal. The RP may file an application under Section 33 of IBC, 2016 seeking initiation of liquidation proceedings of the CD and appointment of the liquidator. The appeal filed before the Hon'ble NCLAT, New Delhi may subsequently be withdrawn in view of filing of the liquidation application under Section 33 IBC, 2016."

- Applicant/RP further submits that this Adjudicating Authority was pleased to direct the applicant to serve notice upon the respondent in IA No. 1784/2020 and HDFC Ltd was directed to explain why the IA No.



1784/2020 should not be allowed and posted the matter for hearing on 06.01.2021. That on **12.01.2021**, the Applicant came to know from the reply filed by HDFC Limited in IA No. 1784/2020 that the premises bearing No. 25, Charmwood Plaza, Charmwood Village, Faridabad is auctioned to a third party by HDFC Ltd under the provisions of SARFAESI Act, 2002. That on **16.07.2021**, this Hon'ble Tribunal was pleased to direct HDFC Ltd to provide the necessary copies of documents and also allow inspection of the records by the applicant at a mutually convenient time and date at the cost of the applicant.

- Applicant/RP convened the 10th meeting of the Committee of Creditors on **03.08.2021** and apprised the status of the proceedings before the Hon'ble Tribunal and about the visit to the premises located at 125, Charmwood Plaza, Charmwood Village, Faridabad -121009. The applicant again apprised the Committee of Creditors about the requirement of the publication of Form G. However, considering the non-availability of the required documents and details, the Committee of Creditors decided to defer the agenda of the publication of EOI.
- The applicant vide email dated 08.07.2022 sent his consent to act as the liquidator in the liquidation process of the Corporate Debtor along with his proposed Professional Fee to the Sole Financial Creditor. After detailed discussions, the Sole Member of the Committee of Creditor vide email dated **13.07.2022** approved the professional fee of the applicant.
- Hence, the Applicant filed the application under Section 33(1) of the IBC, 2016 praying for the liquidation in respect of the Corporate Debtor.

ANALYSIS AND FINDINGS

- 3.** We have perused the application and submissions of the Applicant/RP in the matter. On perusal, it is found that a lot of the time of the CIRP was wasted by RP in filing petitions/appeals. Respondents on one pretext or the



other, did not cooperate with the applicant/RP to provide the relevant information. Further, the Applicant came to know from the reply filed by HDFC Limited IA No. 1784/2020 that the premises bearing No. **25, Charmwood Plaza, Charmwood Village, Faridabad** i.e. the property from where the Corporate debtor was operating is auctioned to a third party by HDFC Ltd under the provisions of SARFAESI Act, 2002.

4. We are of considered opinion that RP has failed to discharge his functions in an efficient manner. He has wasted a lot of time in filing petitions/appeals in vain. Appeals were filed to seek extension/exclusion of time from CIRP period whereas there was no effort to make information memorandum and to discharge the other duties to resolve the insolvency of the Corporate Debtor. Seeking the legal opinion from the counsel regarding the future course to be followed was a futile exercise as the legal opinion provided was already clear to the RP based on the information already available. One of the salient features of IBC is the time bound proceedings, the CIRP was initiated long back in October 2019, ten COC meetings have been conducted with no useful information, not even the auditing has been done even after passing the resolution for the same. If the CD was not operating, RP could move an application for liquidation even before the expiry of 180 days under Section 33 of the Code. RP failed to take proper, timely decisions with respect to the Corporate Debtor. In view of these reasons, this Adjudicating Authority is of the view that this Insolvency Professional needs to be replaced.
5. Further, since no operations are going on, due to lack of the relevant information even the form G was not published, assets of the Corporate Debtor are not known, there is no auditor report that has been placed on record, in the background of facts in the instant case, the statutory period for CIRP is long over, and the provision of Section 33(1)(a) of the IBC is attracted. Relevant provision under Section 33 is extracted below:

Section 33: Initiation of Liquidation



33. (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;**
- (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 approved by not less than seventy five per cent of the voting share 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 sub-section (1).

6. Since the CIRP Period has expired and this Adjudicating Authority has not received resolution plan under Section 30(6), then Liquidation of the Corporate Debtor has to follow. There is no other alternative, perceivable or viable. We are therefore inclined to **ALLOW** the present application for Liquidation.

ORDER

i. The prayers **b** and **d** sought in **I.A. (IB) No. 3465/2019** are **ALLOWED** and prayers **c** and **e** are **REJECTED**. The Corporate Debtor is directed to be liquidated in terms of Section 33(1) of the Code.



- ii.** For the reasons mentioned in para 4 above, in exercise of inherent powers, we **REJECT** the appointment of the Applicant/Resolution Professional, **Shailendra Singh** as Liquidator and we appoint **Mr. Anshuman Kaushik** , Reg. No. **IBBI/IPA-001/IP-P02523/2021-22/13825**, Email: anshumanksk@gmail.com, to act as liquidator to carry on the process of liquidation in terms of section 34(1) of the Code. It is further directed to Mr. Anshuman Kaushik to file his written consent in accordance to the rules and regulations of the Code within 7 days of the pronouncement of this order. Further, he is directed to submit the AFA **within 7 days** to this Adjudicating Authority.
- iii.** The Order of Moratorium passed under Section 14 of the IBC shall cease to have its effect and a fresh Moratorium under Section 33(5) of the IBC shall commence;
- iv.** 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. He is to be informed that he should not delay the process any further. He will maintain the timelines, strictly.
- v.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, in Financial Express (English), all India edition, Dainik Bhaskar (Hindi), all India edition and Website / Portal maintained by the Insolvency and Bankruptcy Board of India stating that the Corporate Debtor is in liquidation.
- vi.** 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.
- vii.** The personnel of the Corporate Debtor are directed to extend all assistance and full co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor. They will do so without demur and promptly.



- iii.** 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.
- ix.** In accordance with section 33(7) of the Code, 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 to be continued during the liquidation process by the Liquidator.
- x.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code and seek and get assistance from all persons connected with Company in liquidation.
- xi.** The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law in a time bound manner.
- xii.** The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. He shall refrain from filing frivolous, time consuming applications. All steps to speed up the liquidation proceedings to be taken by the Liquidator. If there is any deliberate delay in action and if there is inaction causing loss of value of Liquidation Estate and unnecessary expenditure, he will be subject to appropriate action as per law including removal.
- xiii.** In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, NCT of Delhi & Haryana i.e. within whose



jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Insolvency and Bankruptcy Board of India.

- xiv.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xv.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**LIST THE MAIN CP (IB) NO. 413(PB)/2019 FOR REPORTING PROGRESS
ON 13.02.2023**

Sd/-

(RAMALINGAM SUDHAKAR)

PRESIDENT

Sd/-

(AVINASH K. SRIVASTAVA)

MEMBER, TECHNICAL