

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301 - IA(Liq.)/23(AHM)2024
in
C.P.(IB)/181(AHM)2023

Order under Section 33 IBC

IN THE MATTER OF:

Bimal Ashok Desai Chairman Of Monitoring Committee &
Erstwhile RP of Feros Engineering Pvt. Ltd

.....Applicant

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

Order delivered on: 18/02/2025

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

IA(liq)/23/AHM/2024 in CP (IB)/181/2023

*(Filed under Section 33(3) r.w. Section 34 & 74(3) of the
Insolvency and Bankruptcy Code, 2016).*

In the matter of **M/s Fermos Engineering Pvt. Ltd.**

Bimal Ashok Desai,
Chairman of Monitoring Committee &
Erstwhile RP of Fermos Engineering Pvt. Ltd.
Having office at: 217, Florence Pride,
Opposite Corporation Garden,
Sun Pharma Road,
Vadodara, Gujarat- 390020

.... Applicant

Order Pronounced On 18.02.2025

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

For Applicant : Mr. Pratik Thakkar, Advocate
For Defaulting SRA : None

ORDER


1. The **IA(liq)/23/AHM/2024** has been filed by the Applicant Resolution Professional under Section 33(3) r.w. Section 34 & 74(3) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows; -



- a. *That this Hon'ble Adjudicating Authority may be pleased to pass appropriate order for Liquidation of the Corporate Debtor, in the interest of justice;*
 - b. *That this Hon'ble Adjudicating Authority may be pleased to pass appropriate order for appointment the applicant as Liquidator for the Corporate Debtor, in the interest of justice;*
- B1: Pass appropriate orders, as deemed fit under Section 74(3) against the Resolution Applicant "Gbees Mart Pvt. Ltd.", for wilfully failing to comply with the Resolution Plan;*
- B2: The Hon'ble Tribunal be pleased to pass necessary order against the SRA debarring the SRA from submitting any resolution plans in future Insolvency Proceedings under the provisions of Section 29A of the IBC."*
- c. *That this Hon'ble Adjudicating Authority may be please to pass any further necessary orders as the Hon'ble Adjudicating Authority deems fit, in the interest of justice.*


2. Facts of the Case are as follows:-

- i. The present application is filed under Section 33(3) and Section 34 as well as 74(3) of the Insolvency and Bankruptcy Code, 2016, by the Applicant/ Chairman of Monitoring Committee & Erstwhile RP of **Fermos Engineering Pvt. Ltd** for seeking liquidation of the Corporate Debtor due to the failure of the Resolution Applicant to implement the approved resolution plan.
- ii. This Hon'ble Adjudicating Authority, vide order dated 08.09.2023, admitted Company Petition (IB) No.181




of 2023 and appointed Mr. Bimal Ashok Desai as the Interim Resolution Professional (IRP).

- iii. The Applicant has verified the necessary compliances. A resolution plan was received on 11.01.2024 from the Resolution Applicant, M/s. GBEES Mart Private Limited. Following discussions, the final resolution plan was submitted on 19.02.2024 by the the Resolution Applicant.
- iv. The said resolution plan was duly approved by the Committee of Creditors (CoC), and the Applicant filed IA (Plan) No. 7 of 2024 for approval before this Hon'ble Adjudicating Authority. This Hon'ble Adjudicating Authority, vide order dated 26.06.2024, approved the resolution plan submitted by M/s. GBEES Mart Private Limited.
- v. In accordance with the approved Resolution Plan, a Monitoring Committee was constituted to oversee its implementation. The Monitoring Committee consists of the Resolution Applicant, the Former Resolution Professional, and Financial Creditors, with the Former Resolution Professional serving as the Chairman of the Monitoring Committee.
- vi. The Applicant informed the Successful Resolution Applicant via email dated 06.07.2024 regarding the approval of the Resolution Plan and the required




compliance measures as per the order dated 26.06.2024.

- vii. Thereafter, the Applicant received an email from the Resolution Applicant on 08.07.2024 stating that the approved resolution plan did not align with the plan they had submitted and requested a refund of the earnest money deposit.
- viii. In response, the Applicant convened the First Meeting of the Monitoring Committee, designated as the 5th CoC Meeting, to update the members on developments following the approval of the resolution plan.
- ix. The Resolution Applicant, M/s. GBEES Mart Private Limited, has failed to comply with the terms of the resolution plan, including the payment of CIRP dues as stipulated. The Applicant has not received any communication or intimation regarding an appeal challenging the order dated 26.06.2024 in IA (Plan) No. 7 of 2024.
- x. As per the terms of implementation stated in PART II of the Resolution Plan, the compliance period was 15 days, which expired on 11.07.2024. No communication has been received from M/s. GBEES



Mart Private Limited requesting an extension for compliance with the Resolution Plan.

- xi. The applicant has called upon Second Monitoring Committee on 03.08.2024 and wherein various agendas were discussed take-up and approved by the Monitoring Committee. These agendas include:-
- a. To vote upon Liquidation of Fermos Engineering Private Limited.
 - b. To forfeit EMD provided by Resolution Applicant in view of denial by Resolution Applicant due to reason provided by him in his email dated 08.07.2024.
 - c. To appoint Existing Resolution Professional as Liquidator, Subject to Approval by this Tribunal at a lumpsum liquidator's fee of Rs.1,00,000. This was agreed as here are no Assets to be realised except balance available in bank including EMD received from Resolution Applicant.
 - d. To contribute to other Liquidation Cost (Except Liquidators Fee as above) to the extent of Rs.75,000.
 - e. To Authorise Resolution Professional to appoint advocate and Fix his fee for filing Liquidation petition with NCLT.
- xii. The applicant seeks liquidation of the Corporate Debtor under Section 33(3) of the Insolvency and Bankruptcy Code, 2016, and requests appointment as Liquidator as approved by the Monitoring Committee.




xiii. The applicant further prays for appropriate action under Section 74(3) against the Resolution Applicant, Gbees Mart Pvt. Ltd., for willful non-compliance with the Resolution Plan and seeks an order debarring the SRA from future resolution plans under Section 29A of the IBC.

3. This Tribunal vide order dated 09.09.2024 issued show cause notice to the defaulting SRA as to why the plan approved by this Tribunal was not implemented. Successful Resolution Applicant appeared and filed an Affidavit on 13.12.2024 vide inward dairy no D 8659 and made the following statements:-

- i. That the Applicant had submitted a Resolution Plan dated January 11, 2024 and had re-submitted the same dated February 19, 2024 in respect of M/s Fermos Engineering Private Limited as part of the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016. That Tribunal through its order dated 26th June 2024 has approved a resolution plan.
- ii. That the resolution plan approved by, this Tribunal has imposed certain financial obligations over and above what was agreed by the resolution applicant in the resolution plan submitted by it.



- iii. The additional financial obligation has made resolution plan unviable. As the resolution plan submitted by the resolution applicant was not approved it is not obliged to proceed with the modified approved resolution plan.
- iv. That the Applicant hereby unequivocally states that it is no longer interested in pursuing or continuing with the Resolution Plan submitted for M/s Fermos Engineering Private Limited and has not challenged the order in NCLAT or any other court/tribunal.
- v. That the Applicant assures that this decision is in compliance with all applicable provisions of the Insolvency and Bankruptcy Code, 2016, and other relevant laws, and is made in good faith without any intention to prejudice or cause any inconvenience to any party involved in the Corporate Insolvency Resolution Process.
4. This Tribunal vide order dated 02.12.2024 directed the erstwhile RP/chairman of the Monitoring Committee to conduct another meeting of the Monitoring Committee within period of 10 days and place the minutes before this Tribunal by way of additional affidavit. The same




was placed before this Tribunal on 13.12.2024 vide inward dairy no. D 8970 wherein Monitoring Committee approved the Resolution with 100% voting to recommend for debarment of GBEEES Mart Private Limited for submitting any resolution plan in future in any insolvency process.

5. This Tribunal vide order dated 03.02.2025 allowed the applicant to amend the prayers of the IA (Liquidation) No. 23 of 2024 and the same was carried out by the Applicant on 06.02.2025.
6. We have heard the learned counsel for the applicant and perused the documents attached with the application as well as affidavit of the Defaulting SRA.
7. **The observations of this Tribunal are as under:**
 - i. The Adjudicating Authority admitted the Corporate Debtor - Fermos Engineering Pvt. Ltd. in CIRP on 08.09.2023 in CP (IB) No. 181 of 2023 and appointed Mr. Bimal Ashok Desai as the Interim Resolution Professional (IRP). Subsequently, he was confirmed as the Resolution Professional (RP).



- ii. During the CIRP process, expressions of interest were invited from potential resolution applicants. **M/s GBEES Mart Pvt. Ltd.** submitted a resolution plan on 11.01.2024, which was revised and resubmitted on 19.02.2024. After extensive deliberations, the Committee of Creditors (CoC) approved the Resolution Plan of **M/s GBEES Mart Pvt. Ltd.** with the requisite voting share.
- iii. The Adjudicating Authority vide order dated 26.06.2024 sanctioned the Resolution Plan. As per the plan, an Implementation/Monitoring Committee was constituted, comprising the Resolution Applicant, the RP, and Financial Creditors.
- iv. The RP communicated the plan approval to the SRA on 06.07.2024, requesting compliance. However, on 08.07.2024, the SRA refused to implement the plan, claiming discrepancies and seeking a refund of its Earnest Money Deposit (EMD).
- v. The RP convened a Monitoring Committee meeting on 03.08.2024, where it was resolved to initiate liquidation proceedings against the Corporate Debtor. To forfeit the EMD of the SRA due to its failure to fulfill commitments. To appoint the




existing RP as Liquidator. To allocate funds for liquidation expenses.

- vi. The resolution plan approved by the Adjudicating Authority included a mandatory provision for payment to the Employees' Provident Fund Organization (EPFO) as per the statutory obligations. The SRA was fully aware of this condition, as it was clearly mentioned in the final approved plan. The approved resolution plan required the SRA to settle outstanding EPFO dues in addition to the resolution amount, ensuring compliance with labour laws and protecting the interests of employees in terms of judgment of Hon'ble NCLAT rendered in Company Appeal (AT) (CH) (Ins.) No. 29 of 2021 & IA No. 251/2021 in the matter of **Mrs. C.G. Vijyalakshmi Vs. Shri Kumar Ranjan and Ors.** vide order dated 08.02.2023.
- vii. In response, the Tribunal issued a Show Cause Notice to the SRA on 09.09.2024. The SRA, in its affidavit dated 13.12.2024, reiterated that the approved plan was financially unviable and that it had no intention to implement it. Notably, the SRA did not challenge the approval order before any appellate authority.




- viii. Section 33(2) of the IBC states that "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 sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order."
- ix. Section 33(3) of the IBC mandates that if the SRA fails to implement an approved resolution plan, the Adjudicating Authority may order liquidation of the Corporate Debtor. The failure of M/s GBEES Mart Pvt. Ltd. to comply with its obligations under the approved resolution plan clearly brings it within the ambit of this provision, warranting liquidation.
- x. Section 74(3) of the IBC provides penal consequences for willful contravention of an approved resolution plan. This section ensures that any party bound by an approved plan that fails to implement it is held accountable. The inaction of the SRA amounts to willful non-compliance, necessitating punitive measures.
- xi. The Hon'ble NCLAT in **CoC of Amtek Auto Ltd. vs. Dinkar T. Venkatsubramanian & Ors. (2019)**



held in matters under Section 74(3) that “it is the Adjudicating Authority who is required to refer such matter to the Insolvency and Bankruptcy Board of India or the Central Government to take up the matter to the Special Court if on investigation, if any case of offence under Chapter VII, including Section 74(3) is made out”. It was further held “Therefore, we are of the opinion that before referring any matter to the Insolvency and Bankruptcy Board of India or the Central Government, the Adjudicating Authority/ Tribunal is required to provide reasonable opportunity of hearing to the parties concerned/alleged offenders of provisions of Chapter VII of Part II and if satisfied may request the Central Government to investigate the matter by an Inspector or Inspectors and then to decide on such opinion whether to refer and lodge any case before the Special Judge for trial under Section 236 of the ‘I&B Code’ for alleged offence under Section 74(3) or any other provision under Chapter VII of Part II of the ‘I&B Code’ and for punishment under Section 447 of the Companies Act, 2013.”

- xii. The CoC, with a 100% voting share, has recommended the SRA’s debarment under Section 29A and has further sought action under Section 74(3). This unanimous decision underscores the



gravity of the SRA's default and the need for stringent action.

xiii. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018** has held that the commercial decision of CoC is **non-justiable**. In this case, it is seen that CoC with a **100%** majority has passed the resolution seeking liquidation of the Corporate Debtor.

xiv. This Tribunal provided multiple opportunities to the defaulting SRA, including issuing notices and serving an advance copy of IA 101 of 2025, which sought amendments to the present application. Instead of complying, the SRA filed an affidavit stating as under:-

That the Applicant hereby unequivocally states that it is no longer interested in pursuing or continuing with the Resolution Plan submitted for M/s Fermos Engineering Private Limited and has not challenged the order in NCLAT or any other court/tribunal.

Following this, the **SRA ceased appearing** before the Tribunal.

xv. The SRA has neither taken the approval order in appeal before higher authorities nor sought




clarification or modification of the Tribunal's plan approval order dated 26.06.2024 in IA (Plan) 7 of 2024. Consequently, the order has attained finality, and it is evident that the SRA was obligated to the plan value as per the plan approved order.

- xvi. Given the complete lack of challenge by the SRA against the approved resolution plan and its subsequent failure to comply, it is evident that the default was deliberate. Such conduct undermines the objectives of the IBC and must be dealt with strictly to ensure the sanctity of the insolvency resolution process.
- xvii. Therefore, we are of the considered view that the present case is fit to be referred to the **Insolvency and Bankruptcy Board of India** for consideration on the aspect of initiation of criminal prosecution against the defaulting SRA under Section 74(3) of the IBC, 2016 and debarment from future resolution processes in any of the Insolvency proceedings under the provisions of Section 29A of the IBC, 2016.

8. In view of the above observations, we pass the following directions:-



- a) The Corporate Debtor, **M/s Fermos Engineering Pvt. Ltd.**, is ordered to be liquidated under Section 33(3) of the IBC r.w. Regulations made thereunder which shall be effective from the date of this order.
- b) Though the CoC has recommended the name of the erstwhile Resolution Professional as the Liquidator. However, IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18.07.2023 in exercise of its powers conferred under Section 34 (4) (b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (read liquidation) order is passed henceforth.
- c) In terms of the above circular of IBBI, we hereby appoint **Mr. Ankit Gadia**, having Registration No. IBBI/IPA-001 /IP-P02724 /2024-2025 /14426, E-mail ID caankitgadia@gmail.com, Mobile: 97258-23091 as per the panel suggested by IBBI for this Bench for the period of January, 1, 2025 to June 30, 2025, as the Liquidator of the Corporate Debtor to carry the liquidation process.
- d) The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w



Insolvency and Bankruptcy Board of India
(Liquidation process) Regulation, 2016.

- e) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- f) All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.
- g) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- i) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty




to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

- j) This liquidation order shall be deemed to be 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.
- k) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.



- l) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations, and also file its response for disposal of any pending Company Applications during the process of liquidation.
- m) From the pleadings before us, it is not clear whether the RP has forfeited the EMD of the SRA so far or not. In the interest of justice, we direct that the EMD be forfeited immediately by the RP/Liquidator without fail, if not already done.
- n) The Chairman monitoring Committee/ Erstwhile Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- o) Further, the matter is referred to the Insolvency and Bankruptcy Board of India (**IBBI**) for consideration/investigation into the aspect of initiation of criminal prosecution against the defaulting SRA under Section 74(3) of the IBC, 2016 and for consideration of its debarment from future resolution processes in any of the



Insolvency proceedings under the provisions of Section 29A of the IBC, 2016.

- p) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, **IBBI**, the erstwhile resolution professional and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities for records and necessary action, if any.

9. With the above directions, **IA(liq)/23(AHM)2024** in CP(IB) No. 181 of 2023 is disposed of.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)
SP

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)