



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 20th DECEMBER, 2024, 02:30 P.M.

**IA(IBC)/123/GB/2024
In CP (IB)/7/GB/2023**

Present: 1. Hon'ble Member (Judicial), Shri Deep Chandra Joshi
2. Hon'ble Member (Technical), Shri Balraj Joshi

In the Matter of	M/s Jalan Sales Corporation (OC) Vs M/s Sree Bajrang Infracon Pvt. Ltd. (CD)
Under Section	U/s 9 of IBC, 2016.

Appearances (via video conferencing/physically)

For Petitioner (s) :Mr. N. Goenka, Adv.
: Mr. U. K. Kalita, RP in person

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Balraj Joshi
Member (Technical)

Sd/-
Deep Chandra Joshi
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
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IA (IBC)/123/GB/2024

In

CP (IB)/7/GB/2023

An Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016;

In the Matter of:

CS Ujwal Kumar Kalita, Resolution Professional of the Corporate Debtor having address at H. No. 15, Chandra Choudhary Path, 1st Bye-lane (Rudrapur Path), Bhetapara, Beltola, Guwahati-781028;

... Applicant

-And-

In the Matter of:

M/s Jalan Sales Corporation, having registered office at 120, M.G Road, Fancy Bazar, Guwahati, Kamrup(M), Assam- 781001;

...Operational Creditor

-Versus-

Sree Bajrang Infracon Private Limited, having address at Gyankonika Apartment, 2nd Block, 4-C, Byelane-3, Basisthapur, Guwahati, Assam- 781028.

...Corporate Debtor

Coram:

Shri Deep Chandra Joshi : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. N. Goenka, Adv.

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IA (IBC)/123/GB/2024
In CP (IB)/7/GB/2023

Order pronounced on: 20.12.2024

Per: Deep Chandra Joshi (Judicial)

ORDER

1. This Interlocutory Application has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as “**the Code**”) by the **Resolution Professional (RP)** in the matter of Corporate Debtor (CD)– **Sree Bajrang Infracon Private Limited**, praying the following:
 - a) *Pass an order directing the initiation of Liquidation of the Corporate Debtor as a Going Concern;*
 - b) *Appoint Mr. Ujwal Kumar Kalita, i.e., the Applicant herein, having Regn. No. IBBI/IPA-002/IP-N00952/2020-21/13157 as the Liquidator of the Corporate Debtor.*
2. The brief facts associated with this application are :
 - 2.1 The main application CP (IB)/7/GB/2023 filed by the Operational Creditor— M/s Jalan Sales Corporation under Section 9 of the Code, was admitted by this Adjudicating Authority on 12.01.2024 and Mr. Ujwal Kumar Kalita was appointed as Interim Resolution Professional (**IRP**). The IRP, Mr. Ujwal Kumar Kalita had constituted a Committee of Creditors(“**CoC**”) and the Committee of the Creditors in the 1st CoC Meeting held on 14.02.2024 with 100 % voting, confirmed Mr. Ujwal Kumar Kalita as Resolution Professional (**RP**).
 - 2.2 The IRP made Public Announcement on 17.01.2024 in prescribed format ‘FORM A’ [Under Regulation 6 of the Insolvency and Bankruptcy Code] which was published in ‘*The North East Times*’ and ‘*Amar Asom*’ (English and Regional Language Newspapers) having wide circulation in Assam. The RP had received claims of different nature and the total claim admitted by Interim Resolution

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Professional/Resolution Professional till the approval of Resolution plan stands at Rs. 7,46,07,487.47/- in total.

- 2.3 The RP, in conformity with Regulation 35(1)(c) of the said CIRP Regulations, has considered the valuation reports in respect of each segment and duly considered the average value of the two estimates as mentioned in each of the above segments and consequently arrived at the valuation of the assets in respect of the CD. The Applicant later filed IA No. 30 of 2024 under Section 19(2) of the Code before this Tribunal on account of non-cooperation of the suspended board of CD. The Applicant has apprised this Tribunal that despite several orders under IA No. 30 of 2024, the management has not provided the required documents to the Applicant till the date of this Application.
- 2.4 It is stated that the RP in the 3rd CoC Meeting dated 15.03.2024 informed the CoC of the publication of 'FORM G' inviting Expression of Interest ("EOI") with the last date of the EOI set to 31.03.2024. The RP informed the CoC in the 4th CoC Meeting dated 06.04.2024 that neither any EOI/Resolution Plan was received nor was there any request for extension of time for the same. The CoC was of the opinion that since the RP has not yet received the financial data including books of accounts and latest audited financial. On 19.04.2024, the Applicant in pursuance of his duties as the Resolution Professional appointed a Transaction Auditor to carry out investigation into the affairs of the CD. Subsequently, in the 5th CoC Meeting dated 16.05.2024, the CoC ratified the appointment of the auditors.
- 2.5 Finally, in the 7th CoC Meeting dated 07.06.2024, the CoC with 100 % vote resolved not to issue second invitation of EOI. Further, the CoC resolved to file application for liquidation of CD. In furtherance, the discussion took place on matters specified under regulation 39B, 39BA, 39C, 39D & 40D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (IBBI) Regulations, 2016.

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- 2.6 In terms of Regulation 39C of the CIRP Regulations, while recommending liquidation of the CD under Section 33 of the Code, the CoC recommended that the liquidator should first explore selling the assets of the CD as one block on going concern basis. Pursuant to the provision of regulation 40D of IBBI Regulations, 2016, the CoC considered the facts that the books of accounts of the CD are not available and hence the actual operational status of the CD could not be ascertained.
- 2.7 Further, in the same above-mentioned meeting, the CoC confirmed that Mr. Ujwal Kumar Kalita having IBBI Registration Number IBBI/IPA-002/IP-N00952/2020-21/13157 has been appointed as the Liquidator in the matter. The Consent Letter of the Liquidator has been enclosed with the Application.
3. In this respect, it is relevant to reproduce section 33(2) of the Insolvency and Bankruptcy Code, which is as under:
- “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 as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”*
4. From a reading of the above provision, it is clear that when a Resolution Professional at any time during the CIRP but before confirmation of Resolution Plan approaches the Adjudicating Authority with the decision of the CoC approved by not less than sixty six percent of the voting share, the Adjudicating Authority shall pass a liquidation order. In this case, the CoC with 100% votes, approved the resolution for liquidation of the Corporate Debtor. Hence, this is a fit case to order liquidation under Section 33(2) of the IBC, 2016.

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5. For the aforesaid reasons, **IA (IBC)/123/GB/2024 is ALLOWED**. However we observe, that RP has given his consent to act as the Liquidator of the CD, which has been approved by CoC. However, in view of directions contained in IBBI Circular dated 18.07.2023 *vide* no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under Section 34(4)(b) of the IBC, we are appointing Mr. Purshotam Gaggar having IBBI Registration No. IBBI/IPA-001/IP-P00487/2017-2018/10875 as the Liquidator.
6. **As aforesaid, IA (IBC)/123/GB/2024 is ALLOWED with the following directions:**
- 6.1. The Corporate Debtor, Sree Bajrang Infracon Private Limited, is ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016.
- 6.2. Mr. Purshotam Gaggar having IBBI Registration No. IBBI/IPA-001/IP-P00487/2017-2018/10875, having address at P.Gaggar & Associates, 3rd Floor Advika Building, Opp. Sukreswar Ghat Guarden ,M. G. Road, Panbazar ,Guwahati, Assam,781001, e-mail ID- purshotamgaggar@hotmail.com, as Liquidator of the CD. This appointment is subject to him possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. 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. The Liquidator's fee shall be paid in accordance with relevant law, and in particular, as per Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 6.3. 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.

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- 6.4. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The Liquidator is directed to adhere to it.
- 6.5. Public Notice as contemplated under Section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- 6.6. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with Section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.
- 6.7. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by her in the Liquidation process of the Corporate Debtor.
- 6.8. 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 a 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.
- 6.9. 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 continued during the liquidation process by the Liquidator.
- 6.10. In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.

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- 6.11. The application bearing IA (IBC)/123/GB/2024 shall stand disposed of in accordance with the above directions.
7. 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.
8. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
9. File be consigned to records.

Sd-

Balraj Joshi
Member (Technical)

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Deep Chandra Joshi
Member (Judicial)

Signed this on 20th day of December 2024

Abhilash R. [LRA]