



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

**I.A. No. 1768 of 2022
IN
C.P. (IB) 3310/MB/2018**

*Under Section 33(1) read with Section 60(5)
of the Insolvency and Bankruptcy Code,
2016 and Rule 11 of the National Company
Law Tribunal Rules, 2016*

Ashish Vyas

Resolution Professional of
M/s Vag Buildtech Limited
Having its office at:
A-402, Suashish IT Park,
Datta Pada Road, Borivali (East),
Mumbai – 400 066.

.... Applicant/ Resolution Professional

In the matter of:

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

Om Scaffolders

Having its office at: -
Village Kuranwala,
Derabassi - Barwala Road,
Derabassi, District Mohali,
Punjab -140 507.

.... Petitioner/ Operational Creditor

Versus

Vag Buildtech Limited

[CIN: U45400MH2012PLC232077]

Having its registered address at: -
Saba Palace, 3rd Floor, Flat No. 301,
Khar (West), Mumbai – 400 052.

... Corporate Debtor



Order Pronounced on: 05.12.2025

Coram:

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

Shri Hariharan Neelakanta Iyer, Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Rishi Thakur i/b. K. K. Associates.

Per: SHRI HARIHARAN NEELAKANTA IYER, MEMBER (Technical)

1. The instant application has been filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (**'Code'**) by the Resolution Professional of Vag Buildtech Limited (**'Corporate Debtor'/ 'CD'**) Mr. Ashish Vyas (**'Applicant'/ 'Resolution Professional'**) seeking following reliefs:

- i) The Adjudicating Authority of this Hon'ble Tribunal be pleased to pass an order directing the Corporate Debtor to be liquidated under Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016*
- ii) The Adjudicating Authority of this Hon'ble Tribunal be pleased to appoint the Applicant as the Liquidator to conduct the Liquidation of the Corporate Debtor under Chapter III Part II of the Insolvency and Bankruptcy Code, 2016;*
- iii) Costs of this interlocutory application;*
- iv) Any other order of this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case;*

Submissions made by the Applicant: -

2. The Corporate Debtor was admitted in Corporate Insolvency Resolution Process (**'CIRP'**) under Section 9 of the Code vide order of this Tribunal dated 26.11.2021 and the Applicant was appointed as Interim Resolution Professional (**'IRP'**).



3. IRP issued a Public Announcement in 'Form -A' inviting claims from creditors on 03.12.2021. In pursuance to the Public Announcement, the Applicant received and collated claims of creditors as per Section 21 of the Code.
4. As per the minutes of the CoC meetings available on record, the 1st CoC Meeting was held on 27.12.2021 which was attended by State Bank of India ('SBI'), the sole financial creditor and the IRP. The IRP placed the summary of claims received by him as follows: -

(in Rupees)

<u>Sr. No.</u>	<u>Summary</u>	<u>No. of claims received</u>	<u>Total amount of claims provisionally accepted</u>	<u>Total amount of claims under verification</u>
1.	Financial Creditors	1	45,28,06,255/-	16,78,80,343/-
2.	Operational Creditors	2	-	57,39,403/-
TOTAL			45,28,06,255/-	17,36,19,746/-

5. The Applicant was appointed as Resolution Professional ('RP') during the 1st CoC meeting.
6. In the 2nd CoC Meeting held on 21.01.2022, the valuers and transaction auditors were appointed.
7. The CoC in its 3rd Meeting held on 16.02.2022, resolved to approve publication of Form-G for inviting Expression of Interest ('EoI') and eligibility criteria of Prospective Resolution Applicants ('PRA').
8. RP published an Invitation of EoI in Form-G as per the CIRP Regulations on 19.02.2022. The last date of submission of EoI was 07.03.2022 whereas, the last date of submission of Resolution Plan was 21.04.2022.



9. In its 4th meeting held on 14.03.2022, the CoC approved the issuance of request for resolution plan and evaluation matrix of PRA. The CoC in its 4th meeting comprised of SBI and Canara Bank.
10. In the 5th CoC meeting held on 25.04.2022, the CoC discussed the possibility of issuing a fresh Form-G due to non-receipt of EoI following the publication of first Form – G dated 19.02.2022. From the perusal of the minutes of the 5th CoC, copy of which is annexed to the petition, it is seen that there is addition of two more financial creditors namely SREI Equipment Finance Limited and Canara Bank. Thus, the CoC consisted of three financial creditors.
11. In the 6th CoC meeting held on 24.05.2022, the RP apprised the CoC members that there is no Resolution Plan received in response to EoI published in Form-G. RP also mentioned that in the background that there is no fresh issue of Form-G approved in previous CoC meeting and 180 days of CIRP were coming to an end on 25.05.2022. The RP requested the CoC members to discuss and pass necessary resolution for liquidation of CD. In the meeting, the CoC also discussed that *“there is no running project with the CD, the maintenance revenue is expected to flow from completed projects and the 100% of maintenance work is outsourced to third party. The CD is not a going concern”*.
12. As per minutes of the 6th CoC Meeting, the following is the break up of claim from financial creditors: -

(in Rupees)

Name of Creditor	Details of claim received		Amount of claim admitted	Amount of claim under verification
	Date of receipt	Amount claimed		
State Bank of India	16/12/21	45,28,06,255/-	45,24,74,671/-	-



<i>Srei Equipment Finance Limited</i>	<i>09/03/22</i>	<i>3,15,90,849/-</i>	<i>3,14,38,886/-</i>	<i>-</i>
<i>Canara Bank</i>	<i>21/01/22</i>	<i>11,42,000/-</i>	<i>7,65,150/-</i>	<i>3,76,850/-</i>
		<i>45,43,97,104/-</i>	<i>48,46,78,707/-</i>	<i>3,76,850/-</i>

13. It is submitted that after deliberations in the 6th CoC Meeting, the CoC with 99.85% votes had approved liquidation of the Corporate Debtor under section 33(1) of the Code. Therefore, the RP had filed the present application on 20.06.2022 seeking an order for the liquidation of the Corporate Debtor.

Proceedings after filing the Liquidation Application

14. However, this Tribunal vide order dated 14.07.2022, was of the view that decision by CoC for liquidation of the corporate debtor was in haste and against the spirit of IBC and passed following order:

“The above Interlocutory Application is filed by the RP for liquidation of the Corporate Debtor which was admitted into CIRP on 26.11.2021. The initial 180 days for completing the CIRP process was completed on 26.05.2022. The COC even without asking for initial extension of 90 days filed the above Interlocutory Application for liquidation just by issuing FORM “G” once which appears to be hasty action on the part of the CoC and which is against to the spirit of IBC. Therefore, RP is directed to convey COC meeting and appraise CoC.”

15. The RP, in pursuance to the order dated 14.07.2022 convened the 7th CoC meeting on 17.08.2022 and the CoC resolved to re-publish Form-G. The CoC in the said meeting further resolved to obtain an extension of 90 days from 11.08.2022 to 11.11.2022 and exclusion of 77 days from 26.05.2022 to 11.08.2022 from the CIRP period, which was allowed by this Tribunal vide order dated 09.06.2023 in I.A. 2472 of 2022.



16. In accordance with the decision taken in the 7th CoC meeting, the RP published second Form-G on 23.08.2022. The RP received interest from 7 PRAs but only 6 were found to be eligible, out of which only one PRA namely Mr. Abhishek Mehta submitted a Resolution Plan on 22.10.2022 which was the last date of submission of Resolution Plan.
17. The resolution plan submitted by the PRA was deliberated by the CoC in its 8th meeting held on 02.11.2022 and the 9th meeting held on 16.12.2022. The CoC sought certain clarifications and informed the PRA to submit a revised resolution plan.
18. The PRA submitted the revised resolution plan on 25.01.2023.
19. In the 10th meeting held on 03.02.2023, on instructions from SBI having voting share of 78.32%, it was decided to seek a revised resolution plan from the PRA. It was also resolved to seek an exclusion/extension of 60 days from the CIRP period.
20. Meanwhile, the 270-day period of CIRP expired on 07.02.2023. This Tribunal allowed the extension 330-days vide order dated 16.02.2023.
21. In the 11th meeting held on 03.03.2023, the CoC permitted the PRA to submit a signed resolution plan, which was duly submitted on 09.03.2023.
22. In the 12th meeting held on 18.03.2023, the CoC agreed to put the revised resolution plan for e-voting.
23. In its additional affidavit dated 03.02.2024, the RP has submitted a list of dates in which it is mentioned that the RP received various emails from SBI to extend the last date for voting on the resolution plan. On 05.04.2023 SBI requested to extend the last date till 29.04.2023. Another e-mail dated 27.04.2023 was received from SBI requesting to extend the last date for voting till 15.05.2023. On 15.05.2023, SBI through an email requested to extend the last date of voting till



31.05.2023. On 31.05.2023 another e-mail was received by the RP to extend the last date for voting on the resolution plan till 06.06.2023.

24. The e-voting from the resolution plan was completed on 06.06.2023 wherein the resolution plan was rejected by 21.55% votes. CoC members SBI, having voting share of 78.32% and Canara Bank having voting share of 0.13% did not vote on the resolution for the approval or rejection of the resolution plan.
25. Since, the resolution plan of Mr. Abhishek Mehta was not approved by the CoC and no other plans were received, the applicant filed an additional affidavit dated 19.07.2023 to bring on record the events that had transpired after the 6th CoC Meeting and prayed for the liquidation of CD.
26. Meanwhile, on 27.10.2023, Mr. Abhishek Mehta filed an application (IA 163 of 2024) seeking directions to the CoC as well as RP to conduct CoC meeting and consider the resolution plan of Mr. Mehta. This Tribunal vide its order 14.08.2024, noticed that while one CoC member holding 21.55% had voted in favour of the plan but SBI holding 78.32% votes had not yet voted this way or other and therefore directed the RP to call a CoC meeting to enable the voting on the resolution plan.
27. In the 17th CoC Meeting held on 16.08.2024, the CoC decided to put the resolution plan submitted by Mr. Abhishek Mehta for e-voting. The voting started on 28.08.2024 and concluded on 29.08.2024. The SBI with 78.32% finally voted against the resolution and other two members of CoC abstained from voting. Thus, the plan submitted by Mr. Abhishek Mehta was rejected.
28. In the 17th CoC Meeting, the RP has brought to the notice of the CoC the resolution passed in the 6th CoC Meeting for the liquidation of CD. It is further mentioned in the minutes that *“the resolution for liquidation and appointment of the liquidator have already been passed and there is no need to revisit the same”*.



ANALYSIS AND FINDINGS

29. Heard the Counsel and perused the records available.
30. It is noted that the CoC in its commercial wisdom had approved the liquidation of the CD. Pursuant to the directions of this Tribunal, the RP with the approval of CoC issued another Form G and one resolution plan was received. This resolution plan did not receive the requisite votes for approval and on an application by the PRA, this Tribunal directed the RP to put the plan submitted by the PRA for voting again as it was noted that the major constituent of the CoC, namely SBI with 78.32 % of voting did not vote on the resolution. However, on the second round of e-voting the resolution plan submitted by the PRA was rejected with 78.32% voting.
31. It is a settled position of law that the commercial wisdom of the CoC is paramount. This principle was underscored by the Hon'ble Supreme Court of India in the seminal judgment of *K. Sashidhar vs. Indian Overseas Bank & Ors. (2019) 12 SCC 150*, where it was held that the Tribunal and the Appellate Authority cannot enter into the 'commercial wisdom' of the CoC to approve or reject a Resolution Plan.
32. The confluence of the following facts of the rejection of the sole resolution plan by the CoC and its reliance on the resolution for liquidation passed in the 6th CoC meeting approved by 99.85% voting brings the matter within the purview of Section 33(2) of the Code. Given the principle established in *K. Sashidhar (supra)* regarding the sanctity of the CoC's commercial wisdom, this Tribunal is therefore obligated to pass a liquidation order.
33. It is further noted that the CoC has approved the appointment of the RP as the Liquidator.




34. Therefore, the application for liquidation needs to be approved and is ordered as follows:

ORDER

35. The Corporate Debtor, **Vag Buildtech Limited**, shall be liquidated in the manner as laid down in Chapter-III of Part-II of the Code.

- a. As per the decision of CoC, we hereby appoint **Mr. Ashish Vyas**, having Registration No. having e-mail id: ashishvyas2006@gmail.com, as per Section 34(4) of the Code, as the Liquidator of Corporate Debtor to conduct liquidation process. The Insolvency Professional has given his written consent dated 14.06.2022 and further we note from the IBBI website that validity of Authorization of Assignment (AFA) is up till 31.12.2025.
- b. It is noted that the fees of the Liquidator was discussed and approved in the 6th CoC meeting held on 24.05.2022.
- c. The Moratorium declared under Section 14 of the Code shall cease to operate from the date of this order. A fresh moratorium shall commence under Section 33(5) of the Code.
- d. The liquidator shall submit a Preliminary Report to the Tribunal within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- e. The Liquidator shall comply with the Liquidation Regulations and accordingly submit Progress Reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016; and shall apprise the Bench about the Liquidation Process of the Corporate Debtor.
- f. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Applicant,



except when the business of the Corporate Applicant is continued during the liquidation process by the liquidator as per Section 33(7) of the Code.

- g. Subject to Section 52 of the Code no suit or other legal proceedings 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 Tribunal.
- h. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of Chapter III Part-III of the Code read with the Liquidation Process Regulations.
- j. All persons connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by the Liquidator.
- k. Registry shall furnish a copy of this Order to:
 - i. Insolvency and Bankruptcy Board of India, New Delhi;
 - ii. Regional Director (Western Region), Ministry of Corporate Affairs, e-mail id: rd.west@mca.gov.in;
 - iii. Registrar of Companies – Maharashtra, e-mail id: roc.mumbai@mca.gov.in;
 - iv. Erstwhile Resolution Professional, Mr. Ashish Vyas, e-mail id: ashishvyas2006@gmail.com



v. Liquidator,

Mr. Ashish Vyas, e-mail id: ashishvyas2006@gmail.com

36. Copy of this order be forwarded to IBBI with specific reference to paragraphs 23 and 24 qua the conduct of SBI, with relation to voting on the resolution plan.
37. A certified copy of this order may be issued, if applied by the concerned parties upon the compliance of all necessary formalities.
38. No orders as to costs.
39. Accordingly, prayers 'i' and 'ii' are allowed with above directions. IA stands **disposed of**.

Sd/-

HARIHARAN NEELAKANTA IYER
MEMBER (TECHNICAL)

/Akshita/

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)