

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-149/2024

In

IB -408(ND)/2022

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF IB -408(ND)/2022:

Mr. RAM RATAN JAGATI

Sole Proprietor of JJ Trading FZE

..... **Operational Creditor**

VERSUS

M/s. DHARITRIMAA URJA PRIVATE LIMITED

..... **Corporate Debtor**

AND IN THE MATTER OF IA-149/2024:

Mr. Rakesh Mishra,

Resolution Professional of the Corporate Debtor

..... **Applicant**

Order Pronounced On: 04.07.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Nibruti Samal, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. Rakesh Mishra, the Resolution Professional of the Corporate Debtor before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 11 of the

IA-149/2024 In IB -408(ND)/2022

Date of Order: 04.07.2024

National Company Law Tribunal Rules, 2016 seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the 5th CoC meeting held on 24.11.2023 with 100% voting shares. The Applicant seeks the following relief:

"a. Pass necessary order for Liquidation of the corporate debtor under Section 33(2) of the Code considering the resolution passed by the CoC with 100% voting share in favour of liquidation, thereby appointing a Liquidator for further process;

b. Pass such other further order/ orders as may be deemed fit and proper in the facts and circumstances of the instant case."

2. **Brief Background of the Case**

An Application was filed by Mr. Ram Ratan Jagati, Sole Proprietor of JJ Trading FZE ("Operational Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Dharitrimaa Urja Private Limited ("Corporate Debtor") under Section 9 of the Code filed before this Adjudicating Authority. This Adjudicating Authority vide order dated 16.06.2023 ("Admission Order") admitted the application and declared a moratorium and appointed Mr. Alok Kumar Agarwal as an Interim Resolution Professional. Subsequently, the present Applicant herein was confirmed as the Resolution Professional by the CoC in its 1st CoC meeting held on 12.07.2023 and approved by this Adjudicating Authority vide order dated 08.08.2023.

3. The IRP in compliance of Section 13 of the Code read with Regulation 6 of IBBI (CIRP) Regulations, 2016, made the public announcement in the prescribed Form A within the specified time i.e. on 17.06.2023, and called upon the creditors to submit their claims as on the Insolvency Commencement Date on or before 30.06.2023, in two newspapers in Delhi i.e. Financial Express (English edition) and Jansatta (Hindi edition).

4. The Invitation to submit an Expression of Interest ("EOI") for submission of the resolution plan was published by the Resolution Professional in the prescribed Form G in two newspapers namely Financial Express (English edition) and Jansatta (Hindi edition) in Delhi/NCR on 13th August, 2023. Pursuant to such publication, queries were received from several parties who expressed their interest in submitting EOI, however, none of them submitted the details under EOI or the submission of EMD.
5. The Resolution Professional in the course of the third CoC meeting held on 6 October, 2023, apprised the members of the CoC that the financial statements of the corporate debtor show no fixed asset. The agenda regarding liquidation was deliberated in length in the Fifth meeting of the CoC held on 24" November, 2023 wherein the Resolution Professional apprised the members of the CoC that the Corporate Debtor is not operational since the year 2016-2017 and books of the Corporate Debtor show no fixed asset apart from few financial assets which does not bear much realizable value. Accordingly, a resolution to proceed with the filing of the Liquidation Application was put to voting, which is as under:

***“RESOLVED THAT** pursuant to section 33(2) and Regulation 40D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and other applicable provisions, of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, to liquidate the corporate debtor —Dharitrimaa Urja Private Limited and proceed with the liquidation process.*

***RESOLVED FURTHER THAT** Resolution Professional be and is hereby authorized to file appropriate application as well as do all such acts, deeds and things as may be required necessary or incidental thereto.*

***RESOLVED FURTHER THAT** the cost incurred by Resolution Professional while file appropriate application as well as do all*

such acts, deeds and things as may be required necessary or incidental thereto will form part of CIRP Cost.”

6. The result of E-voting on the resolution put forth by the RP in the fifth meeting was declared on 22nd December, 2023 whereby CoC approved the agenda of liquidation by 100% voting share.
7. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona fide in nature.
8. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
9. 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-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
10. The above-quoted judgement, makes it clear that the “Commercial wisdom of CoC” is to be given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.
11. Considering the fact that the Corporate Debtor does not have any assets or property and the Corporate Debtor has not been operational since the year 2016-2017 and books of the Corporate Debtor show no fixed asset apart from few financial assets which does not bear much realizable value. Hence, we are of the view that the Liquidation process ought to be initiated against the Corporate debtor.
12. In light of the above facts and circumstances, it is hereby ordered as follows:

- i.** The **IA-149/2024** filed by Mr. Rakesh Mishra, the Resolution Professional of the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
- ii.** The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the 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 Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.
- iii.** Therefore, this Adjudicating Authority appoints Mr. Bikram Singh Gusain as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is IBBI/IPA-002/IP-N00011/2016-2017/10015, the address of the Liquidator is A-1003, Spring Valley Apartments, Plot No. 3-C, Sector - 11, Dwarka, New Delhi-110075 and the e-mail id of the Liquidator is bikramgusain@gmail.com and the contact no. of the Liquidator is +919650619066.
Therefore, the Liquidator shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.
- iv.** Mr. Rakesh Mishra, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.

- v.** 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 the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.
- vi.** The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii.** 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.
- viii.** All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- ix.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- x.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. 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 the 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.

- xi.** 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.
 - xii.** The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
 - xiii.** The Liquidator shall submit a 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;
 - xiv.** The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
 - xv.** The Registry is directed to send a copy of this order to the IBBI for their record.
 - xvi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**