

as the case may be, as to be submitted by the Applicant within such period of time as this Tribunal deems fit proper;

c. Pending the hearing and final disposal of the present Application, this Tribunal be pleased to extend the time for carrying into effect the proposal of Applicant in respect of the Corporate Debtor under the CIRP to avoid the death of the Corporate Debtor;

d. ;

e. ;

3. The Applicant is a Partnership Firm inter alia engaged in the business of capital contribution in manufacturing, sales and export in chemical, paints and ancillary business. The Respondent is the Interim Resolution Professional of the Corporate Debtor. The Corporate Debtor is a private limited company inter alia, engaged in the business of paint application to reduce corrosion on industrial surfaces and surface management solutions.

3.1.A Corporate Insolvency Resolution Process was initiated against the Corporate Debtor. Pursuant thereto, on 25 August 2023, the Respondent published Form G inviting Prospective Resolution Applicants.

3.2.The Applicant became the eligible proposed resolution applicant pursuant to which, a request for resolution plan (“RFRP”) was provided by the Respondent. However, due to certain technical issue, the request for RFRP ended up in the SPAM folder of the Applicant.

3.3.The Applicant received the RFRP after the expiry of the last date of the plan. Thereafter, the Applicant submitted their resolution plan however the plan was not considered by the Respondent as the same was submitted after the expiry of the last date of submission.

4. Ld. Counsel for the RP submits that the Resolution plan submitted by the erstwhile management has been rejected by the CoC and CoC has decided to

liquidate the Corporate Debtor. Ld. Counsel for the RP further submits that the CIRP period was already expired on 17.06.2024.

5. Ld. Counsel for the RP further submits that in accordance with the approval granted by the CoC they are contemplating to an application for liquidation of the Corporate Debtor formally. The Counsel for the erstwhile management is present and seeks liberty from this Bench to place on record their objection to the rejection of their plan and objection to the proposed liquidation of the Corporate Debtor.
6. After considering the submissions made by the learned counsel for both sides, this Bench notes that the CIRP period has already expired on 17.06.2024 and the CoC has decided to file an application for liquidation of the Corporate Debtor. It is also relevant to note that Code itself provides for liquidation in case of non-receipt of Resolution Plan within the statutory timelines. Section 33(1) of the Code is reproduced hereinunder:

(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;
or

(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.

7. On bare perusal of Section 33(1)(a) of the Code, it can be seen that the CoC is well within its right to approve liquidation of the Corporate Debtor. The Applicant's prayer of directing the CoC to consider its holistic proposal/resolution plan at this stage would result in this Bench encroaching the CoC's commercial wisdom. It is trite law that the CoC's commercial wisdom is paramount and does not warrant this Bench's interference.
8. Accordingly, **the I.A. 5560/2023 is dismissed** and in accordance the powers vested u/s 33(1)(a) of the Code, this Bench hereby orders that the Corporate Debtor be liquidated.
 - a. **Ms. Vijay Pitambar Lulla**, having Registration No. IBBI/IPA-001/IP-N00323/2017-2018/10593, email vijayplulla@rediffmail.com, Mob. 9920279899 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
 - c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - d. The Liquidator appointed under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
 - e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor

is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, 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.
- h. This liquidation order u/s 33(7) 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.
- i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

/NP/

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)