

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA (IBC)/ 1908 (CHE) / 2023

IN

CP (IB) / 796 (CHE) / 2020

(Under Section 33(1) & 33(2) of Insolvency & Bankruptcy Code, 2016)

Shri Harsh Garg,

Resolution Professional of

M/s. You Seung Sang Sa India Construction Private Limited,

No. 170, Sector 21 – A, Chandigarh – 160 022.

... Applicant /Resolution Professional

In the matter of

Monika Gupta, Sole Proprietor of M/s. Monika Traders

... Applicant /Operational Creditor

Versus

M/s. You Seung Sang Sa India Construction Private Limited

... Respondent /Corporate Debtor

Order Pronounced on 26th July 2024

CORAM

Shri JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Applicant:

Mr. Varinder Chhibbar, Advocate

ORDER

(Heard through video conferencing)

1. IA (IBC)/1908 (CHE)/2023 in IBA/796(CHE)/2020 is an application filed under Section 33 of the Insolvency & Bankruptcy code, 2016 (herein after termed as “the Code”) by Mr. Harsh Garg, RP of M/s. You Seung Sang Sa India Construction Private Limited, the Corporate Debtor (hereinafter referred as “CD”) seeking following reliefs as follows,

“1. Pass an order requiring the corporate debtor i.e., M/s. You Seung Sang Sa India Construction Private Limited to be liquidated in a manner as laid down in the

Insolvency and Bankruptcy Code, 2016, and to appoint Sh. Harsh Garg as the Liquidator.

2. *Issue public announcement stating the corporate debtor is in liquidation*
3. *Pass an order requiring to send liquidation order to the authority with whom the corporate debtor is registered"*

2. The corporate debtor, M/s. You Seung Sang Sa India Construction Private Limited, located at No.342/1, New No.523, Anna Salai, Nandanam, Chennai, Tamil Nadu - 600 035, was admitted to Corporate Insolvency Resolution Process, (hereinafter referred as "CIRP") vide an order dated 09.08.2021 passed by this Adjudicating Authority. Mr. Harsh Garg, was appointed as the Interim Resolution Professional of the CD.
3. Form the Compliance certificate (Form H) attached with the application the dates and events subsequent to initiation of CIRP of the CD is as follows,

S. No	Date	Events
1	09.08.2021	Commencement of CIRP & Appointment of IRP
2	12.08.2021	Publication of Public announcement
3	27.08.2021	Constitution of Committee of Creditors (CoC) by IRP
4	03.09.2021	1 st CoC meeting confirming IRP as RP, Appointment of Valuers
5	10.09.2021	Filed IA(IBC)/993(CHE)/2021 (Seeking Co-operation)
6	23.09.2021	Appointment of Registered Valuer for Plant and Machinery
7	29.09.2021	Issue of Invitation for EoI
8	14.10.2021	Last date for submission of EoI
9	15.10.2021	4 th CoC Meeting where the Agenda of Liquidating CD is proposed for the first which was rejected by the CoC. Directed the RP to pursue the IA(IBC)/993(CHE)/2021
10	08.11.2021	Final List of Eligible Prospective Resolution Applicants (However No Expression of Interest were received)
11	28.11.2021	Last date of Submitting Resolution Plan (No Plan Received)
12	28.01.2022	IA(IBC)/160(CHE)/2022 (Seeking Exclusion from 10.09.2021)
13	05.02.2022	Expiry of 180 days of CIRP
14	05.07.2022	Expiry of 330 days (No Extension Exclusion Granted)
15	26.10.2022	Order dismissing the IA(IBC)/160(CHE)/2022

16	02.11.2022	7 th CoC meeting, wherein CoC decided to file appeal against the Order dated 26.10.2022
17	30.01.2023	8 th CoC meeting wherein resolved for Liquidation of the CD
18	05.03.2023	Date of filing Liquidation application before this Adjudicating Authority

4. It is stated that after appointment the applicant received claims from the Creditors of the CD and formed the CoC of the CD.
5. The final Composition of CoC is only of Operational Creditors and extracted as follows,

Name of the financial creditor	Amount claimed (Rs.)	Amount admitted (Rs.)	Percentage of voting share(%)
Monika Traders	5,84,32,074	5,84,32,074	(41.67%)
Radhika Industrial Corporation	1,26,35,404	1,26,35,404	(9.01%)
Khatu Enterprises	1,07,91,547	1,07,91,547	(7.69%)
The Assistant Commissioner (ST), Poonamallee, Assessment Circle, Chennai, South Division	2,20,48,481	2,20,48,481	(15.72%)
M/s Erecon Space Pvt. Ltd.	4,80,56,955	3,62,94,441	(25.88%)
TOTAL	15,19,64,461	14,02,01,947	100.00%

6. The applicant submits that the suspended Directors of the Corporate Debtor were South Korean Nationals who left the country prior to CIRP. Except the Residential addresses in South Korea and email addresses no details of them are available. The registered office and other addresses of the CD which were known from the website of the CD had been inspected by the applicant and found all to be rental offices which were vacated long before.
7. It is submitted that the applicant as he did not get any co-operation from the Directors and Statutory Auditors of the CD, applicant filed IA(IBC)/993(CHE)/2021 seeking direction for co-operation from the suspended board (Mr. Her Seung Hwi and Mr. Hur Yoo Hae) and the statutory auditor (M/s. S. Kalyanaraman & Co. LLP) of the CD.

8. It is stated that during the 4th CoC meeting dated 15.10.2021 the RP informed the position of the CIRP and non-availability details relating to assets, financial records, books of accounts etc., of the CD and suggested the process of liquidation since no EoI received. The CoC rejected the said suggestion and directed the RP to pursue the IA(IBC)/993(CHE)/2021. The Copy of the Minutes of 4th CoC is placed at **Page 24 – 32 of the Application**.
9. It is stated that the applicant filed an IA(IBC)/160(CHE)/2022 on 28.01.2022 for seeking exclusion of period from 10.09.2021 till disposal of IA(IBC)/993(CHE)/2021.
10. It is submitted that during 6th CoC meeting the issue of Paper Publication in Korea was discussed and RP was directed to file another application seeking permission for publishing notices to the suspended directors only in English Newspaper circulating in Korea in the matter of hearing co-operation application. Therefore IA(IBC)/586(CHE)/2022 in IA(IBC)/993(CHE)/2022 was filed on 04.04.2022 and same is allowed on 26.10.2022 by this Tribunal.
11. It is also submitted that, this Tribunal vide order dated 26.10.2022 dismissed the IA(IBC)/160(CHE)/2022 and recorded the non-satisfactory performance of the RP as follows,

'IA(IBC)/160(CHE)/2022 has been filed by the RP seeking extension of CIRP period with following prayers:-

"It is therefore, respectfully prayed that the present application may kindly be allowed and the period w.e.f. 10.09.202 till the disposal of present application may kindly be excluded from the CIRP period of the Corporate Debtor Le, M/s You Seung Sang Sa India Construction Private Limited, which is going to expire on 05.02.2022."

From the above, it is seen that the present application is misconceived as it is not clear of the days to be excluded. RP has not mentioned about the number of days to be

excluded in the application and everything is left to the discretion of the Bench. Hence, this Application is disposed of.

It is also seen that the period of 330-days has expired. Despite the completion of the period as specified under IBC, when no resolution plan was approved by the CoC so far, no application for liquidation has so far not been filed by the RP. This attitude of the Learned RP is not appreciated by this Bench. A copy of the order may be marked to IBBI for taking appropriate action against the RP.

Similarly, we are surprised to find the attitude of CoC, despite knowledge of provisions of the Code, after expiry of 330-days of CIRP, if no plan is forthcoming, then the application for liquidation has to be moved.

12. It is submitted that 7th CoC meeting was conducted on 02.11.2022, wherein again the CoC were against the idea of Liquidation for the reason that the last balance sheet of the CD shows assets close to value of Rs.100 Crores. The Copy of minutes of the 7th CoC meeting is placed at **Page 33 – 37 of the Application.**

13. It is submitted that the applicant has approached the NCLAT against the Order dated 26.10.2022 of this Tribunal passed in IA(IBC)/160(CHE)/2022. The said appeal was dismissed as withdrawn vide order dated 23.12.2022 directing the applicant to approach this Tribunal. So this applicant before this Tribunal moved an application IA(IBC)2070(CHE)/2023 seeking reliefs as follows,

“that the present application may kindly be allowed and the order dated 26.10.2022 passed by this Hon’ble Tribunal may kindly be recalled/amended vide which the same has been marked to the Insolvency & Bankruptcy Board of India for taking appropriate action against the Resolution Professional, without appreciating the facts and circumstances of the case”

14. However said application was also dismissed by this Tribunal vide order dated 23.02.2024 thus giving the finality in respect of relief sought for exclusion of CIRP

period starting from 10.09.2021 till the disposal of IA(IBC)/993(CHE)/2021 in respect of the CD.

15. It is submitted that during the 8th CoC meeting dated 30.01.2023, applicant proposed the CoC that Form G was published and no response received. Further 330 days deadline for CIRP in relation to the CD had also ended and no resolution plan was submitted, it would be best to liquidate the CD. The said proposal was accepted and voted in favour with 83.29%, thus permitting the Liquidator applicant to file the present application. The Copy of the 8th CoC meeting was placed at *Page 40 – 50 of the Application*.

16. The details relating to the Resolutions passed in respect of the present application are extracted as follows,

Agenda Item No. 7

To approve the initiation of Liquidation Process of the Corporate Debtor in lieu of non-receipt of EOI from any prospective Resolution Applicant

The RP informed the COC Members that as per Section 33(1) of the IBC 2016,

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 the 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.

Further as per Sec 33(2) of IBC 2016,

“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 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).

Explanation - For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum”

The RP informed the COC members that since Form G was issued but no response from any prospective resolution applicant was received and more than 330 days have passed since the initiation of CIRP process of the CD and no resolution plan has been received in this regard, so upon discussion with the COC Members, the way forward is decided as to liquidate the CD and file an application before the Hon'ble NCLT Chennai bench for the same.

Hence the RP was directed by the COC members to file an application for initiation of Liquidation process of the Corporate Debtor and passed the following resolution

Resolution:



It is informed to the participants that upon affirmative votes of not less than 66% of voting shares casted by the COC members for this agenda item, the same shall stand approved. This agenda item was passed with a vote of 83.29% casted by the members present in the COC meeting in the favor of this resolution while the remaining 16.71% abstained from voting on the said agenda item

Agenda Item No. 8

To approve the appointment of Liquidator in the Liquidation Process of the Corporate Debtor

The RP informed the COC Members that as per Sec 34(1) of IBC 2016.

"Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4) "

Pursuant to the initiation of Liquidation process of the Corporate Debtor, the RP provided his consent to the COC Members to be appointed as the Liquidator for the Liquidation process of the Corporate Debtor. The RP told the COC Members that he is eligible to be appointed as the Liquidator of the Corporate Debtor as per the relevant rules and regulations of IBC 2016. The COC took note of the same and agreed for the appointment of RP as the Liquidator pursuant to the initiation of Liquidation proceedings of the CD.

Resolution:

It is informed to the participants that upon affirmative votes of not less than 66% of voting shares casted by the COC members for this agenda item, the same shall stand approved. This agenda item was passed with a vote of 83.29% casted by the members present in the COC meeting in the favor of this resolution while the remaining 16.71% abstained from voting on the said agenda item

Agenda Item No. 9

To approve the fees of the Liquidator in the Liquidation Process of the Corporate Debtor

The RP informed the COC members that in pursuant to the provisions of Regulation 39D of IBBI (CIRP) Regulations, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulations, 2016.



"While approving a Resolution Plan under Section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

- a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013*
- b) the period, if any, used for sale under clause (e) & (f) of Regulation, 21 of the IBBI (Liquidation Process) Regulation, 2016, and*
- c) the balance period of liquidation*

However, since the assets of the CD have not been traced and the COC has approved for initiation of Liquidation process of the Corporate Debtor, so rather than deciding the Liquidator fee as Regulation 39D of IBBI (CIRP) Regulations, 2016 read with Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016, the Liquidator has rather suggested the COC members to fix the Liquidator's fee as the same as that of RP on a monthly basis.

Hence, the RP proposes for Liquidator fees of Rs 2,50,000 per month during the entire period Liquidation process of the Corporate Debtor, of which the COC took cognizance and passed the following resolution

Resolution:

It is informed to the participants that upon affirmative votes of not less than 51% of voting shares casted by the COC members for this agenda item, the same shall stand approved. This agenda item was passed with a vote of 83.29% casted by the members present in the COC meeting in the favor of this resolution while the remaining 16.71% abstained from voting on the said agenda item

17. It is submitted that the CoC had recommended the appointment of the applicant RP as the Liquidator in respect of the CD and fixed Rs.2,50,000/- per month as his remuneration. The voting of the CoC for the resolutions passed is extracted as follows,

B. COMMITTEE OF CREDITOR(S)

S. No	NAME OF OPERATIONAL CREDITORS (Voting Share %)	REPRESENTED BY	MODE OF PRESENCE
1.	Monika Traders (41.677%)	Monika Gupta alongwith her husband Neeraj Kumar (as authorized to join the meeting by Monika Gupta)	Video Conferencing
2.	Radhika Industrial Corporation (9.012%)		Absent
3.	Khatu Enterprises (7.698%)		Absent
4.	The Assistant Commissioner (ST), Poonamallee, Assessment Circle, Chennai, South Division (15.726%)	J Senthilvel	Video Conferencing
5.	M/s Erecon Spaces Private Limited (25.887%)	Sushmesh Sharma (Director)	Video Conferencing

18. We have heard the Ld. Counsel for the applicant and perused the documents on record.

19. It is observed that the CoC after a period of inordinate delay found no prospects in continuing with the CIRP. Therefore the resolution for Liquidation of the Corporate Debtor has been passed by the CoC directing the Resolution professional to file necessary applications for Liquidation of the Corporate Debtor.

20. The Applicant/RP submitted FORM-H as per Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. The same is placed at *Page 54 – 59 of the application*. Further the applicant has filed convenience proforma dated 08.12.2023 which discusses about 4 valuers in connection to the CD. It also discloses some pending litigations and PUFEE transaction applications connected to the CD.

21. From the records it is apparent that the Applicant RP and CoC had not stick on with the timelines mandated by the code. The apathetic behaviour of both the RP and CoC is inappropriate and not appreciative. Even the same is recorded in the order of this Tribunal dated 26.10.2022 & 23.02.2024.

22. In the present matter no exclusion or extension has been granted after expiry of 180 days of the CIRP. Without obtaining any required permission of this Tribunal, even after the expiry of 330 days, maximum time limit provided under IBC no resolution plan was received. Only after passing order dated 26.10.2022, in 05.03.2023 the present application has been filed.

23. Section 33 of the Insolvency and Bankruptcy Code, stipulates as follows,

“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).”

24. In **Arcelormittial India Pvt Ltd v. Satish Kumar Gupta ((2019) 2 SCC 1)** it is observed as follows;-

“76.10. As has been sated hereinbefore, the liquidation process gets initiated Under Section 33 if, (1) either no revolution plan is submitted within the time specified Under Section 12, or a revolution plan has been rejected by the adjudicating authority: (2) where the Resolution Professional, before conformation of the resolution plan, intimates the adjudicating authority of the decision of the Committee of Creditors to liquidate the corporate debtor; or (3) where the resolution plan approved by the adjudicating authority is contravened by the corporate debtor concerned. Any person other than the corporate debtor whose interests are prejudicially affected by such

contravention may apply as the adjudicating authority, who may then pass a liquidation order on such application."

25. Similarly explaining the ambit of the cases covered under Section 33 (1) (i) and (ii), the Supreme Court in ***Manish Kumar v Union of India*** ([2021] 14 S.C.R. 895), observed as follows;-

"Section 33, which is in Chapter III in Part II, compels announcing the death knell of the corporate debtor. That is if, before the expiry of insolvency resolution process period or the maximum period permitted which is CIRP Under Section 12, inter alia, a resolution plan is not received or though received is rejected by the adjudicating authority, then Under Section 33, order is to be passed. The curtains are wrung down on the insolvency resolution process. The corporate debtor goes into liquidation. The adjudicating authority is bound to pass an order requiring corporate debtor to be liquidated as provided in chapter 111 Part 11. Section 33(2) contemplates that before the confirmation of the resolution plan if the committee of creditors so approved by not less than 66% of the voting decide to liquidate the corporate debtor, the adjudicating authority is to pass the liquidation order."

26. It is also noted from the minutes that the CoC has recommended Mr. Harsh Garg (Applicant herein) to act as the Liquidator of the Corporate Debtor. However IBBI vide its notification bearing No. ***Liq-12011/214/2023-IBBI/840*** dated 18.07.2023 has recommended that the person other than IRP/RP of the Corporate Debtor to be appointed as the Liquidator in the case of liquidation of the Corporate Debtor. Since no resolution plan was submitted by any person, CoC constrained to pass resolution for Liquidation of CD and passed by majority. Further CoC also recommended the name of the Applicant/ RP to be appointed as Liquidator. Therefore there is no impediment to appoint him as the Liquidator.

27. From the above facts, circumstances and precedents, this Adjudicating Authority deems it fit to order Liquidation of the Corporate. Accordingly, we order liquidation of the Corporate Debtor (*M/s. You Seung Sang Sa India Construction Private Limited*) by appointing *Mr. Harsh Garg having Reg. No. IBBI/IPA-001/IP-P00243/2017-18/10472 with active AFA status till 30.06.2025 (email address - gharsh.garg81@gmail.com)* as the Liquidator to carry out the liquidation process subject to the following terms/directions: -

- a) *The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.*
- b) *The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.*
- c) *The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.*
- d) *In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.*
- e) *The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.*

- f) *The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.*
- g) *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.*
- h) *The Liquidator shall submit individual Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.*
- i) *The Liquidator directed explore the possibilities of selling the Corporate Debtor as the going concern.*
- j) *Copy of this order be sent to the Creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., Company-in-liquidation.*

28. With the above directions, **IA(IBC)/ 1908(CHE)/2023 in IBA/796/2020** stands allowed and disposed of.

29. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India.

-Sd/-

**RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)**

-Sd/-

**JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)**