

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

IA-6508/2023

In

IB -614(ND)/2021

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 -614(ND)/2021:

Mr. RAM RATAN JAGATI

Sole Proprietor of JJ Trading FZE **Operational Creditor**

VERSUS

M/s. MANGLAM APARTMENTS LIMITED **Corporate Debtor**

AND IN THE MATTER OF IA-6508/2023:

Mr. Rakesh Mishra,

Resolution Professional of M/s. Manglam Apartments Limited

..... **Applicant**

Order Pronounced On: 15.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Nibruti Samal, Mr. Sohaib Khan, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by Mr. Rakesh Mishra, the Resolution Professional of M/s. Manglam Apartments Limited, the Corporate Debtor before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code")

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Date of Order: 15.04.2024

read with Rule 11 of the 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 3rd CoC meeting held on 30.11.2023 with 99.89% 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 99.89% voting share in favour of liquidation;*
- b. Pass order for appointment of Mr. Rakesh Mishra, bearing IBBI Reg. No. IBBI/IPA-001/IP-P-01676/2019-2020/12719 as the Liquidator under Section 34(1) of the Code;*
- c. 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. Manglam Apartments Limited ("Corporate Debtor") under Section 9 of the Code filed before this Adjudicating Authority (Court-III) in (IB)-614/ND/2021. This Adjudicating Authority (Court-III) vide order dated 16.06.2023 ("Admission Order") was pleased to admit the application and a moratorium was declared including the appointment of 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, to call 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, though emails and queries were received from several parties who expressed their interest in submitting EOI, however, none of them proceeded further to submit the details under EOI or the submission of EMD.
5. The Resolution Professional received a mail on 22nd November, 2023 from the CoC member with 99.89% voting share, vide which the concerned member suggested to proceed with the filing of liquidation application for the Corporate Debtor. Accordingly, the third CoC meeting was conducted on 28th November, 2023 wherein the agenda regarding liquidation was deliberated as per Section 33(2) of the Code. Further, the Resolution Professional apprised the members of the CoC that the Corporate Debtor has not been operational since the year 2018-2019 and the books of the Corporate Debtor show no fixed asset apart from financial assets which do not bear much realizable value. Accordingly, the resolution to proceed with filing of Liquidation Application was put to voting as under:

***“RESOLVED** that pursuant to section 33 (2) and Regulation 40 D 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, the decision to liquidate the corporate debtor - Manglam Apartments Limited and proceed with the liquidation process, be and hereby is approved.*

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to file appropriate application incorporating, recorded in view of COC 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 filing 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.

Resolved That recommendations of the members of the Committee of Creditors is hereby accorded for appointment of Mr. Rakesh Mishra as the liquidator in the matter of Manglam Apartments Limited pursuant to Section 34 of Insolvency and Bankruptcy Board of India.

Resolved further that Resolution Professional be and is hereby authorised to file application for liquidation before National Company Law Tribunal and to initiate/take all actions necessary steps actions in this regard.”

6. 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.
7. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
8. This Adjudicating Authority vide order dated 14.12.2023 passed the following order which is extracted below:

“It is submitted by the Learned Counsel appearing for the Resolution Professional that there are no moveable or immovable assets and the Company has a few financial investments. The Applicant is directed to file an affidavit stating the details of the financial investments available with the Company as well as with respect to the requirements under Regulation 39(B), within two weeks.”

9. In compliance of the order dated 14.12.2023, the Applicant/RP filed an affidavit stating that as per the Audited Financial Statements of

the Corporate Debtor for the year ended 31st March 2023 and 31st March 2022, the Corporate Debtor has assets only in the category of Security and Financial Assets and there are no movable assets in the Company. The details are extracted below for ready reference:

Assets in Manglam Apartments Ltd. (5)

(1) Loan and Advances Under Current Assets

S. No.	Particulars	Amount outstanding as on 31-03-2023 (INR)	Amount outstanding as on 09-06-2023 (INR)
1.	Unsecured Loan to M/s. Alstronng ACP Manufacturing India Pvt. Ltd. (The said Company is undergoing Corporate Insolvency Resolution Process vide order dated 18 th April, 2022 passed by the Hon'ble NCLT, New Delhi Bench-III)	2,00,79,847	2,00,79,847
2.	Indirect Taxes Receivable	11,520	11,520
3.	Security	10,000	10,000
Total Loans and Advances and Other Current Assets		2,01,01,367	2,01,01,367

The Bank Balance as on Insolvency Commencement Date (9th June, 2023) is INR 71.

10. 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 99.89% majority has passed the resolution seeking liquidation of the Corporate Debtor.
11. In light of the above-quoted judgement, it is clear that the "Commercial wisdom of CoC" is 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.

12. 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.
13. We are of the considered view that there is no chance of receiving any resolution plan as the Corporate Debtor does not have any assets or property and the Corporate Debtor has not been operational since the year 2018-2019 and the books of the corporate debtor show no fixed asset apart from financial assets which do not bear much realizable value. Hence, the RP has moved an application before this adjudicating authority seeking liquidation of the Corporate Debtor along with a plea to appoint him as the Liquidator.
14. In light of the above facts and circumstances, it is hereby ordered as follows:
- i.** The **IA-6508/2023** filed by Mr. Rakesh Mishra, the Resolution Professional of M/s. Manglam Apartments Limited, 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. Devvart Rana 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-N00680/2018-2019/12025,

the address of the Liquidator is Apt. No. 684, Sector-A, Block - B & C, Vasant Kunj, New Delhi, Delhi-110070 and the e-mail id of the Liquidator is devvartrana@gmail.com and the contact no. of the Liquidator is +919891813021.

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 is 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)**