

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, MUMBAI COURT II**

MA 4008 of 2019

In

CP (IB) 4524/MB/C-II/2018

Under Section 33 of the Insolvency
and Bankruptcy Code, 2016

In the Application of

Mr. Ravindra Chaturvedi

Address: BKC Centre, 31-E, Laxmi
Industrial Estate, New link Road,
Andheri (W), Mumbai – 400 053

**...Applicant/Resolution
Professional**

In the matter of

Suraksha Reality Limited

...Financial Creditor

Versus

Idhasoft Limited

[CIN: U72200MH2006PLC166403]

...Corporate Debtor

Order Delivered on 26.03.2021

Coram:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Mr. Ravikumar Duraisamy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Ms. Savita Nangare a/w Mr. Raj Dani, Advocates
i/b Atham Legal.

ORDER

Per: Ravikumar Duraisamy, Member Technical

1. This is an Application filed on 11.12.2019 U/s. 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) by **Mr. Ravindra Chaturvedi**, the Resolution Professional of the **Idhasoft Limited** (hereinafter referred to as the Corporate Debtor), seeking an order of ‘Liquidation’ of the Corporate Debtor. It is submitted that the Committee of Creditors in the fifth meeting held on 04.12.2019 has unanimously approved for “Liquidation” of the Corporate Debtor.

Facts of the case:

2. The Applicant submits that a Petition under Section 7 of the I&B Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was admitted by this Tribunal vide its order dated 17th June 2019 (hereinafter referred to the “**said Order**”).
3. The Tribunal appointed the Applicant as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor. The public announcement was made on 20th June 2019 vide Form A under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the “**CIRP Regulations**”) published in the Mumbai edition of Newspapers namely Free Press Journal and Navshakti .
4. Pursuant to the aforesaid Public Announcement, the Applicant received claims from the following creditors:

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Sr. No.	Name of Financial Creditor	Secured/ Unsecured	Claim Amount (in INR)	Claim Admitted (in INR)	Voting %
1.	Axis Bank Limited	Secured	19,06,84,960	19,06,84,960	72.34%
2.	Omkara Assets Reconstruction Private Limited	Secured	2,97,45,314	2,97,45,314	11.30%
3.	Suraksha Realty Limited	Unsecured	4,32,21,917	4,32,21,917	16.38%
	TOTAL		26,36,52,191	26,36,52,191	100.00%

5. The Applicant submits that during the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, the following meetings of the CoC were held:

Sr. No.	Date of Meeting	Sr. No.	Date of Meeting
1.	16 th July, 2019	4.	11 th November, 2019
2.	27 th August, 2019	5.	4 th December, 2019
3.	27 st September, 2019		

6. In the first meeting of the CoC the appointment of the IRP was confirmed as Resolution Professional (“RP”) u/s 22 of I&B Code . In the said meeting, the Applicant was directed to carry out transaction audit and to submit the same in the next CoC meeting.
7. Thereafter, in the 2nd meeting of the CoC the Applicant discussed the expenses incurred till date and estimated expenses. The Applicant proposed to appoint the following Registered Valuers (hereinafter referred to as the “Valuers”) to determine the fair value and liquidation value of the assets of the Company:

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Sr. No.	Name of the Valuer	Type of Asset
1.	Balaji & Associates	Land and Building
2.	Mr. Pradeep P.	Land and Building
3.	Mr. Prashant Jain	Securities and Financial Assets
4.	CA Dr. S P Das	Securities and Financial Assets

Since there is no plant and machinery to offer for valuation, CoC had resolved not to appoint any Valuers for valuation of the same (Meaning??).

8. The Applicant submits that the Valuation for the assets of the Corporate Debtor as per the report submitted by the Valuers is as under:

(Amt. in Rs.)

Sr. No	Name of Valuer	Class of Assets	Date of the Report	Fair Market value	Liquidation value
1	Mr. L Balaji	Land and Building	07/08/2019	2,40,000	1,92,000
2	Mr. Pradeep p	Land and Building	08/08/2019	2,86,500	2,29,000
3	Mr. Prashant Jain	Securities and Financial Assets	12/10/2019	11,43,380	11,43,380
4	CA Dr. S P Das	Securities and Financial Assets	04/10/2019	11,73,645	11,73,645

9. As per Regulation 36 and 36A of CIRP Regulations , the Applicant has to publish Form G within 75 days from the commencement of CIRP. Therefore, the Applicant submitted the draft Form G and advised CoC to extend the last date of submission of Expression of Interest (EOI) for revival of the corporate debtor from 15th September, 2019 to 25th September, 2019. The Applicant made a paper publication

on 31st August, 2019 in Form G in the Mumbai dailies DNA and Pudhari of with last date of submission of EOI as 25th September 2019.

10. The Applicant submits that based on the transaction audit report submitted by the Applicant, the applicant was advised to invite quotations from forensic auditors. Subsequently CoC members advised the Applicant to schedule a meeting of two shortlisted firms in the third meeting of the CoC which was scheduled on 27th September, 2019. After meeting these two shortlisted firms, the Applicant was advised to appoint M/s. J C Kabra & Associates as Forensic Auditors for conducting Forensic Audit from FY 2009-10 to FY 2015-16 (7 years). The Forensic Auditor has informed that he is anticipating some major breakthrough in next few days and has observed major fund diversion from India to US subsidiaries and shall finalize and authenticate his report on receipt of Dun & Bradstreet reports of the 4 (four) USA companies. The COC members also approved appointment of advocate for filing the MA for release of lien of Income Tax on two fixed deposits. Further, no EOI was received till the last date of submission of EOI. Considering the company being closed and there no assets, except negligible piece of land which would hardly fetch any value the CoC members resolved not to extend the time frame for invitation of expression of interest. Therefore, CoC members resolved inevitable liquidation of the Corporate Debtor.
11. In the 5th meeting, the CoC with unanimous vote resolved to liquidate the corporate debtor u/s 33 of I&B Code and authorized the Applicant to file appropriate proceedings before this Tribunal, seeking appropriate order of liquidation of the Corporate Debtor.

12. Further, the Applicant herein has expressed his ability (or willingness) to be appointed as the Liquidator of the company. But CoC in the 5th meeting, with 27.68% voting share favoured the appointment of RP as Liquidator whereas, the members with voting share of 72.34% (or 72.32%) dissented. He further submits that the COC is re-considering his appointment as Liquidator. The Applicant has sought leave of this Tribunal to file consent form as and when such appointment, if any, is finalized by the COC.
13. We have considered the submissions and perused the documents, it is noted that in response to the EOI, no resolution plan has been received from any quarters. Therefore, the CoC in its 5th meeting resolved in favour of liquidation of the Corporate Debtor. In view of the unanimous decision of the CoC, we have no other option than to admit MA 4008 of 2019 and initiate Liquidation process of the Corporate Debtor.
14. In the 5th CoC meeting, CoC members having 27.68% of voting share has assented for appointment of RP as Liquidator but CoC members having voting share of 72.34% dissented for appointment of RP as Liquidator. Since the majority of the CoC Members had voted against Applicant's appointment as liquidator. From the subsequent material submitted it is observed that Mr. Rajeev Muppidi from Axis Bank Limited vide its email dated January 15, 2020, has consented on behalf of the bank for the appointment of RP as Liquidator.
15. At this stage it is noted/observed that after the expiry of period almost six weeks from the date of voting on Resolution where RP had to be confirmed as Liquidator whereas on December 4, 2019, dissented on

appointment of RP as Liquidator. The practice followed by bank is unacceptable and not a normal course of process. Therefore, we direct the bank to refrain from indulging in such practices.

16. This Bench, therefore, hereby orders as follows: -

- a. The MA 4008 of 2019 in CP 4524 of 2018 is allowed to initiate liquidation process against the Corporate Debtor.
- b. Therefore, this Bench hereby appoints Mr. Anjan Bhattacharya [Reg. No. IBBI/ IBBI/IPA-001/IP-P00926/2017-2018/11533] [Email: anjan.bhattacharya@aaainsolvency.com] as the Liquidator in terms of section 34(1) of the Code from the panel of names made available by the Insolvency and Bankruptcy Board of India (IBBI). His fees shall be regulated in terms of Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016.
- c. The Applicant/RP shall forthwith hand over possession of the Corporate Debtor, its assets and all documents in his possession, to the Liquidator;
- d. The Liquidator shall initiate the liquidation process as envisaged under Chapter-III of the Code and the IBBI (Liquidation Process) Regulations, 2016;
- e. Public Notice shall be issued in two newspapers, viz., in *Business Standard* (English) and *Navshakti* (Marathi), stating that the Corporate Debtor is in liquidation, as required in terms of section 33(1) of the Code;

- f. The moratorium declared under Section 14 of the I&B Code shall cease to operate here from.
- g. All the powers of the Board of Directors and key managerial persons of the Corporate Debtor shall cease to exist. All these powers shall henceforth vest in the Liquidator;
- h. The personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor;
- i. 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 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 I&B Code.
- j. This liquidation order 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;
- k. The Court Officer shall forward a copy of this Order to (i) the Applicant, (ii) the Liquidator named in para (b) above; and (iii) the Registrar of Companies, Mumbai, Maharashtra, immediately; and
- l. A copy of this order shall additionally be served by the Applicant/RP on the Registrar of Companies, Mumbai,

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Maharashtra, for updating the Master Data of the Corporate Debtor.

m. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.

Sd/-

**JANAB MOHAMMED AJMAL
MEMBER (JUDICIAL)**

Sd/-

**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**

26.03.2021
Sushil/SAM