

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V**

I.A. 1938 OF 2022

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

Filed by

Anup Kumar Singh,

Suite-1B, 1st Floor, 22/28A
Manoharpurkur Road of Deshopriya Park,
Kolkata-700029, West Bengal, India.

...Resolution Professional/Applicant

In the matter of

CP (IB) No. 971 of 2020

SREI Equipment Finance Limited

Vishwakarma, 86C, Topsia Road, Kolkata-
700046, West Bengal, India.

...Financial Creditor/Petitioner

Versus

**Muktar Infrastructure India Private
Limited**

Plot No. B- 2/B-3, Phase I Vera Industrial
Estate, Verna, Goa- 403722, India

...Corporate Debtor

Order Reserved On: 06.09.2022

Order Pronounced On: 21.09.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Adv. Deep Dhige i/b Adv. Amit A. Tungare

ORDER

1. The above application is filed by Anup Kumar Singh, Resolution Professional, (hereinafter referred to as the “Applicant”) seeking liquidation of Muktar Infrastructure India Private Limited (hereinafter referred to as the “Corporate Debtor”) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. That this Hon’ble tribunal maybe pleased to order and direct Liquidation against the Corporate Debtor as per the Section 33(2) of the Insolvency and Bankruptcy Code 2016;*
- b. That this Hon’ble Tribunal maybe pleased to appoint the Applicant viz. Mr. Anup Kumar Singh, IBBI Registration Number IBBI/IPA-001/IP-P00153/2017-18/10322 as the Liquidator in respect of the Corporate Debtor Company;*
- c. That this Hon’ble Court maybe pleased to issue such other necessary orders and reliefs as may be deemed fit in the present matter.*

2. The brief facts of the application are as follows:

A. That this tribunal vide an order dated 04.10.2021 in Company Petition No.971 of 2020, admitted the Petition under Section 7 of the Code, filed by SREI Equipment Finance Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against Muktar Infrastructure India Private Limited (hereinafter referred to as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional, (hereinafter referred to as the “IRP”) of the Corporate Debtor.

- B. Applicant submits that a Public announcement in Form-A was made on 22.10.2022 in two newspapers viz O Herald (English newspaper) and Danik Herald (Regional newspaper).
- C. On 16.11.2021 during the 1st meeting of the Committee of Creditors (hereinafter referred to as the “CoC”) the Applicant was appointed as the Resolution Professional, which is approved by 100% members voting in favour of the same.
- D. The Applicant submits that in the 1st meeting of COC, the Resolution was passed for appointment of two Registered Valuers accordingly as required under Regulation 27 of IBBI (IRP for Corporate persons) Regulations, 2016 and the information memorandum was prepared as provided under Regulation 36(1) of the said regulation.
- E. The Applicant further submits that the COC in its 3rd meeting held on 17.03.2022 have resolved to seek an exclusion of 17 days time of the CIRP period from 04.10.2021 to 21.10.2021 and further extension of 90 days beyond 180 days of the CIRP period. The Resolution was approved by 98.77% voting. The Applicant in his application I.A/952/(MB)/2022 filed before the Hon’ble Tribunal. The Tribunal vide order dated on 12.04.2022, after being satisfied by the submissions of the applicant granted the exclusion. The order of admission was passed for exclusion of 17 days as well as the further extension of 90 days beyond 180 days which would end on 17.07.2022.

“RESOLVED THAT, pursuant to sec 12(2) & (3) of IBC, 2016 read with Regulation 40(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 approval of Committee of Creditors be and is hereby accorded to file a petition for exclusion from 04.10.2021-21.10.2021, i.e. 17 days and extension of CIRP timelines

for a period of 90 days beyond 180 days in matter of Corporate Insolvency Resolution Process of Muktar Infrastructure (India) Private Limited.”

- F. During the 4th COC meeting held on 22.06.2022 the Applicant published Form G on 24.12.2021 in two newspapers i.e. the Financial Express being an English Daily and Dainik Herald being a Marathi Daily. It was published again on 11.01.2022, 21.01.2022 and lastly on 01.02.2022 inviting the Expression of Interest (EOI). On the last date of receipt of EOI i.e. on 10.02.2022, four expression of interests were received from the Prospective Resolution Applicants namely Aryan Mining & Trading Corpn Private Limited; Sunrise Industries; Mr. Muktar Shamshuddin Shaikh alias Mucta Shamshuddin Xec; Mahakram Developers Private Limited. However, no Resolution Plans were received till the extended last date for the submission of resolution.
- G. The Applicant submits that as the process was nearing the estimated closure date, hence Liquidation was the only viable option left in the absence of any Resolution Plan. The above resolution was therefore placed before in 4th COC meeting convened on 22.06.2022 consideration and the same was passed with 98.77% votes in favour by the Committee Members and Union Bank of India having 01.23% voting share abstained from voting.

“RESOLVED THAT *pursuant to Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (Including all the amendments and modification for the time being in force) approval of the committee of creditors be and is hereby accorded for the approval of Liquidation of the Corporate Debtor, Muktar Infrastructure (India) Private Limited as envisaged under the Insolvency and Bankruptcy Code 2016.*

FURTHER RESOLVED THAT the Resolution Professional, Mr. Anup Kumar Singh shall be appointed as the Liquidator in terms of Section 34(1) of the Insolvency and Bankruptcy Code, 2016.

FURTHER RESOLVED THAT the Committee of Creditors hereby authorizes the Resolution Professional to the Adjudicating Authority and to do all such acts, deeds as necessary for giving effect to the above resolution.”

- H. The Applicant sought under the notice of the COC that the Corporate Debtor was running business as a going concern, it is expected that the Corporate Debtor may cover most of its Liquidation Costs out of the proceeds of its business. However, in the event if it is unable to cover its liquidation costs, it was proposed that the Committee Members being Secured Financial Creditors shall contribute towards the Liquidation costs of the Corporate Debtor as per their respective claim ratio in the Liquidation Process. The Applicant further submits that the entire Assets and the Current Liabilities after 04.10.2021 are to be sold as going concern in terms of clause (e) of regulation 32 Of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- I. Heard the counsel appearing for the Resolution Professional and perused the record. The Counsel for the Resolution Professional submits that no Resolution Plan has been received and there is no option except to put the Corporate Debtor Company into Liquidation as per the Code as well as also to protect the asset of the Corporate Debtor from further deterioration. Since the COC with a required mandate of 98.77% voting approved for Liquidation of the Corporate Debtor in view of not getting any Resolution Plans, this Tribunal has very limited judicial review in such matters of commercial wisdom and therefore this Bench has no option except to allow the above Liquidation Application. The Counsel appearing for the Applicant also filed consent letter of

Resolution Professional, Mr. Anup Kumar Singh to act as the Liquidator. In view of the above facts, this Bench feels that this is a fit case for ordering Liquidation as going concern of the Corporate Debtor. Accordingly, the Interlocutory Application Number 1938 of 2022 is allowed directing Liquidation of the Corporate Debtor. Accordingly, we pass the following:

ORDER

The above I.A. No. 1938 of 2022 is allowed and the Corporate Debtor Muktar Infrastructure India Private Limited is ordered to be liquidated as a going concern.

- a. **Mr. Anup Kumar Singh**, having Registration No. IBBI/IPA-001/IP-P00153/2017-18/10322 and having office at: Suite-1B, 1st Floor, 22/28A Manoharpurkur Road of Deshopriya Park, Kolkata-700029, West Bengal , India. 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 will have 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. All the powers of the Board of Directors, Key Managerial Persons, the Partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. 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.
- h. 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.
- i. 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.

With the above directions, this application i.e. I.A. No. 1938 of 2022 is hereby allowed and disposed of.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)