





NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

CP (IB)/1367(PB) /2018  
IA (I.B.C)/2235(PB)/2021  
IA (I.B.C)/2164(PB)/2021

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IN THE MATTER OF :

ICICI BANK LIMITED

... APPLICANT/PETITIONER

VERSUS

M/s C&C CONSTRUCTIONS

LIMITED

...CORPORATE DEBTOR/RESPONDENT

AND

IN THE MATTER OF:

M/s C & C CONSTRUCTIONS LIMITED

Through

NAVNEET KUMAR GUPTA (RP)

REG. NO. IBBI/IPA-001/IPP000001/2016-17/10009 ... APPLICANT/RP

AND

IN THE MATTER OF:

GURJEET SINGH JOHAR

...APPLICANT/EX-PROMOTER

VERSUS

M/s C & C CONSTRUCTIONS  
LIMITED

...RESPONDENT/CORPORATE DEBTOR

Through

NAVNEET KUMAR GUPTA (RP)

REG. NO. IBBI/IPA-001/IPP000001/2016-17/10009

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18.10.2022



UNDER SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE,  
2016

Order Pronounced On: 03/10/2022

**CORAM:**

**SH. RAMALINGAM SUDHAKAR**

**HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA**

**HON'BLE MEMBER, TECHNICAL**

**PRESENT:**

**For the Financial Creditor** :Mr. Debarshi Bhadra, Advocate  
Mr. Srijan Sinha, Mr. Himanshu  
Chaubey, MR. Parul Dhurvey, Mr.  
Naveen Soni, Advvs., Mr. PBA  
Srinivasan, Mr. V. Aravind, Prerana  
Sabharwal, Parth Tandon Advvs.  
Counsel for the CoC

**For the Respondent** : Mr. Sanjay Bhatt, Ms. Ruchi Goyal, Adv., Mr.  
Apoorv Agarwal, Mr. Abhshkek Kumar  
Jaiswal for Promoters.

**For the Applicant/RP** : Mr. Vivek Sibal, Sr. Adv, Mr Pulkit Deora, Mr.  
Arnav Vidyarthi with Mr. Navneet Kumar  
Gupta, RP in person

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ORDER

PER SH. AVINASH K. SRIVASATAVA, HON'BLE MEMBER (T)

1. The Present Application (IA 2235/2021) in a way of final report has been preferred by the Applicant/RP of **M/s C&C Constructions Limited, (CD), CIN: L45201DL1996PLC080401** under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for seeking appropriate orders for liquidation of the CD in view of the expiry of CIRP Period on **17.04.2021** and in view of the rejection of the sole resolution plan. Applicant/RP has prayed for the following reliefs:
  - a. Pass appropriate orders under section 33 of the Code, thereby requiring the corporate debtor to be liquidated in the manner as provided under Chapter III of the Code, and all / any such consequential orders as this Hon'ble Tribunal may deem fit and proper, and / or
  - b. Pass an order directing that the Applicant /Resolution Professional shall act as the Liquidator for the purposes of the Liquidation, and / or
  - c. Pass any such further order(s)/ direction(s) as this Hon'ble Tribunal may consider fit and proper
2. The Application (IA- 2164/2021) has been preferred by Applicant (Mr. Gurjeet Singh Johar) under Section 60(5) of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016 for seeking directions to the CoC for consideration of proposal submitted by promoters under Section 12A of the IBC in the interest of revival of Corporate Debtor, maximization of value of its assets and in interest of the creditors and all stakeholders. The Applicant has asked for the following reliefs:
  - (a) Pass directions to the Committee of Creditors of the Corporate Debtor to consider the Settlement Proposal dated 23 February 2021 of the Promoters and to cast their vote on the same;
  - (b) Stay consideration of the application for liquidation of the Corporate Debtor filed by the RP till final decision and voting of the CoC on the plan under Section 12A of the IBC;

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(c) Pass any such further orders that this Hon'ble Tribunal may deem fit in the facts and circumstance of the present case.

3. As both these applications are connected i.e. liquidation of the Corporate Debtor. Hence, we are inclined towards passing of a common order in the aforesaid matters.

4. **Brief facts submitted by Applicant/ RP in IA 2235/2021 are as follows:**

- Corporate Debtor, **M/s C&C Constructions Limited** was incorporated to undertake and execute all kinds of contracts for constructions of roads, sanitary works, electrical works, civil engineering works and furniture and fittings and supplies of all types of building material and labour in India and abroad
- Financial Creditor i.e. ICICI BANK had filed an application under Section 7 of the Code, bearing number IB- 1367/(PB)/2018, for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on **14.02.2019** initiating CIRP against the Corporate Debtor. The Applicant, on **17.02.2019**, caused a public announcement, in prescribed Form A, in accordance with Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). The Applicant has received various claims, from financial creditors, operational creditors, workmen and employees, in the respective prescribed forms, in accordance with Section 15(1)(c) of the Code, read with Regulations 6(2)(c) and 12 (1) of CIRP Regulations. A complete list of all claims filed with the Applicant, and the amounts verified, as on the date of the present Application has been placed on record as Annexure A3. The Applicant, at first instance, received and verified claims from the below mentioned Financial Creditors, and therefore constituted the Committee of Creditors ("COC"). The Financial Creditors who forms the part of COC are

- Axis Bank
- State Bank of India
- DBS Bank

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- ICICI Bank Limited
- IDBI bank
- IndusInd Bank
- L&T Infrastructure Finance Company Limited
- Oriental Bank of Commerce (now merged with Punjab National Bank)
- Central Bank of India
- SREI Equipment Finance Private Limited
- Assets Reconstruction Company (India) Limited
- IFCI Factors Limited
- IFCI Limited
- India Infrastructure Finance Company Limited
- Edelweiss Asset Reconstruction Company Private Limited

• After commencement of CIRP, an appeal **C.A No. (AT) (Insolvency) No. 249/2019** under Section 61 of IBC, 2016 was preferred against the order of the Admission of CIRP dated **14.02.2019 by Gurjeet Singh Johar (ex-promoter of CD)**. A proposal for settlement was made by Appellant to Financial Creditors and the Hon'ble NCLAT vide its order dated **14 March 2019** gave an opportunity to promoters to settle the claims and directed not to constitute COC, if not yet constituted until further orders. Order dated **14.03.2019 by Hon'ble NCLAT is extracted below:**

*"Learned Senior Counsel for the Appellant submits that the Appellant is interested to settle the matter with the "Financial Creditor" for which an offer has already been given. It is also informed that no "Committee of Creditors" have been constituted. Mr. Srijan Sinha, learned Counsel appearing on behalf of the ICICI Bank Ltd. accepts that an offer has been given by the Appellant and the matter is under consideration.*

*In the circumstances, we adjourn the matter and allow the parties to settle the claim within four weeks. Parties may file affidavit enclosing the copy of settlement, if any reached, by the next date. Post the case 'for admission' on 29th April, 2019.*





*In the meantime, let limited notice be issued to the "Corporate Debtor through the Interim Resolution Professional to know the status of the process. Requisite (documents) along with process fee be filed by tomorrow, i.e., by 15.03.2019.*

*Until further orders, the Resolution Professional will not constitute any Committee of Creditors, if not yet constituted. However, the Interim Resolution Professional will ensure that the company remains going concern and will take assistance of the (suspended) Board of Directors/its employees. The person who is authorised to sign the bank cheques may issue cheques only after authorization of the Interim Resolution Professional. The bank accounts of the Corporate Debtor be allowed to be operated for day-to-day functioning of the Company such as for payment of current bills of the suppliers, salaries and wages of the employees/workmen, electricity bills, etc.*

However, on 30.05.2019, in C.A (AT (Insolvency) No. 249/2019 and C.A No. 455 of 2019, the stay on the formation of COC was vacated.

- As per Section 22(2) of the IBC, 2016 the Committee of Creditors in the 2nd meeting dated 14.06.2019 resolved to appoint the IRP as the Resolution Professional (RP) by 96.04% voting share. Vide order dated 09.07.2019, IRP was appointed as RP by this Adjudicating Authority.

- The Applicant/RP submits that he could not release the publication of the invitation for expression of interest in Form G of the schedule as per Regulation 36A of the Insolvency and Bankruptcy Board of India, as he had been given to understand that settlement discussions between Mr. Gurjeet Singh Johar (Promoter of the Corporate Debtor) and the lenders of the Corporate Debtor are at an advanced stage. On 17.07.2019, C.A (AT (Insolvency) No. 249/2019 and C.A No. 455 of 2019 were taken up for consideration before the Hon'ble Appellate Tribunal, whereat further time was granted, as requested by the Appellant to settle the matter under section 12A of IBC, 2016. The

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matter was held up until **13.08.2019**. Extract of the Order dated **17.07.2019** by Hon'ble NCLAT in is given below:

*"Learned counsel for the Appellant submits that the 'Committee of Creditors' has now been constituted in violation of the provisions of the Insolvency and Bankruptcy Code, 2016. However, the Appellant is given time to negotiate with all the Financial Creditors', 'Operational Creditors' to settle the matter and to place the same before the 'Committee of Creditors' for appropriate order under Section 12A of the I&B Code'.*

*On the request of the counsel for the Appellant, we adjourn these appeals.*

*Post these appeals for orders' on 13th August, 2019.*

- On **14.08.2019**, initial CIRP period of 180 days came to an end as per section 12 of IBC. Thereafter, on **20.08.2019**, **I.A No. 2344 of 2019** was taken up for consideration by the Hon'ble Appellate Tribunal wherein the Hon'ble Tribunal disposed of the **I.A No. 2344 of 2019** filed by the Applicant RP seeking extension of time for CIRP process while observing that the exclusion would be considered along with the disposal of the appeal but without appreciating that 180 days had ended on **14.08.2019**. Order dated **20.08.2019** is extracted below:

**20.08.2019** The question of exclusion of any time, if so required, may be considered at the time of the final order as may be passed in the Company Appeal.

I.A. No. 2344 of 2019 stands disposed of.

Let the appeal be listed on **2nd September, 2019**, as ordered earlier.

- On **26.08.2019**, a Civil Appeal, **7244 of 2019** was preferred by the RP before the Hon'ble Supreme Court, in respect of the aforementioned impugned order dated **20.08.2019**, on the ground that the RP was no longer able to function as the **I.A No. 2344 of 2019** had been disposed of without any effective order or directing the RP to continue, since the period of 180 days as prescribed under

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Section 12 of the IBC, 2016 had elapsed. On **13.09.2019**, the above-mentioned Civil Appeal **7244 of 2019** was taken up by the Hon'ble Supreme Court for hearing where an order was passed requesting the Hon'ble Appellate Tribunal to modify their order in accordance with the prayer. **Order of Hon'ble SC dated 13.09.2019** is extracted below:

*"Permission to file the appeal is granted. In view of the order of the National Company Law Appellate Tribunal (NCLAT), the IRP cannot function any further. In case an application is filed by IRP before the NCLAT for modification of the interim stay, we request the NCLAT to take up the matter and/or to finally decide the same within one month. In view of the above, the appeal is disposed of."*

- On **30.09.2019**, the Applicant herein had preferred an Application, **I.A No. 136084 of 2019**, dated **30.09.2019**, before the Hon'ble Supreme Court in **C.A No. 7244 of 2019** for rectification of above-mentioned order dated **13.09.2019**, in **C.A No. 7244 of 2019**, passed by this Hon'ble Supreme Court. The above-mentioned Application was taken up for hearing by the Hon'ble Supreme Court on **25.10.2019** whereat the Hon'ble Supreme Court directed that the words "interim stay" be read as "interim order" and accordingly disposed of the Application. Order of Hon'ble Supreme Court dated **25.10.2019** is extracted below:

*"As prayed, in the order dated 13.09.2019 passed in C.A. No.7244/2019 the words "interim stay" be read as "interim order". The application is, accordingly, disposed of."*

- **C.A No. 249/2019, C.A No. 455/2019** along with the interlocutory **I.A. No 1380** (filed by IRP for execution (exclusion) of certain periods) & **I.A. No. 3049 of 2019** (filed by employees of Corporate Debtor) were taken up for consideration on **11.11.2019** by Hon'ble NCLAT whereat **Mr. Gurjeet Singh Johar** withdrew the C.A No. 249 of 2019 and C.A No. 455 of 2019. The Hon'ble Appellate Tribunal expressed its inability to entertain the aforesaid I.As in view of the main appeal having being withdrawn





- On **26.08.2019**, 4<sup>th</sup> meeting of COC resolved for publication of invitation of expression of interest and the same was published in prescribed form on **03.09.2019 and 04.09.2019**. On **22.10.2019**, final list of Prospective Resolution Applicants was circulated by the Resolution Professional after clearing all observations made by CoC. On **18.11.2019**, an additional prospective resolution applicant was permitted by the CoC to participate, and added to the final list. On the same day, RP sought exclusion of time period of 125 days from **14.03.2019 to 17.07.2019 due to pending litigation, which was granted by extending the CIRP until 11.01.2020 by this Adjudicating Authority vide order dated 26.11.2019.**
- In the 7<sup>th</sup> COC Meeting held on **18.12.2019**, a resolution plan from **M/s NORTH SQUARE PROJECTS PRIVATE LIMITED (RA) was received.** In 8<sup>th</sup> Meeting of Committee of Creditors held on **24.12.2019**, it was discovered that the bid bond submitted along with the above stated resolution plan was for an amount of INR 25 Lakhs instead of INR 2 Cr as required under the request for the Resolution Plan issued to the Resolution Applicant. Hence, the representative of the RA was requested to inform the members of the Committee of Creditors by **27.12.2019** if the RA would be able to submit a bid bond of the appropriate amount as provided under the RFRP.
- Meanwhile, on **07.01.2020, an application bearing no. C.A No. 255 of 2020** was preferred by the Applicant/RP before this Hon'ble Tribunal, seeking extension of time for a period of 45 days, beyond 330 days for the Corporate Insolvency Resolution Process on the ground of receipt of a resolution plan that requires further deliberation and to simplify the eligibility criteria for the prospective Resolution Applicants. The aforementioned relief was granted vide order dated **15.01.2020**. The 11<sup>th</sup> COC meeting held on **24.02.2020** requested the RP to seek another extension for further 45 days on the ground that COC had not received a resolution plan and therefore the members of CoC need time to consider the above mentioned settlement proposal received from the promoters/directors of the Corporate Debtor. Therefore, RP moved an **IA 1586/2020** for seeking





extension of time period for further 45 days which was granted vide Order dated **19.08.2020** by this Adjudicating Authority Further, in 10<sup>th</sup> COC meeting held on **13.02.2020**, it was agreed that suspended promoters of the Corporate Debtor would be proposing a plan for settlement and withdrawal of CIRP process under Section 12 A of IBC, 2016.

- On **02.09.2020**, Request for Resolution Plan ('RFRP') was reissued by the RP to all the PRAs forming part of the final list pursuant to the approval of CoC to allow final opportunity to the PRAs appearing in the final list to which one of the PRAs, namely, **RPP Infra Projects Limited (hereinafter referred as 'RPPPL')** responded positively and deposited the bid bond guarantee of **INR 25 Lacs** on 04th Sep 2020 to start the due diligence process. In the 16<sup>th</sup> COC meeting held on 17.09.2020, a final opportunity was provided to the PRA to submit the resolution plan by 05th Oct 2020. On **05.10.2020**, Resolution Plan was submitted by the **PRA, RPPPL and a revised Resolution plan** was received by the Applicant/ RP from the prospective resolution applicant, RPPPL on **30.10.2020**. Further, State Bank of India, vide email dated 21.11.2020, had appointed one **M/s Resurgent India Limited** as the advisor for carrying out the Techno Economic Viability on behalf of Committee of Creditors. Thereafter, the Resolution Plan submitted by RPPPL was put to vote before the members of the COC for consideration.

- In the 23<sup>rd</sup> COC meeting held on 15.02.2021, members of CoC, considering the receipt of revised 12A proposal from the erstwhile Directors and Promoters of the Corporate Debtor and that additional time is required to deliberate upon the resolution plan submitted by prospective resolution applicant, i.e., RPPPL requested the RP to file the application seeking an extension of 30 days. In view of the above resolution, voting timeline also stood extended till 03.03.2021. Hence **LA No. 1142 of 2021** was filed before the Hon'ble Adjudicating Authority seeking an extension of CIRP timeline with effect from **17.02.2021 to 18.03.2021**. The extension was granted vide order

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dated **09.03.2021** by Hon'ble NCLT thereby granting an extension of CIRP period with effect from 17.02.2021 to 18.03.2021.

- Finally, on **26.03.2021**, voting upon the resolution plan had concluded. The Resolution Plan had been rejected by COC with a majority of 72.49%. A copy of Voting results for the Resolution plan presented by RA(RP/PL) has been annexed as Annexure-52 in the liquidation application.
- Further, in the 25<sup>th</sup> COC meeting, it considered the aspect of liquidation, sale of the Corporate Debtor as a going concern, liquidation costs, and the appointment of the Resolution Professional as the Liquidator.
- It is submitted by the Applicant /RP as per the 25<sup>th</sup> COC Meeting's minutes that there was a discussion on estimated liquidation expenses and creation of a corpus. After deliberations, it was concluded that contribution to the liquidation costs shall be made by the financial creditors in accordance with the provisions of the Regulation 2A of the Liquidation Regulations. It was decided that as per the estimates, no separate corpus was required to be formed by the CoC members. Copy of the minutes of the meeting held on 05.04.2021 is annexed as **Annexure A 53(colly)** to the Liquidator's application.
- Hence, the RP has filed an application under section 33(1) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.

**5. Brief Submissions on behalf of Applicant (Mr. Gurjeet Singh Johar) in IA 2164/2021 are as follows:**

- Applicant submits that after commencement of CIRP, an appeal was preferred against the Admission of CIRP. A proposal for settlement was made by Applicant to Financial Creditor and the Hon'ble NCLAT vide its order dated 14 March 2019 gave an opportunity to promoters to settle the claims and Hon'ble NCLAT stayed the constitution of COC. However, on 30.05.2019, the stay on the formation of COC was vacated. However, Applicant continued all efforts to settle the matter.

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- Applicant further submitted that on July 17, 2019, Hon'ble NCLAT gave further time to the Applicant to settle the matter. The Copy of the NCLAT order dated 17.07.2019 is annexed as Annexure B in Application 2164/ 2021.
- Further, on **11.11.2019**, appeal against the Admission order was withdrawn by the Applicant in order to settle with the creditors of the Corporate Debtor in accordance with Sec 12A of the IBC, 2016. Hon'ble NCLAT vide order dated **11.11.2019 disposed of the Appeal giving liberty to promoters to move in terms of Sec 12A of IBC. Order of the NCLAT is annexed as Annexure D.**
- It is further submitted by Applicant that their settlement proposal was circulated by promoters for consideration of COC and it had been informed by COC members that they are internally reviewing the settlement proposal. Applicant further submitted that the last date of submission of the Resolution Plan was extended many times and in the 10<sup>th</sup> meeting of the COC held on **13<sup>th</sup> Feb 2020**, COC noted that no resolution plan was received for the CD. In the said COC meeting, Applicant made a proposal and offered to explore and suggest a definitive course of action under the ambit of Sec 12A. Thereafter, in the 11<sup>th</sup> COC meeting, applicant presented a settlement plan submitted to FC via email dated **23.02.2020**.
- Thereafter, various rounds of submission of revised settlement proposal on the request of the COC took place. Applicant further submits that on 5<sup>th</sup> Oct, 2020, RPPPL (RA) submitted a resolution plan and in the 18<sup>th</sup> COC meeting, COC noted that in order to weigh and make an informed decision through comparison and assessment of settlement proposal of promoters and option of liquidation, another extension for 30 days was sought be the RP. Also Pursuant to 18<sup>th</sup> meeting of COC, SBI, one of the lead bank appointed an advisor to undertake Techno Economic Viability (TEV) for comparison and evaluation of both Resolution plan and Settlement proposal.
- It is further submitted by the Applicant that despite having incorporated the suggestions and comments of the COC members in the settlement proposal, RP did not put the settlement proposal for





voting before COC. It is further submitted by the Applicant that the resolution plan was rejected by the COC. Applicant wrote an email to the COC to urge the COC members in view of the COC already having agreed to consider the 12A settlement proposal.

- It is the submission of the Applicant that members of the COC recorded a voice vote and by 90.58% votes in the affirmative, the COC decided to take up discussion on the 12A proposal as agenda item 5A at the 25<sup>th</sup> COC meeting. However, the RP has sought to file an application seeking direction of liquidation of the Corporate Debtor. It is the contention of the Applicant that neither any opinion/views of COC have been considered by RP before filing an application nor any such agenda proposing liquidation was placed. In fact, the COC expressed its inclination to consider the 12A settlement proposal submitted by the Applicant.

- It is further submitted by the Applicant that the members of the COC, the promoters and all stakeholders would be at loss. The liquidation value disclosed to the COC of the CD is ₹ **355.17 crore** only and the plan submitted under Section 12A of the IBC is far superior to the liquidation value. It is further submitted by the Applicant that RP has acted contrary to the intent and spirit of the Code which clearly gives paramount importance to resolution of the Corporate Debtor and provides for liquidation as the last resort. Further Applicant submits that this abrupt action of the RP requesting for liquidation of the Corporate Debtor would result in termination of the ongoing contracts of the Corporate Debtor (including its Myanmar project which is a project with implications linked to India's strategic security aspirations) on account of ipso facto clauses in these contracts linked to liquidation of the Corporate Debtor. Such an event will not only lead to deterioration in value for the Creditors and the stakeholders but also be detrimental to national interests.

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6. We have perused the application and submissions of the Applicant/RP in the matter. On perusal, it is found that from time to time various extensions and exclusions of CIRP period were granted by this Adjudicating Authority as well as other authorities for the success of IBC process. Many a time, the extension for CIRP period was sought on the ground that COC wishes to consider the settlement proposal under Sec 12A proposed by promoters of the CD. The same fact of consideration of the settlement proposal has been recorded in the COC meetings. But ultimately COC resolved to go for the liquidation of the Corporate Debtor. We are highly disappointed with the attitude of the COC in taking extensions from time to time for the sake of considering the settlement proposal. Everytime, they (COC members) asked for the revised settlement proposal for which the Applicant (**Mr. Gurjeet Singh Johar**) in **IA 2164/2021** submitted that even after the 25<sup>th</sup> COC Meeting (the last COC meeting before this application for liquidation is moved) he has continued to engage with the COC members and submitted all required clarifications. We are of the opinion that these extensions on the ground of settlement proposal were not required rather it led to a sheer wastage of judicial time as well as of CIRP Period. To add insult to injury the public perception of delay is attributed to the Adjudicating Authority.

7. The issue of inordinate delays in disposing off the Applications under IBC, 2016 keep on simmering. Media Journals and reports from authorities are always raising concern about the delay in IBC proceedings before the NCLT. All the NCLT benches face the same problem, that the delay in disposing of the multiple applications filed just for the asking with no good reasons causes great stress on NCLT. In the instant case at hand, we are highly disappointed with the conduct of the COC and how they have dealt with the CD. Our endeavour is towards speedy disposal of the cases and to curb dilatory practices adopted by parties. It is true that during Covid times, this Adjudicating Authority had somewhere given relaxations, extensions, exclusions and condoned the delay in completion of the IBC proceedings, be it CIRP period, Liquidation period etc. But now





time has come when this Adjudicating Authority has to take firm decisions regarding all the stakeholders involved in the IBC proceedings. It is high time that all the concerned involved ought to follow the stipulated timelines provided in the Code for effective implementation of scheme of the Code i.e value maximization. It is an established fact that with time the value of money depreciates which has an overall adverse effect on the assets of the Corporate Debtor which in turn adversely impact all the stakeholders involved be it Financial Creditors, Operational Creditors, Employees or Other Government Authorities. One of the most important feature of this newly evolving Insolvency and Bankruptcy Code is the resolution of the distressed CDs in a time bound manner. Timely completion of proceedings in IBC shall help in achieving the object underlying the code in a more efficient and effective manner.

8. As far as the consideration of proposal by promoters is concerned and the contention of the Applicant (**Mr. Gurjeet Singh Johar**) that "COC expressed its approval for consideration of 12A proposal and that "neither any opinion of COC is considered by RP before filing the liquidation application nor any agenda proposing liquidation was placed" is totally misconceived. In the Minutes of the **25<sup>th</sup> COC meeting** dated **05.04.2021**, in item no 5 it is clearly mentioned that "**Agenda of Section 12A is only to "discuss" and limited to "discussion only"** and **should not be construed/understood/perceived as any permission being granted by chair for any other purpose in context of Section 12A."** Rather Agenda in Item 5 "The COC is requested to consider the way forward including initiation of Process for Liquidation of the Corporate Debtor in accordance to Section 33(1)(A) of the Code" is taken up to discuss the way forward.

9. On perusal of the 25<sup>th</sup> COC meeting, we found that, a proper resolution for liquidation of CD was not passed. Only the aspect of liquidator fees, creation of the corpus to pay the liquidation expenses etc. were taken up. But the RP has submitted that he had preferred this application under section 33 "in view of the expiry of the CIRP on **17.04.2021**" and "**in view of the rejection of the Resolution plan**". BE THAT AS IT MAY, in

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the background of multiple rounds of appeals and extensions in the instant case, the fact is that already a lot of time has elapsed since the CD has been admitted into CIRP, and the provision of Section 33(1)(a) of the is attracted. Relevant provision under Section 33 is extracted below:

**Section 33: Initiation of Liquidation**

**33. (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;
  - (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.

since the CIRP Period has expired and this Adjudicating Authority has not received resolution plan under Section 30(6), then Liquidation of the Corporate Debtor has to follow. There is no other alternative, perceivable or viable. We are therefore inclined to **ALLOW** the present application for Liquidation.

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**ORDER**

10. In view of above, the application bearing **IA (IB) No. 2164/2021** by **Gurjeet Singh Johar** is hereby **REJECTED** and the application (**IA-2235/2021**) by **RP** is **ALLOWED** by ordering **Liquidation of the Corporate Debtor, namely M/s C & C Constructions Limited.**

- i. Prayers as sought for in **I.A. (IB) No. 2235/2021** filed by **Mr. Navneet Kumar Gupta, RP of M/s C&C Constructions Limited**, the Corporate Debtor, is **ALLOWED** and the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code
- ii. The Order of Moratorium passed under Section 14 of the IBC shall cease to have its effect and a fresh Moratorium under Section 33(5) of the IBC shall commence;
- iii. The Applicant/Resolution Professional, **Navneet Kumar Gupta** has agreed to act as liquidator to carry on the process of liquidation in terms of section 34(1) of the Code and his written consent is annexed at **Page no 2936 (Volume 16)** of the Liquidation Application. He has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, which is valid till **24.01.2023**. **Mr. Navneet Kumar Gupta, Reg. No. IBBI/IPA-001/IPP00001/2016-17/10009** is hereby appointed as Liquidator as provided under section 34(1) of the Code.
- iv. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. He is to be strictly informed that he should not delay the process any further. He will maintain timelines.
- v. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, in Financial Express (English), all India edition, Dainik Bhaskar (Hindi), all India edition and Website / Portal maintained by the Insolvency and Bankruptcy Board of India stating that the Corporate Debtor is in liquidation.

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- vi.** All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- vii.** The personnel of the Corporate Debtor are directed to extend all assistance and full co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor. They will do so without demur and promptly.
- viii.** 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 Code read with its proviso.
- ix.** In accordance with section 33(7) of the Code, 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 to be continued during the liquidation process by the Liquidator.
- x.** 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 and seek and get assistance from all persons connected with Company in liquidation.
- xi.** The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law in a time bound manner.
- xii.** The Liquidator shall submit 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. He shall refrain from filing frivolous, time consuming applications. All steps to speed up the liquidation proceedings to be taken by the Liquidator. If there is any deliberate delay in action and if there is inaction causing loss of value of Liquidation

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Estate and unnecessary expenditure, he will be subject to appropriate action as per law including removal.

- xiii.** In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, NCT of Delhi & Haryana i.e. within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Insolvency and Bankruptcy Board of India.
- xiv.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xv.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**LIST THE MAIN CP (IB) NO. 1367(PB)/2018 FOR REPORTING  
PROGRESS ON 23<sup>rd</sup> December, 2022**

*sd*

(RAMALINGAM SUDHAKAR)

PRESIDENT

*sd*

(AVINASH K. SRIVASTAVA)

MEMBER, TECHNICAL



*sd*  
13/10/2022

सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अदिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-1, 11003