

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**CA- 516(PB)/2019 in**  
**C.P. NO.IB-37(PB)/2018**

**IN THE MATTER OF:**

Dinesh Chand Jain & Ors.

....Financial Creditor(s)

vs.

Fantastic Buildcon Pvt. Ltd. & Ors.

....Corporate Debtor

**AND IN THE MATTER OF:**

Mr. Om Prakash Vijay  
Resolution Professional  
For Fantatstic Buildcon Pvt. Ltd.

..... Applicant

**SECTION: Under Section 33 of the Insolvency and  
Bankruptcy Code, 2016**

**Order delivered on:. 02.07.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**SHRI S.K. MOHAPATRA**  
**Hon'ble Member (Technical)**

**PRESENTS:**

For the Applicant : Mr. Krishna Kumar, Ms. Srujana Suman  
Mund, Advs.  
Mr. Om Prakash Vijay, RP in person

For the Respondent : Mr. Rakesh Kumar, Mr. P.K. Sachdeva & Ms.  
Chetna Bisht, Advs. For ex-directors



**ORDER**  
**M.M.KUMAR, PRESIDENT**

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, Fantastic Buildcon Private Limited.
2. Facts in brief are that the financial creditor(s), Dinesh Chand Jain 7 Ors. had filed a petition bearing no. IB 37(PB)/2018 under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 13.06.2018 and Mr. Om Prakash Vijay was appointed as Interim resolution Professional (IRP).
3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the said Interim Resolution Professional made a public announcement in FORM-A on 20.06.2018 in two newspapers namely Business Standard and Rastriya Sahara (Annexure

B). As per Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 public announcement was also duly uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. In pursuance of the public announcement made the IRP received various claims and Committee of Creditors was constituted. List of the claims received along with the details of the members was filed before the Tribunal vide diary no. 4380 on 06.07.2018 and the same was taken on record.
5. During the pendency of CIRP process the ex-director of the Corporate Debtor challenged the admission Order before the National Company Law Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 317 of 2018 and vide an order dated 09.08.2018 the Hon'ble Appellate Tribunal dismissed the appeal (Annexure D). Subsequently the ex-director of the Corporate Debtor filed an appeal before the Hon'ble Supreme Court in Civil Appeal No. 9105 of 2018 and vide an order dated 24.09.2018, the Hon'ble Supreme Court dismissed the appeal (Annexure E).



6. In the meeting of Committee of Creditors (for brevity 'CoC') held on 13.07.2018 the IRP was confirmed to function as Resolution Professional (RP).
7. On a perusal of the minutes of the second meeting of CoC dated 30.07.2018, it can be made out that the IRP had appointed two registered valuers namely Mr. Anil Saxena and Mr. Sachin Goel to determine the liquidation value of the corporate debtor.
8. As per the Evaluation Matrix approved by the committee of creditors, the resolution professional invited the prospective resolution plan applicants to submit resolution plan by publishing Expression of interest in FORM-G in two newspapers namely Business Standard (English Edition) and Rastriya Sahara (Hindi Edition) on 27.08.2018 (Annexure I).
9. Pursuant to the publication, the Resolution Professional did not receive any Expression of interest till the last date and with the approval of the CoC, the last date to for receiving expression of interest and submitting rcsolution plan was further extended. A fresh notice was issued by way of

publication in two newspapers of wide circulation (Annexure J).

10. Pursuant to the same, the Resolution Professional did not receive any resolution plan. In order to give effect to the resolution of the corporate debtor the Resolution Professional filed an application bearing No. CA-1170(PB)/2018 under Section-12(2) of the Code seeking a further extension of 90 days beyond 180 days. The Tribunal vide order dated 14.11.2018 extended the time period of CIR process by 90 days.

11. Thereafter, the RP prepared a revised Information Memorandum and Resolution Plan Document (RPD). Further with the approval of the CoC, the Expression of interest was again invited by publishing FORM-G in two newspapers namely Business Standard (English Edition) and Rastriya Sahara (Hindi Daily) on 01.11.2018 (Annexure K).

12. The RP also averred that even after carrying out a fresh newspaper publication for the third time, he did not receive any resolution plan.

13. That the CIRP period of 270 days in the present matter came to an end on 10.03.2019 and in the absence of any successful Resolution Plan the CoC in its 16<sup>th</sup> meeting dated 06.03.2019 (Annexure P) unanimously passed the following resolution:

*1. "RESOLVED that an application to be filed before the Adjudicating Authority under the provision of Section 33(1)/33(2) and other applicable provisions of the Insolvency & Bankruptcy Code, 2016 and rules/regulations framed thereunder, in respect of Fantastic Buildcon Pvt. Ltd. (Corporate Debtor) for approval of the Liquidation proceedings of the corporate debtor as no resolution plan has been received by the RP."*

14. The bold objection raised by the non-applicant with regard to the appointment of RP as Liquidator in the present case is without any substance. The precise objection is that the RP is a person chosen by the financial creditor and in other words such an RP may tend to be biased. Under the Code a financial creditor is entitled to name an IRP who can be confirmed as RP. There are statutorily recognized grounds



which constitute the basis for removing an RP to act as a Liquidator. As per Section-34(4) of the Code the first such ground for replacing an RP is when the Adjudicating Authority finds that the resolution professional if the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; secondly the Board (IBBI) recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing or thirdly the resolution professional fails to submit written consent under sub-section 1 of section 34. In the present case no such ground exists to replace the resolution professional. Moreover there is no factual foundation laid to conclude that RP has acted in a biased or unfair manner so as to endanger the fair disposal of liquidation process Hence the argument raised is not acceptable in law or facts and the same is hereby rejected.

15. In the factual background and in the absence of any resolution plan and for want of time beyond statutory CIRP period; there is no other alternative but to order a for



liquidation of the corporate debtor under Section 33 of the Code (as recommended by the required majority decision of the CoC).

16. The Resolution Professional has submitted its written consent by filing an affidavit, in Form AA under the Code, to act as Liquidator in the present case (Pages 106-107).

17. As a result the application is allowed by ordering liquidation of the corporate debtor, namely Fantastic Buildcon Pvt. Ltd. in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

- a.** Mr. Om Prakash Vijay, Resolution Professional holding registration no. IBBI/IPA-001/IP-P00491/2017-18/10879 is appointed as Liquidator in terms of Section 34(1) of the Code;
- b.** Mr. Om Prakash Vijay is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;





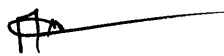
- c.** The Registry is directed to communicate a copy of this Order to the Registrar of Companies, NCT of Delhi & Haryana to and to the Insolvency and Bankruptcy Board of India to update its information and website;
- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e.** 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 and in accordance with the relevant regulations.
- f.** It is seen that Resolution Professional has filed an Application bearing No. CA 857(PB)/2018 seeking appropriate directions for avoidance of certain transactions entered into by the promoters and directors of the corporate



debtor involving huge financial stakes. The said CA – 857PB)/2018 was reserved for orders by the Tribunal before an application under Section 33(1) was adjudicated upon. In this regard, Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section-35(1) of the Code read with relevant Rules & Regulations and the same be disposed of during the process of liquidation.

**g.** The liquidator shall also follow up the pending company applications and file its response for disposal of pending CAs during the process of liquidation.

**h.** 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.



i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

j. C.A.-857(PB)/2018 and C.A. 516(PB) /2019 filed in IB 37(PB)/ 2018 is disposed of in the aforesaid terms.

*Sd/-* \_\_\_\_\_  
**(M.M.KUMAR)** 02.07.2019  
**PRESIDENT**

*Sd/-*  
**(S.K. MOHAPATRA)**  
**MEMBER (TECHNICAL)**

Pronounced under Rule 151 of the NCLT Rules as MEMBER (TECHNICAL)  
SH. S.K. MOHAPATRA is not holding Court today.

*Nirmala Vincent*  
**Nirmala Vincent**  
**( Court Master)**

02.07.2019  
VIDYA