

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

MA 681/2017 in C.P.NO.67/I&BP/2017

Under Section 33(1)(a) of IBC, 2016

C S Rohit Jain ... Applicant  
Interim Resolution Professional

In the matter of

Gupta Corporation Private Limited

.... Corporate Debtor

Order delivered on 1.2.2018

Coram: Hon'ble M. K. Shrawat, Member (J)  
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant : Ms. Gaurangi Patil, Advocate for IRP, i/b G P & Associates

For the Respondent: Mr. Ashish Pyasi, a/w Mr. Umang Thakar, Advocates,  
i/b Dhir & Dhir Associates.

*Per V. Nallasenapathy, Member (Technical)*

**ORDER**

1. It is an application filed by the Interim Resolution professional seeking a liquidation order of the Corporate Debtor on the ground that Committee of Creditors has not approved any Resolution Plan as provided under Section 33 of the Insolvency and Bankruptcy Code, 2016.
2. The Corporate Debtor made a petition for initiation of Corporate Insolvency Resolution process under Section 10 of the Code and an admission order was passed by this Adjudicating Authority on 3.4.2017 wherein moratorium was declared under

Section 14 of the Code and appointing CS Rohit Jain as Interim Resolution Professional.

3. The applicant says that First meeting of COC was held on 11.5.2017 at Nagpur, wherein 12 Financial Creditors attended the meeting. In the said meeting only resolution regarding Insolvency Resolution cost was approved by the COC, wherein the remaining two resolutions pertaining to appointment of IRP as RP and authorising IRP for debit transactions without permission of the COC, were rejected.

4. The Second COC meeting was held on 16.9.2017 at Nagpur wherein the IRP circulated the valuation reports given by the Valuers. The Valuation Report submitted by S. J. D & Co. had given a valuation of Rs.175.90 crores and the Valuation Report submitted by M. Y. Shastri & Co. gave a valuation of Rs.169.81 crores. In this COC meeting due to inclusion of one more Financial Creditor, i.e. State Bank of India, the number of Financial Creditors rose to 13 in number from 12 in number. The following are the details of the financial creditors as disclosed by the Interim Resolution Professional:

Sr. No.	Name of the Creditors	Amount (in crores)	Voting Rights (%)
1.	Bank of India	974.68	29.30
2.	IDBI Bank	581.50	17.48
3.	Punjab National Bank	530.20	15.94
4.	Allahabad Bank	278.92	8.38
5.	Indian Overseas Bank	213.65	6.42
6.	Union Bank of India	166.08	4.99
7.	Vijaya Bank	89.27	2.68
8.	ICICI Bank Ltd	97.68	2.94
9.	L&T Infrastructure Finance Co. Ltd.	79.70	2.40
10.	Axis Bank	96.87	2.91
11.	State Bank of India	89.16	2.68
12.	Tata Capital Financials Services Ltd.	85.06	2.56
13.	Reliance Capital Limited	43.79	1.32
	TOTAL	3326.56	100

5. One Mr. Rajeev Sawangikar, Financial Advisor of Corporate Debtor attended the Second COC meeting with the permission of Interim Resolution Professional. Mr. Rajeev Sawangikar proposed the amalgamation of five group companies of



Gupta Group viz. Gupta Corporation Private Limited, Gupta Coal India Pvt. Ltd., Gupta Energy Pvt. Ltd., Gupta Global Resources Pvt. Ltd. and Indo Krishna Green Fields Ltd. The COC rejected the said proposal as it was not proposed as a Resolution Plan. The COC approved the appointment of Resolution professional, extension of Corporate Insolvency Resolution period by 45 days with effect from 1.10.2017, appointment of advocate for COC, obtaining new valuation report and calling of COC at shorter notice.

6. The applicant further says that the first 180 days of Corporate Insolvency Resolution Process came to an end on 30.9.2017, the subsequent extension of the period for 45 days granted by this Adjudicating Authority also ended on 14.11.2017. Since no resolution plan has been received by the IRP, he submits that the Corporate Debtor is to be liquidated as required under Section 33 of the Code.

7. Even though an application for appointment of Mr. Ramesh Sarogi as Resolution professional, as approved by the Committee of Creditors in the meeting on 16.9.2017 was filed before this Bench, no orders was passed on that Application, however, it was informed that the said Mr. Ramesh Sarogi is not interested in taking up the assignment. Now, the Interim Insolvency Resolution Professional C S Rohit Jain prays this Bench to appoint him as the Liquidator of the Corporate Debtor. However, this request cannot be considered by this Bench in view of the fact that the COC in its first meeting held on 11.5.2017 rejected the proposal to appoint him as Resolution Professional, and in fact, in the Second COC held on 16.9.2017 resolved to appoint the said Mr. Ramesh Sarogi as Resolution professional subject to the approval of the IBBI. In this circumstance this Bench is unable to consider the request of the Interim Resolution Professional for his appointment as Liquidator.

8. In view of the fact that no approved resolution plan has been filed before the Adjudicating Authority as contemplated under Section 31 of the Code, this Bench initiates liquidation against the Corporate Debtor as envisaged under Section 33 (1)(a) of the Code, accordingly, this Bench orders

- a. 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.

- b. that the applicant herein is hereby directed to act as a Liquidator, until new liquidator is appointed on the recommendation of IBBI.
- c. 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.
- d. 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.
- e. that the Liquidator will charge fees for 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 proceeds of the liquidation estate under Section 53 of the Code.
- f. 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.
- g. This liquidation order shall be deemed to be 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.
- h. The IBBI is directed to propose the name of another insolvency Professional to be appointed as a Liquidator. The Registry is directed to follow up with the IBBI and post this matter for appointment of Liquidator on receipt of proposal from IBBI.

9. This interim arrangement shall remain in operation upto the appointment of a Liquidation by IBBI, who shall take over from the stage the charge is handed over by the present liquidator.

10. The Registry is hereby directed to post this matter after receipt of reply from IBBI.

Sd/-  
V. NALLASENAPATHY  
Member(Technical)

Sd/-  
M.K. SHRAWAT  
Member (Judicial)