

**THE NATIONAL COMPANY LAW TRIBUNAL  
COURT V, NEW DELHI**

**I.A. 6248/2023  
IN  
COMPANY PETITION NO. (IB) – 38/ND/2020**

*Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions.*

**IN THE MATTER OF:**

**RAJEEV LOCHAN**

Resolution Professional  
of Jain Timber Co Private Limited

**.... Applicant**

**AND IN THE MATTER OF**

**JAIN TIMBER CO PRIVATE LIMITED**

**...Corporate Applicant**

**MEMO OF PARTIES**

**RAJEEV LOCHAN**

Resolution Professional  
IP Regn. No: IBBI/IPA-002/IP-N00606/2018-2019/11885  
AFA Valid till 02.10.2024  
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**... Applicant/ Resolution Professional**

**Order Delivered On: 25.09.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**  
**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant:** Mr. Sandeep Bhuraria, Ms. Nishtha Grover,  
Advs. for Union Bank Mr. Shivam Gautam  
for RP/Applicant

**ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. This is an application filed by the Resolution Professional, Mr. Rajeev Lochan, under Section 33 read with Section 34 of the Insolvency and Bankruptcy Code, 2016 ("Code/IBC") read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"), for issuance of directions for liquidation of Corporate Debtor, i.e., Jain Timber Co Private Limited.
2. The facts in brief stated in the application is as under: -
  - a) The Applicant submits that this Adjudicating Authority vide its order dated 04.08.2023 had initiated the Corporate Insolvency Resolution Process against Jain Timber Co Private Limited ('Corporate Debtor') in CP IB-38/ND/2020, being an application filed under Section 10 of the IBC and appointed Jain Timber Co Private Limited as the Interim Resolution Professional of the Corporate Debtor who was later confirmed as the Resolution Professional of the Corporate Debtor in the 1<sup>st</sup> CoC meeting held on 07.09.2023.
  - b) The Applicant submits that the Applicant in compliance of the Section 15 of the

Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 made public announcement in Financial Express (English Edition) and Jansatta (Hindi Edition) on 13.08.2023.

- c) The Applicant submits that the claims of Rs. 29,48,52,440 have been admitted till date out of the total claims of Rs. 29,48,52,440. The CoC comprises of the sole Financial Creditor, Union Bank of India with 100% of voting power.
- d) Applicant further submitted that the Committee of Creditors ("CoC") in its first meeting dated 07.09.2023 optioned that there were no assets owned by the Corporate Debtor and the same was confirmed by Mr. Pardeep Jain (Suspended Board of Directors) and accordingly the committee of creditors sought an asset tracking report from an independent consultant.
- e) Applicant submitted that after the receipt of asset tracking report from the independent consultant, the Applicant has called the second meeting of Committee of Creditors which was held on 31.10.2023, wherein the Committee of Creditors with 100 % of majority has resolved to liquidate the Corporate Debtor under the provisions of Section 33 of IBC and the Applicant being the Resolution Professional of the Corporate Debtor to act as a Liquidator of the Corporate Debtor.

3. It is observed that pursuant to the above stated facts and circumstances, the Applicant has preferred the present application for passing the order of Liquidation of the Corporate Debtor in terms of the provisions enumerated under Section 33(2) of the IB Code, 2016 and to appoint Mr. Rajeev Lochan as the Liquidator in the matter.

4. Section 33(2) of the Code provides that the Adjudicating Authority shall pass an order for liquidation of the Corporate Debtor, if the CoC by more than 66% (Sixty-Six Per Cent) of votes passes the resolution for liquidation. In the present case, the CoC with 100% (One Hundred Per Cent) has approved the liquidation of Corporate Debtor.

5. This Tribunal has gone through the application filed by the Applicant / Resolution

Professional, the present application is filed under section 33(2) of the Insolvency and Bankruptcy Code, the relevant extract of the section is reproduced as under: -

**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 fasttrack 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; or

(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.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

6. Further, in the matter of **Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT): MANU/NL/0788/2022**, the Hon'ble NCLAT in para 7 has stated as under: -

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and***

*before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. **CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant.** However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.*

7. In light of the above judgment, the CoC in the legislative scheme is empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The aforesaid resolution was approved by the members of COC unanimously with 100% voting shares, in its 2<sup>nd</sup> meeting held on 31.10.2023. It is well settled that decision taken by the CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority. Further, the resolution for liquidation of the Corporate debtor was approved by COC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC. Moreover, it is observed that no asset of the Corporate Debtor has been found.
8. Union Bank of India being the sole member of the Committee of Creditors ("CoC") of Jain Timber Co Private Limited ("Corporate Debtor") has filed an Application i.e IA/3780/2024 proposing to appoint Mr. Shaikh Nafis Anjum as the liquidator to carry out the liquidation proceedings of the Corporate Debtor.
9. In light of the above, the application is **allowed** by ordering liquidation of the corporate debtor, namely Jain Timber Co Private Limited with following directions:

- a) This Adjudicating Authority hereby appoints Mr. Shaikh Nafis Anjum, bearing registration No. IBBI/IPA-003/IPA-ICAI-N-00211/2018-2019/12363, the address of the Liquidator is A-34 Lower Ground, Vikas Puri ,Vikas Puri, National Capital Territory of Delhi ,110018 and the e-mail id of the Liquidator is [sn.anjum123@gmail.com](mailto:sn.anjum123@gmail.com) as the liquidator to carry out the liquidation proceedings of the Corporate Debtor. The AFA of the proposed Liquidator Valid Upto 16.011.2024. The Consent certificate of the Liquidator placed on record with Application i.e IA/3780/2024.
- b) Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- c) The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d) This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e) The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f) 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.
- g) 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.
- h) 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;
- i) Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary steps;

- j) The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.
- k) Accordingly. **I.A 6248/2023 in CP(IB) 38/ND/2020** stands **allowed** and is disposed of in terms of the aforesaid terms.

Let a copy of the order be served to the parties.

**Sd/-**

**DR. SANJEEV RANJAN  
MEMBER (TECHNICAL)**

**Sd/-**

**MAHENDRA KHANDELWAL  
MEMBER (JUDICIAL)**