



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) (Liq) No. 32/KB/2024

In

Company Petition (IB) No. 236/KB/2023

***An Application under Section 33 of the Insolvency and
Bankruptcy Code, 2016.***

IN THE MATTER OF:

**Bihar E-Governance Services &
Technologies Limited**

... Corporate Debtor in CIRP.

And

IN THE MATTER OF:

**Kanchan Dutta, the Resolution
Professional of the Corporate Debtor**

... Applicant/ RP.

Date of Pronouncement: November 08, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant: Mr. Aditya Gooptu, Adv.

ORDER

Per: D. Arvind, Member (Technical)

1. The Court congregated through hybrid mode.
2. Heard the Learned Counsel Mr. Aditya Gooptu appearing on behalf of the Resolution Professional (RP) of Bihar E-Governance Services & Technologies Limited, Corporate Debtor herein.



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3. By way of the present application preferred under Section 33 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code”, RP Kanchan Dutta has sought for direction for liquidation of the corporate debtor herein and appointment of liquidator as well as the condonation of delay of one day in filing this application.

4. Facts in a nutshell is that the corporate debtor has been admitted into CIRP vide our Order dated 24.04.2024. in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (“CIRP Regulations”). The IRP issues public announcement on 26.04.2024 and the last date of submission of claim was fixed on 08.05.2024. However, no claim was received from any creditors of the corporate debtor till the last dated of submission of claim.

5. As there is no financial creditor of the corporate debtor The IRP sent the communication along with the copy of the public announcement in terms of 6A of the CIRP Regulations, 2016 to all the operational creditors as per the last available books of accounts of the corporate debtor, through email and speed post as detailed below:

SN	Name of Creditors	Status	Outstanding Amount (in Rs.)
1.	IL & FS Technologies Limited (Terracis Technologies Ltd.)	Related party	2,16,30,022
2.	Graphic Trades	Creditors	6,25,856
3.	IL & FS Ecosmart Ltd.	Related Party	4,78,100
4.	Benchmark Infotech	Creditors	1,35,499



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5.	Cybertech Software & Multimedia Pvt. Ltd.	Creditors	1,02,632
Total			2,29,72,109

6. Learned Counsel Mr. Aditya Gooptu appearing on behalf of the RP would submit that out of five operational creditors having outstanding amounting to Rs. 2.29 Crore, two creditors having outstanding amounting to Rs. 2.21 Crore have informed to the IRP that they have no outstanding from the corporate debtor. Out of remaining three operational creditors a creditor namely Graphic Trades has submitted their claim on 27.05.2024 and the remaining two creditors having outstanding amounting to Rs. 0.02 Crore, no reply has been received after communication made by the IRP.

7. Thus, in accordance with the Section 21 of the I&B Code, read with regulations 16 and 17(1) of the CIRP Regulations, the Committee of Creditors (CoC) was constituted on 20.06.2024, based on claim received from the sole operational creditor of the corporate debtor, namely Graphic Trades, as under:

SN	Name of the Creditor	Claim Amount	Claim Admitted	Security Interest	Voting %age
1.	Graphic Trades	Rs. 6,30,315/-	Rs. 6,25,856/-	Unsecured	100%

8. Learned Counsel for the RP would further submit that the IRP issued a letter on 28.05.2024 to the Commissioner of Income Tax Department, Patna intimating the initiation of CIRP of the corporate debtor. On 02.07.2024, the IT Department issued a letter stating that an outstanding demand of Rs. 2,18,440/- for A.Y. 2015-



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16 raised under Section 143(1)(B) exclusive of interest under Section 220(2) of the Income Tax Act, 1961, is pending for recovery against the assessee as per records available with office. However, no claim has been received from the IT Department till date.

9. It is contended that in the first CoC meeting convened on 27.06.2024, the CoC approved the appointment of IRP as RP. Thereafter, the RP conducted three CoC meeting on several dates i.e., on 26.07.2024, 10.08.2024 and 04.09.2024 respectively. In all the meetings, the notices were issued to the sole operational creditor/ member of the CoC to join the meeting. However, neither any response nor any explanation was received from the sole member of the CoC for non-participation in the meeting. Thus, due to lack of quorum in the CoC meetings, the meetings were called off due to non-participation of the sole CoC member. On 07.10.2024, the RP issued a letter, annexed at page 223-224, to the sole member of the CoC regarding the non-participation in scheduled CoC meetings. The RP also emphasized that due to the non-participation, RP has no alternative but to file a necessary application with this Adjudicating Authority for liquidation of the corporate debtor as mandated by the regulatory requirement. To this letter also, there was no response from the operational creditor/ sole member of CoC.

10. Mr. Gooptu Learned Counsel for the RP would argue that due to non-participation of the CoC member, the RP is facing impediments in discharging his duties as enumerated in the Code and CIRP Regulations and thus, the RP has no other option left but to file the instant application for liquidation without any resolution



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approved by the CoC. The final progress report of the RP has been annexed at pages 20-230 to the application.

11. It is submitted that the 180 days of the CIRP has ended on 21.10.2024 and thus, the applicant has sought for condonation of delay of 1 day in filing this application, which has been filed on 22.10.2024.

12. We find that the RP has issued several notices along with the agenda of meeting to the sole CoC member on 24.07.2024, 10.08.2024, 30.08.2024, 07.10.2024, for conducting the meeting but no response has been received from the CoC. We also find that the RP has attempted to conduct three meetings after the first CoC meeting, but not in a single meeting the CoC member has participated, which shows his unwillingness to continue with the CIRP and resolution of the corporate debtor.

13. We note that at page 14-15 to the application, the RP has provided the list of assets of the corporate debtor, as under:

SN	Particulars	Approximate Value
1.	Scrapped assets and old furniture and fixture lying at 'Sharman House No 15 Road No 8, East Patel Nagar, Patna 800023	Rs. 25,000/-
2.	Bank Account of corporate debtor with Indian Overseas Bank, Shastri Nagar, Patna Branch, Beltron Bhavan, Shastri Nagar, Patna-800023.	Rs. 3,52,000/-
Total		Rs. 3,77,000/-



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14. It is well-settled position of law that the objective of the Code is to resolve the insolvency of the debtor in a time bound manner though CIRP or to liquidate the corporate debtor, as expeditiously as possible to maximize the value of the assets and balancing the interest of all the stakeholders. In the present case, we would discern that there is no possibility of resolution of the corporate debtor as no stakeholders having interest in the CIRP of the corporate debtor has shown any positive willingness to cooperate with the RP and proceed further to complete the process. Thus, we find no reason to order for liquidation of the corporate debtor as the same non-cooperation will continue again and will erode the bank balance and value of the scrapped assets of the corporate debtor further to negative.

15. We find that in ***Janak Jagjivan Shah (RP) v. CoC of Rainbow Infrabuild Pvt. Ltd.*** in **Company Appeal (AT) (Insolvency) No.1406 of 2024** reported in **(2024) ibclaw.in 691 NCLAT**, the Hon'ble NCLAT has observed that the CIRP having been unsuccessful, and no liquidation order having been passed, recourse to Section 54 for dissolution of the corporate debtor, could not have been taken by the RP. the Hon'ble NCLAT laid down that when the entity, who has initiated the CIRP is not ready to proceed any further and CIRP period having already come to an end, no further steps were required in the CIRP of the Corporate Debtor and RP could have closed the matter by intimating the Registrar of Companies for striking off the name of Company from the Register of the Companies. The exact dictum of the judgment reproduced hereunder:



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“18. [...] In the present case, the Adjudicating Authority has not exercised its jurisdiction in allowing the application filed by the CD for dissolution referring to Section 54 of the IBC and Regulation 14 of the Liquidation Regulations. The scheme of the IBC clearly provides that dissolution is a step subsequent to the Corporate Debtor having been completely liquidated. In the present case, the liquidation proceedings have not been undertaken and resorting to Section 54 could not have been taken as per the scheme of the IBC. The facts of the present case indicate that CIRP has been completed without any Plan having been received, inspite of Form G published twice. The Adjudicating Authority did not pass any order for liquidation, which could have been passed under Section 33, sub-section (1). Thus, the CIRP having been unsuccessful and no liquidation order having been passed, recourse to Section 54, could not have been taken by the RP.

19. Under the Companies Act, Chapter XVIII, containing the heading “Removal of names of companies from the Register of Companies”, provides ample jurisdiction to Registrar of Companies to remove the name of a Company from Register of Companies. Section 240 empowers the Registrar, who on being satisfied by reasonable cause as mentioned in sub-clause (1) or as is covered by sub-clauses (c), (d) and (e), Registrar can strike off the name of the Company from the Register of Companies. In the present case, the RP could have intimated the Registrar of Companies for striking off the name of the Company. In the facts of the present case, where company is not carrying on any business and



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there are no assets of the Company, dissolution of the Company under Section 54, is a step, which could have been taken as per the statutory scheme of the IBC. This Tribunal's judgment in Shyson Thomas was a case where Adjudicating Authority exercising its jurisdiction has directed for dissolution by allowing the application. In the present case, the Adjudicating Authority had rejected the application, relying on the provisions of Section 54 of the IBC and Regulations 14 of the Liquidation Regulations.

*20. We have noted above that CoC has decided not to make any contribution towards the liquidation process and liquidation, hence, was not directed. In the present case, CoC consisted of sole Financial Creditor, who had initiated the CIRP against the CD. **When the entity, who has initiated the CIRP is not ready to proceed any further and CIRP period having already come to an end, no further steps were required in the CIRP of the Corporate Debtor and RP could have closed the matter by intimating the Registrar of Companies for striking off the name of Company from the Register of the Companies.***

21. In view of our foregoing discussions and conclusions, we dispose of this Appeal with following direction:

(I) The impugned order dated 11.06.2024 directing for carrying out transaction audit, is set aside.

(II) The RP may send intimation to Registrar of Companies, giving the facts and details,



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praying that Company's name be struck off
from the Register of Companies.

(III) The CIRP having come to an end and
liquidation has not been ordered, no further
steps are required to be taken by the RP. The
CIRP proceedings may be treated to be closed."

(Emphasis Added)

16. We also find that the Coordinate Bench NCLT, Bengaluru in the matter of ***M/s. Synew Steel Private Limited*** in ***I.A. No. 435/2020 in C.P. (IB) No. 96/BB/2020***, order dated 16.01.2020, has held that:

"5. In terms of Section 60 of the Code, the Adjudicating Authority shall be the NCLT having territorial jurisdiction over the place, where the registered office of corporate persons is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. If the facts and circumstances of a case justify that no purpose would be served to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in interest of speedy justice.

6. The above facts and circumstances of the Case justify that ***there would be no useful purpose served, by placing the Corporate Debtor under a Liquidation process, under the extant provisions of Code.*** Since the Assets of Company were realized, the liquidation process under the provisions of



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*Code is deemed to have been completed under Chapter III of Part II of Code and **thus it would be just and proper for the Adjudicating Authority to dissolve the Company, as proposed by Resolution Professional.** The instant Application is filed in accordance with law and the Resolution in question to dissolve the Corporate Debtor was approved by the Sole CoC, as detailed supra. **We are satisfied that this is a fit case for dissolving the Applicant Company and allowing the Petition filed by the RP praying for the same.**”*

(Emphasis Added)

17. In the present case in hand, we would discern that the CoC, which is constituted by only a single member being an operational creditor, is not willing and interested to continue with the CIRP of the corporate debtor and also is not intending to get back their own money admitted by the RP. We have noted that total assets of the corporate debtor as identified by the RP is Rs. 3,77,000/- which includes Rs. 3,52,000/- kept in the bank account of the corporate debtor with Indian Overseas Bank.

18. Thus, we are of the considered opinion that no useful purpose would be served by putting the corporate debtor under liquidation process and accordingly we deem it fit to invoke our inherent powers conferred under Rule 11 of the NCLT Rules, 2016, to meet the ends of justice or to prevent abuse of the process, and order for dissolution of the corporate debtor and direct the RP to liquidate the fund available with the bank account of the corporate debtor by allocating the same to the IT Department in respect of their outstanding demand pending for recovery and towards other



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statutory dues, if any. After distribution of funds towards the IT Authorities and other statutory dues if any fund remains in the bank account, that would be paid to the National Defence Fund, Government of India.

19. In view above, by exercising the power conferred under Rule 11 of the NCLT Rules, 2016, we dispose of the present application with the following directions:

- a. Delay is condoned.
- b. The corporate debtor Bihar E-Governance Services & Technologies Limited is ordered to be **dissolved** with an immediate effect after appropriating the fund available with the bank account as directed above.
- c. The Resolution Professional is directed to serve a copy of this order upon the Registrar of Companies, within whose jurisdiction the Corporate Debtor is registered with, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- d. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) and the Registrar of Companies, whose jurisdiction the Corporate Debtor is registered with for maintaining their own record.



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- e. The Registry is further directed to communicate the order through email forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- f. However, at any event, the liability of the corporate or personal guarantors, if any, shall not be absolved by the virtue of this order for dissolution of the corporate debtor. Aggrieved party(ies) shall be at liberty to continue or take appropriate legal recourse against them before appropriate forum.
- g. No order as to costs.

20. In view above, the application being **I.A. (IB) (Liq) No. 32/KB/2024** along with the **Company Petition (IB) No. 236/KB/2023** is **disposed of** accordingly.

21. Certified copy of this order may be issued, if applied for with the Registry, upon necessary compliances with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 08th Day of November 2024.

Bose, R. K. [LRA]