



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. No. 6267/2023

in

Company Petition (IB) No. – 237/ND/2021

IN THE MAIN MATTER OF:

M/s Mittal Lumber Private Limited

[CIN: U74899DL1991PTC043305]

Having its Registered Office at:

74/1/31 AMAR COLONY, ROHTAK ROAD, NANGLOI, NEWDELHI -110041

AND IN THE PRESENT MATTER OF:

Mr. Devendra Umrao

Resolution Professional [IBBI/IPA-003/IP-N00223/2019-20/12640]

Email: devumraoibc@gmail.com

Having his Office at:

B- 43A, First Floor, Kalkaji, New Delhi – 110019.

.... Applicant

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

I.A. No. 6267/2023

in

Company Petition (IB) No. – 237/PB/2021



Appearances:

For the Applicant: Mr. Mohit Kumar Bafna, Advocate.

ORDER

PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Order Pronounced on: 02.09.2024

1. This is an application filed by the Resolution Professional under 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiation of liquidation process of the Corporate applicant.
2. The Applicant has made the following submissions: -
 - (i) That a petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 was filed by Mr. Pradeep Kumar Jain (being the Director authorized vide board resolution dated 05.10.2020 for initiation of Corporate Insolvency Resolution Process) in respect of M/s Mittal Lumber Private Limited ("Corporate Applicant") before this Adjudicating Authority.
 - (ii) That the said Application was admitted by this Adjudicating Authority vide its order dated 24.05.2023, wherein the applicant herein (Mr. Devendra Umrao) was appointed as the Interim Resolution Professional.
 - (iii) Pursuant to the said Order dated 24.05.2023, the IRP made a Public Announcement in "Form A" in the Delhi-NCR edition of following newspapers on 26.05.2023: -
 - a. Financial Express (English Newspaper)
 - b. Jansatta (Hindi Newspaper).

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(iv) The aforesaid Public Announcement in "Form A" was uploaded of the website of the Insolvency and Bankruptcy Board of India on 26.05.2023 and Letter informing initiation of CIRP was sent to Key stakeholders (Directors) on 26.05.2023.

(v) Pursuant to the aforesaid Public Announcement dated 26.05.2023, the IRP received only a single claim from the following financial creditor: -

Name of the Financial Creditors	Details of the Claim Received		Details of claim admitted		
	Date of Receipt	Amount Claimed (Rs.)	Amount of Claim admitted (Rs.)	Nature of claim	%of Voting share in Coc
Union Bank of India, SAM Branch	07.06.2023	15,33,14,429.22	15,05,69,131.9	Secured	100%

(vi) That a claim from One Operational creditor was also received but it was not accompanied with relevant documents to substantiate the claim, hence was put under verification.

(vii) Accordingly, the CoC was constituted consisting of sole member being the Union Bank of India (sole financial creditor) having voting share of 100%.

(viii) After verifying the Claims of Financial Creditors, the Committee of Creditors was constituted and a total of 4 CoC meetings were held as per the following schedule: -

a. First CoC meeting held on 22.06.2023.

b. Second CoC meeting held on 21.07.2023.



c. Third CoC meeting held on 15.09.2023.

d. Fourth CoC meeting held on 23.10.2023.

(ix) That pursuant to Second COC meeting held on 21.07.2023, following Registered Valuers were appointed to determine the fair value and liquidation value of assets of the company:

S. No.	Name	Class of the Assets
1.	Mr. Rajan Sahdev [IBBI/RV/02/2020/13217]	Securities & Financial Assets ("S&FA")
2.	Mr. Vaneet Bhatia [IBBI/RV/06/2020/13051]	Securities & Financial Assets ("S&FA")
3.	Mr. Ompal Singh [IBBI/RV/02/2021/13876]	Plant & Machinery ("P&M")
4.	Mr. Sanjeev Gupta IBBI/RV/02/2021/13750	Plant & Machinery ("P&M")

(x) During the Second CoC meeting held on 21.07.2023, Form-G (Form for Invitation of Expression of Interest), eligibility criteria as prescribed under Section 25(2)(h) of Code and Bid Evaluation Matrix was approved by the CoC Members (voting results received on 11.08.2023) for invitation of Expression of Interest for revival of Company. In pursuance to the aforesaid resolution, the Applicant made a public announcement on 21.08.2023 in Form G under Regulation 36A.

(xi) In pursuance to the aforesaid public announcement made in Form G, the Resolution Professional has received only 1 valid expression of interest (EOI)



from the Prospective Resolution Applicant and accordingly issued provisional list of the Prospective Resolution Applicants on 15.09.2023 and final list of the Prospective Resolution Applicants on 25.09.2023 as per the provisions of the Insolvency & Bankruptcy Code, 2016 and regulations made thereunder.

- (xii) The CoC in its third meeting, approved the appointment of the applicant herein (erstwhile Interim Resolution Professional) namely Mr. Devendra Umrao, as the Resolution Professional to conduct CIRP in the matter.
- (xiii) That the CoC in their third meeting held on 15.09.2023, approved the Request for Resolution Plan (RFRP) prepared by the RP along with the other agenda items and accordingly the Resolution Professional has circulated the RFRP to the Prospective Resolution Applicants inviting them to submit the Resolution Plan as per the Expression of Interest submitted by them.
- (xiv) The RP had thereafter sent a formal request for resolution plan to the prospective resolution applicants and requested them to submit their resolution plan on or before 25.10.2023. However, the RP has not received any resolution plan from the only Prospective Resolution Applicant as the only PRA (M/s Subhlaxmi Investment Advisory Private Limited) sent an email dated 07.10.2023 to the RP expressing its inability to participate in the process and wished to withdraw itself and accordingly asked to refund their earnest money deposit.
- (xv) It is further contended that the CoC in their fourth COC meeting held on 23.10.2023 approved the appointment of M/s A. Arora & Co. (Chartered Accountants) as Transaction Auditor to conduct the transaction audit of the Corporate Debtor for the period from 01.04.2014 till 24.05.2023.
- (xvi) That the applicant RP had also prepared the Information Memorandum from the information collated in terms of Regulation 36(1) (a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is further



contended that the undertaking for obtaining the information memorandum was also circulated to the CoC. However, the said undertaking from the CoC has still not been received by the RP.

(xvii) Accordingly, in absence of any viable resolution plan and considering the time already spent in proceedings, the CoC in its 4TH CoC meeting resolved to liquidate the Corporate Applicant with a majority of 100% votes and further authorized the RP to file an application under Section 33(2) of the IBC before the Adjudicating Authority seeking Liquidation of the Corporate Applicant.

(xviii) The applicant has filed an additional affidavit dated 18.01.2024 nominating Mr. Shaikh Nafis Anjum [IBBI/IPA-003/IPA-ICAI-N-00211/2018-19/12363] to further act as Liquidator in the matter.

(xix) The aforesaid additional affidavit contains the following documents attested by the proposed Liquidator: -

- a. Consent to act as Liquidator (Form AA) where the proposed Liquidator has given an undertaking dated 17.01.2024 addressed to the Union Bank of India (sole CoC member) wherein he has acknowledged that the consultation committee has proposed him to continue as the Liquidator.
- b. Authorization for Assignment valid till 16.11.2024 as per Form B.
- c. Certificate of Registration issued by IBBI in favour of the proposed Liquidator namely Mr. Shaikh Nafis Anjum [IBBI/IPA-003/IPA-ICAI-N-00211/2018-19/12363].

(xx) Accordingly, the Liquidator has prayed that the instant application may be allowed with such directions as deemed fit by this Adjudicating Authority.



ANALYSIS AND FINDINGS

3. We have heard the Ld. Counsel appearing in the present matter and after perusal of documents placed on record to substantiate its contentions, proceed to adjudicate the instant matter on merits.

4. The present application has been filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016. 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 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; 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.]

5. 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 observed as follows (relevant extract): -

“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...

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.”

6. It is observed that CoC in their 4TH meeting held on 23.10.2023 has resolved to liquidate the Corporate Applicant with 100% voting share.
7. This Adjudicating Authority does not find any plausible reason to interfere with the commercial wisdom of the CoC who have in their 4th CoC meeting held on 23.10.2023, resolved to initiate liquidation of the Corporate Debtor with 100% of majority votes.
8. The IBBI vide their communication [Liq-12011/214/2023-IBBI/840 dated 18th July 2023] has recommended that the Resolution Professional and Liquidator not be the same person. Although the applicant RP had initially prayed that he himself be allowed to continue as liquidator, but in terms of the said recommendations provided by the IBBI, and upon suitable directions given by this Adjudicating Authority to that effect, the RP has filed an affidavit dated 18.01.2024 nominating Mr. Shaikh Nafis Anjum [IBBI/IPA-003/IPA-ICAI-N-00211/2018-19/12363] to further act as Liquidator in the matter (consent assignment and AFA has already been placed on record).
9. Accordingly, there being no other impediment, this Adjudicating Authority allows the present application to initiate liquidation in respect of the Corporate Applicant.



Consent assignment and AFA of the proposed liquidator has already been placed on record which appears to be satisfactory. Accordingly, there being no other impediment, this Adjudicating Authority allows the present application to initiate liquidation appoints Mr. Shaikh Nafis Anjum [IBBI/IPA-003/IPA-ICAI-N-00211/2018-19/12363] to act as Liquidator in the present matter.

11. Accordingly, the applicant herein namely Mr. Devendra Umrao (Resolution Professional of the Corporate Applicant), is relieved from the present assignment as Resolution Professional.
12. In light of the above, the application is allowed by ordering liquidation of the corporate debtor, namely M/s Mittal Lumber Private Limited with following directions-
 - (i) 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;
 - (ii) 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; by virtue of which no suit or other legal proceeding shall be instituted by or against the corporate debtor. However, any suit or other legal proceeding may be instituted by the Liquidator, with the prior approval of this adjudicating authority.
 - (iii) This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate applicant as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
 - (iv) The Liquidator so appointed 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.



- (v) The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate applicant in accordance with provisions of Section 35(1) of the Code.
- (vi) 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 applicant as per law.
- (vii) 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 Board of India (Liquidation Process) Regulations, 2016;
- (viii) Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary steps;
- (ix) The CoC is directed to pay the remuneration and expenses of the Applicant (Resolution Professional outstanding as on date, subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016).
- (x) The applicant Resolution Professional namely Mr. Devender Umrao is hereby directed to handover all the records and documents pertaining to the present case forthwith to the aforesaid appointed liquidator namely Mr. Shaikh Nafis Anjum, in order to enable the liquidator to carry out his duties efficiently as per law.
- (xi) In terms of Regulation 4(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [amended upto 12-02-2024]; the



Liquidator shall be entitled to such fee which shall be payable to the liquidator and would be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(xii) I.A 6267/2023 filed in Company Petition (IB) No. 237/PB/2021 stands allowed and is accordingly disposed of in the aforesaid terms.

-SD/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)

MEMBER (JUDICIAL)