

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI

I.A. 6368/2023 in Company Petition (IB) No. – 549/ND/2022

[An application Under Section 33 of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016]

IN THE MATTER OF:

Mr. Rahul Jindal

Resolution Professional of M/s Sargam India Electronics Private Limited

[IBBI/IPA-001/IP-P-02649/2021-2022/14048]

Registered Address: 52/24, Ramjas Road, Karol Bagh, New Delhi-110005

Communication Address: 1st Floor 109, Surya Kiran Building, KG Marg, Connaught Place, Delhi 110001

Email: sargamindiaelectronics.ibc@gmail.com

.... Applicant

IN THE DECIDED MATTER OF:

M/s Kumar Electronics

... Operational Creditor

Versus

M/s Sargam India Electronics Private Limited

... Corporate Debtor

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Applicant: Mr. Karan Gandhi, Advocate.

For the CoC: Mr. Brijesh Kumar Tamber, Advocate.

ORDER

PER - RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 29.07.2024

1. This is an application filed under 33(2) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 for initiation of liquidation process of the Corporate Debtor. The applicant in the instant application has prayed for the following reliefs: -
 - a) Allow the present application
 - b) Pass an order and direct the liquidation of the Corporate Debtor herein i.e. M/s Sargam India Electronic Private Limited in accordance with the provisions of Section 33 of Insolvency and Bankruptcy Code, 2016.
 - c) Pass an order and confirm the appointment of the Applicant i.e. Mr. Rahul Jindal [IBBI/IPA-001/IP-P-02649/2021- 2022/14048] to further act as the Liquidator of the Corporate Debtor as approved by the majority of the CoC.
 - d) Pass any other directions as this Adjudicating Authority may deem fit in the interest of justice.

2. The Applicant has made the following submissions: -
 - i. That the brief background of the matter is that the Corporate Insolvency Resolution Process in the matter of the Corporate Debtor herein was commenced vide order dated 29.11.2022 passed by this Adjudicating Authority wherein inter alia Mr. Ankit Goel was appointed to act as the Interim Resolution Professional in the matter.
 - ii. Thereafter, the Committee of Creditors (CoC) in its 2nd meeting held on 12.01.2023 resolved to replace the erstwhile IRP with Mr. Rahul Jindal in pursuance of which an I.A. No. 675/2023 was filed. This Adjudicating Authority vide its order dated 03.03.2023 had allowed the said application, and had appointed the Mr. Rahul Jindal as the Resolution Professional in the matter of CIRP of the Corporate Debtor.
 - iii. That during the Corporate Insolvency Resolution Process of the Corporate Debtor, the Applicant in compliance of Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has published expression of interest in FORM G on 18.03.2023 in Financial

express and other Hindi newspaper having a wide circulation over the jurisdiction where the registered office of the corporate debtor is situated.

iv. That in response of the aforesaid publication inviting Expression of Interest (FORM G), the Applicant received EOI's from 7 interested person(s) and thereafter 2 Resolution Plans were received by the Applicant from the following persons: -

- a. Mr. Sahil Mangla
- b. Mr. Sandeep Agarwal.

v. That the 11th meeting of the CoC of the Corporate Debtor was held on 15.11.2023 which was deferred / adjourned for seeking legal opinion by the legal counsel of the Resolution Professional and adjourned meeting was later resumed on 29.11.2023.

vi. That in the said 11th meeting of CoC, the plan submitted by Mr. Sahil Mangla was put up for e-voting and it was decided that the voting lines be kept open from 03.10.2023 to 16.10.2023. That while the voting lines were open, the Applicant received requests from the CoC for extension of the voting deadlines.

vii. Since, the CIRP period of 330 days was going to expire on 25.10.2023, and in light of extension request by the CoC, it was resolved by the CoC in its 12th meeting held on 23.10.2023 with 91.18% votes for seeking extension of CIRP period for further 30 days beyond 330 days which was allowed by this Adjudicating Authority vide its order dated 31.10.2023 (CIRP period extended from 26.10.2023 to 25.11.2023)

viii. That further the voting qua the approval of the Resolution Plan submitted by the Mr. Sahil Mangla was finally concluded on 14.11.2023 and as per the voting result the resolution plan submitted by Mr. Sahil Mangla failed to attain the requisite majority of 66%. The voting results are as follows: -

S. No	Particulars	Voting Results
a.	Voting in Favour	60.55 %
b.	Voted Against	36.52 %
c.	Abstained/ Not Voted	2.93%

ix. Subsequently, in 13th Meeting of CoC held on 18.11.2023, in light of the fact that the Resolution Plan could not attain the requisite majority, the CoC deliberated and approved a resolution for liquidation of the Corporate Debtor with 87.39% of majority.

- x. It is further contended that that the CoC in its 13th meeting, had also approved the appointment of the applicant to act as the liquidator of the corporate debtor with 51.93 % of majority votes.
- xi. Accordingly, the liquidator has preferred the instant application in a bonafide manner having regard to the facts and circumstances of the case.

ANALYSIS AND FINDINGS

- 3. We have heard the Ld. Counsel(s) appearing in the present matter and after perusal of documents placed on record to substantiate their 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. The CoC has expressed its opinion in the 13th CoC meeting held on 18.11.2023, resolving to initiate liquidation of the Corporate Debtor with 87.39% of majority votes. Although a Resolution Plan was submitted by Mr. Sahil Mangla, the same could not attain the requisite threshold of 66% votes under the Insolvency and Bankruptcy Code, 2016.

7. Therefore, this Adjudicating Authority does not find any plausible reason to interfere with the commercial wisdom of the CoC who have in their 13th CoC meeting held on 18.11.2023, resolved to initiate liquidation of the Corporate Debtor with 87.39% of majority votes.
8. In light of the above, the application is allowed by ordering liquidation of the corporate debtor, namely M/s Sargam Electronics Private Limited with following directions: -
- (i) The IBBI vide their circular [Liq-12011/214/2023-IBBI/840 dated 18th July 2023] has recommended that the Resolution Professional and Liquidator cannot be the same person. In terms of the said recommendations provided by the IBBI, the prayer no. (c) as mentioned in point no. 1 herein above, of the applicant to further continue as Liquidator in the matter cannot be sustained and to that extent stands **dismissed**.
 - (ii) Accordingly, Mr. Rahul Jindal, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
 - (iii) This Adjudicating Authority now proceeds to appoint a Liquidator from amongst the panel of IP's maintained with it. Therefore, as per the sequence of roster allotted to this particular bench (for the period 01.07.2024 TO 31.12.2024), Mr. Paban Kumar Jain [IBBI/IPA-001/IP-P01148/2019-20/12490] is appointed as Liquidator in the present matter.
 - (iv) Registry is directed to inform the aforesaid liquidator forthwith regarding his appointment in the present matter on the following communication details: -
 - a. Email id is jainchi@hotmail.com
 - b. Mobile Number is 9212006084.
 - (v) The Liquidator is directed to file his consent declaration regarding his willingness to accept the appointment as liquidator in the present matter along with valid AFA and undertaking that no disciplinary proceedings are pending against him, within 10 days of receipt of intimation regarding their appointment in the present matter.
 - (vi) 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;

- (vii) 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.
- (viii) 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;
- (ix) 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.
- (x) 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.
- (xi) 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.
- (xii) 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;
- (xiii) Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary steps;
- (xiv) 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.
- (xv) The applicant Resolution Professional namely Mr. Rahul Jindal is hereby directed to handover all the records and documents pertaining to the present case forthwith to the aforesaid appointed liquidator namely Mr. Paban Kumar Jain, in order to enable the liquidator to carry out his duties efficiently as per law.
- (xvi) 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.

9. I.A 6368/2023 filed in Company Petition (IB) No. 549/ND/2022 stands partially allowed and is accordingly disposed of in the aforesaid terms.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)