IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

I.A No. 163 of 2022 in
C.P. (IB) No.32/BB/2021
U/s. 33(2) of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016

In the matter of I.A. No.163/2022:

Mr. Srinivas Thatikonda
IRP of M/s. Welworth Software Pvt. Ltd.
R/Off: Flat No.006, NamdaAshirwad Apartments,
No.1, Canara Bank Colony, 2nd Main,Chandra Layout,
Bengaluru – 560 072. ... Applicant/IRP

In the matter of:
Mr. PuttaKempanna - Petitioner / Financial Creditor

Versus

M/s. Welworth SoftwarePvt. Ltd. - Respondent /Corporate Debtor

Order delivered on: 30th,November, 2022

Coram: 1. Hon'ble ShriKishore Vemulapalli, Member (Judicial)
2. Hon'ble ShriManoj Kumar Dubey, Member (Technical)

Parties / Counsels Present:

For the Resolution Professional : Shri Hemanth R. Rao

ORDER

Per:Manoj Kumar Dubey, Member (Technical)

I.A. No.163 of 2022:

1. This application has been filed by Shri Srinivas Thatikonda,Interim Resolution Professional of M/s. Welworth Software Private Limited (hereinafter as 'Corporate Debtor') under Section 33(2) of the Insolvency and Bankruptcy Code,2016 r/w Rule 11 of the NCLT Rules, 2016*inter alia* seeking an order of

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Liquidation in the matter of Corporate Debtor and to appoint a suitable Insolvency Professional to act as a Liquidator of the Corporate Debtor.

2. The main Petition bearing C.P. (IB) No.32/BB/2021 was filed u/s7 of the I&B Code, 2016, r/w Rule 4 of the I&B (AAA) Rules, 2016 by Mr. PuttaKempanna(hereinafter as 'Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s. Welworth Software Pvt. Ltd. and the samewas admitted by this Adjudicating Authority on 01.02.2022 by appointing Mr. Srinivas Thatikondaas the Interim Resolution Professional(IRP) to carry out the resolution process of the Corporate Debtor.

3. Pursuant to Regulation 6 of the IBBI (CIRP) Regulations, 2016 ('Regulations'), the IRP had caused a Public Announcement in Form-A in *'The Hindu'* (English language) and *'Vijayavani'*(Kannada language) on 05.02.2022.The IRP constituted a Committee of Creditors (CoC) consisting of following persons/entities:

Creditors	**Voting Share(%)**
PuttaKempanna	100%
Total	100%

4. IA No.65 of 2021 was filed by the IRP of the Corporate Debtor seeking direction against the erstwhile Directors of the Corporate Debtor to corporate with the Resolution Professional and hand over the assets of the Corporate Debtor.However, the same is pending before this Adjudicating Authority.

5. It is submitted that in the 1st CoC meeting held on 03.03.2022, the applicant informed the CoC about the non-cooperation from the ex-management of the Corporate Debtor ;and regarding the application filed for the same before this Tribunal.Further the applicant informed the CoC that he cannot continue as a Resolution Professional due to health issues due to post Covid Syndrome and requested the CoC to appoint a new Resolution Professional for conducting the CIRP.

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6. In the 2nd meeting of Coc held on 07.03.2022, the ex directors of the Corporate Debtor had failed to cooperate with the applicant, the applicant once again informed of his inability to continue as IRP due to health reasons. IA NO.99 of 2022 was filed by the IRP of the Corporate Debtor seeking appointment of a new Resolution Professional as he was unable to discharge his duties due to health reasons and the same was disposed of as infructuous by this Tribunal vide order dated 28.09.2022.

7. The CoC in its Fifth Meeting held on 16.04.2022, the sole CoC member, in his commercial wisdom decided to liquidate the Corporate Debtor. It is submitted that, the CoC was of the opinion that no resolution applicants were interested in a Company which has no employees or assets. It is stated that more than 66% of the CoC has passed the resolution for liquidating the Corporate Debtor and the same is as under:-

> *To consider and , if theough fit, to pass with or without modification the following resolution:*
>
> *"Resolved That in pursuant to Section 33 of IBC,2016 and the rules made thereunder, the consent of members of the CoC be and is hereby accorded to approve the filing of application with Hon'ble NCLT Bengaluru Bench, for the initiation of liquidation of Corporate Debtor and the Liquidator of the Corporate Debtor shall be appointed by the Adjudicating Authority.*
>
> *Resolved Further That the Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental hereto."*
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> *Results: The agenda item approved & passed with majority vote of 100% member through voting in favour of resolution.*

8. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar v.VSL Securities Pvt Ltd. in CA No.1/2020in CA No.308/2000,dated 09.06.2020,observed as under:-

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evalution of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review".*

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SRINIVAS THATIKONDA
IBBI/IPA-022/IP-N00631/2018-19/11886
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9. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

10. The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

"**33. *Initiation of liquidation.***-

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)."

11. Prescribed period for filing application- In the present case, the application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 01.02.2022. The present application is filed on 21.04.2022. i.e., during the insolvency resolution process period but before the confirmation of the resolution plan, the CoC approved and passed with majority vote of 100 % member through voting on 16.04.2022. Hence this application shall be considered under section 33(2).

12. **Appointment of Liquidator** - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP

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SRINIVAS THATIKONDA
IBBI/IPA-022/
IP-N00631/
2018-19/11886
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shall, subject to submission of written consent, act as the Liquidator for the purpose of Liquidation. Section 34(4)(c) of the Code states that if the Resolution Professional fails to submit written consent under Section 34(1) of the Code, the Adjudicating Authority shall by order replace the RP. In the present case, it is stated in the application that the Resolution Professional showed his unwillingness to continue as Liquidator and thus did not submit his consent to act as the Liquidator. Sub Section (7) of Section 34 of the Code says that the Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an Insolvency Professional as Liquidator by an order appoint such Insolvency Professional as Liquidator.

13. In this regard a letter bearing File No.25/02/2022-NCLT dated 04.07.2022 has been received from National Company Law Tribunal, New Delhi forwarding therewith a copy of IBBI letter no. IP-12011/1/2020-IBBI/1903/3754 dated 30.06.2022 along with the guidelines and the panel of resolution professionals approved for NCLT, Bengaluru Bench for appointment as IRP or Liquidator. The panel is valid from 01.07.2022 to 31.12.2022.We select Mr. Narayana Kamma at Serial No. 3 email ID kln6019@gmail.com , registration no IBBI/IPA-002/IP-N01072/2020-2021/13429,Mobile no 9844283398 of the panel to be appointed as Liquidator

14. Regulations 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No.IBBI/2019-20/GN/REG048 dt.25.07.2019. Relevant aspects in this respect are examined hereunder:

a. **Liquidation cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The liquidation cost is as per the resolution passed at agenda Item No.8.4 in 5th CoC meeting.

b. **Assessment of sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The liquidator shall follow the Regulation 32 of the IBBI(Liquidation Process)Regulation,2016 while selling the assets of the Corporate Debtor .

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SRINIVAS THATIKONDA
IBBI/IPA-002/IP-N00631/2018-19/11886
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c. **Fees of the Liquidator [Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.** The fee payable to the Liquidator is as per Regulations 4(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

15. **Pending applications, if any, and its effects** – The Learned Counsel for the Applicant has stated that there is no pending application before any Tribunal of law or any other authority or any other Tribunal.

16. In view of the satisfaction of the conditions provided under **Section 33(2)** of the Code, the Corporate Debtor, namely,**M/s. Welworth Software PrivateLimited** is directed to be liquidated in the manner as laid down in ChapterIII of theCode. Some of the directions are noted as under:

    i.) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor;

    Provided that a suit or other legal proceeding may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

    ii.) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

    iii.) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and

    iv.) That all the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator; and

    v.) That the personnel of the Corporate Debtor shall extend all assistance

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IP-N00631/
2018-19/11886
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and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

vi.) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claims, which shall be 30 days from the liquidation commencement date.

vii.) That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

viii.) That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his Preliminary Report within seventy-five (75) days and to file regular Progress Reports as per the Regulation 15.

ix.) The liquidator shall file his written consent within one week from today.

17. Thus,**I.A No. 163 of 2022** stands disposed of.

18. Copy of this order be supplied to the Counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this Order to the Liquidator at his e-mail address.

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MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

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KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

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(Admitted Matter)