IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – V
Company Application No. 989/2021
In
Company Petition (IB) No. 2863/ND/2019

IN THE MATTER OF :

SUNIL KUMAR
Operational Creditor
House no. D-157, Gali no. 10
Near Shanti Dal Public School,
Harphool Vihar, Jai Vihar, Phase-3,
Bapraula, West Delhi-110043

.......Operational Creditor/Applicant

VERSUS

NESA INDIA PRODUCER COMPANY LIMITED
Corp Office: 103 KH No.47/22
Akash Vihar Nangloi,
Near Kali Mata Mandir,
New Delhi-110041 ....Corporate Debtor/Respondent

AND IN THE MATTER OF:

MR. SUDHANSHU GUPTA
Interim Resolution Professional
For Nesa India Producer Company Limited

....Applicant/Interim Resolution Professional

VERSUS

MR. ASHAQ ASLAM
Director of Suspended Board of Corporate debtor ....Respondent 1

MR. HITESH
Director of Suspended Board of Corporate debtor ....Respondent 2

MR.JAI PRAKASH
Director of Suspended Board of Corporate debtor ....Respondent 3

MR. VIMAL MATHUR
Director of Suspended Board of Corporate debtor ....Respondent 4

MR. PRADEEP SHARMA
Director of Suspended Board of Corporate debtor ....Respondent 5

MR. SUNIL KUMAR
Operational Creditor ....Respondent 6

ORDER DELIVERED ON: 25.01.2022

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Avinash K. Srivastava, Hon'ble Member (Technical)

For the Applicant: Adv. Mansij Arya and Adv. Priyanka
For the Respondent: Adv. Manas Tripathi

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

The present application is filed under Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant, who is appointed as the Interim Resolution Professional, in the matter of IB 2863 (ND) 2019, for terminating the Corporate Insolvency Resolution Process of Nesa India Producer Limited and discharge the applicant as an IRP of the Corporate Debtor and reimburse the expenses incurred on the CIR process.

2. Brief Facts of the case are as follows:

   i. On a Petition under Section 9 of the Code filed by Mr. Sunil Kumar (herein referred to as the Operational Creditor), this Tribunal vide order dated 25.11.2019 admitted the petition, and initiated Corporate Insolvency Resolution Process of M/s Nesa India Producer Company Limited and also appointed the present

Applicant, Mr. Sudhanshu Gupta as the Interim Resolution Professional (IRP) subjected to stipulated conditions.

ii. That after appointment the IRP had performed the following duties:

a. **Publication of Form A:** As per Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Applicant/IRP had made public announcement in Form A of the schedule, which was published in two newspapers, one English namely Financial Express and one Hindi namely Jansatta dated 10th January, 2020 (not later than 3 days after receiving the certified copy of the order).

b. **Intimation of his appointment:** The IRP had intimated the Corporate Debtor and its directors about his appointment via email dated 8th January, 2020 and solicited their cooperation in the matter. Intimation of IRP appointment was also given via speed post on 9th January, 2020 at the registered office of the Corporate Debtor and also at the addresses of the directors suspended board of the Corporate Debtor.

c. **Visiting the registered office to take control of the management of CD:** On 13th January, 2020 the applicant/IRP had visited the registered office of the Corporate Debtor to take control of the management of the Corporate Debtor wherein Mr. Ashfaq Aalam had handed over few of the documents and assured the applicant/IRP that all other requisite documents and information as required and asked as per the email dated 08.01.2020 will be provided in the next 2 (two) days. Even after rigorous follow ups and requests the applicant/ IRP is not having all the documents and information till date.

d. The IRP had communicated with the respective banks wherein the CD had bank account i.e. HDFC Bank Limited, Indusland Bank Limited and Union Bank of India requesting them not to honour any cheques or execute any transactions without the directions of the IRP.

e. Upon inspection of the bank statements provided by the Directors of the suspended Board of Corporate Debtor, the Applicant / IRP had observed numerous volume of transactions during the financial year 2018-19 and 2019-20 including cash transactions, which are suspicious in nature and the nature of such transactions are not apparently clear.

f. The IRP had also examined the Financial Statements of the Corporate Debtor from the Web-Portal of the Ministry of Corporate Affairs related to Financial Year ended on 31st March 2019 and observed as under:-

- The Corporate Debtor doesn't have any Current or Non- Current Liability.
- The financial statement are reflecting Tangible Assests of Rs.12,65,311 on its asset side however Note No. 10 relating to description of Tangible Assets were not provided by the directors of the suspended board not the same was available on the website of the MCA.
- The statutory auditor of the Corporate Debtor had mentioned in the audit report about misrepresentation and mishandling cash and cash equivalent by Mr Hadish Khan, Mr. Sanjay Singh and Mr. Sahun Ali, erstwhile Directors of the Company. Further, it has also been noticed that Mr. Hadish Khan, Mr. Sanjay Singh and Mr. Sahun Ali have filed their resignation as Directors of the company by filing e-form DIR 11 while the Corporate Debtor had not filed e – form DIR 12 with the registrar of companies in respect of their resignation.

g. The IRP had attempted to communicate with the directors of the suspended Board of Corporate Debtor via emails the details of which are enclosed below:

S.NO	DATE	PARTICULARS
1.	08.01.2020	Intimation of appointment of IRP pursuant to order dated 25.11.2019 and to provide the information/documents as listed in the mail.
2.	14.01.2020	Produce all the requisite documents and information in his office on 15th January
3.	16.01.2020	Reminder Mail
4.	21.01.2020	Reminder Mail
5.	05.02.2020	Application by Interim Resolution Professional under Section 19(2) and 19(3) of the Insolvency and Bankruptcy Code, 2016
6.	03.03.2020	Notice for Hearing listed on 18/03/2020 for application filed u/s 19 (2) & (3) of IBC, 2016.
7.	21.09.2020	Application for seeking Urgent Hearing of C.A No.1093/C-V/ND/2020 filed in petition No. IB-2863 (ND) 2019 titled "Sunil Kumar vs Nesa India Producer Company Limited"
8.	7.01.2021	Serving of NCLT Order dated 17.12.2020 passed in the matter of application filed under Section 19(2) & (3) of IB Code, 2016.

h. After obtaining the mobile number of the Operational Creditor the applicant/IRP contacted him for depositing the sum of Rs 2 lakhs along with GST as directed by the Hon'ble Tribunal however he refused to comply with the same.

i. the Applicant very recently on 8th February, 2021 visited the registered office of the Corporate Debtor, however, the same was locked and the neighbours were not aware of any whereabouts of the existence of Corporate Debtor. It was further apprised that there are frequent visit of different persons asking about the corporate debtor and their directors/manager.

j. Prior to that in January, 2021 also, the Applicant through his counsel tried contacting Mr. Ashfaq Aalam on his mobile number available with him but the same was not answered.

iii. As per Regulation 6(2) (C) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the last date of submission of claims was 21st January, 2020, which was also specified in Form A i.e. Public Announcement. However, it is relevant to note here that the Applicant/IRP has not received any claim till date. Moreover, no claim has been received from Respondent, Mr. Sunil Kumar (who had filed the application u/s 9 of the Code; against which the Hon'ble National Company Law Tribunal admitted the petition for initiating Corporate Insolvency Resolution Process of the Corporate Debtor).

iv. No Committee of Creditors has accordingly been constituted even after the expiry of 365 days from the date of initiation of the CIRP.

v. The Applicant/IRP has not yet prepared the list of the Creditors as per Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 as neither any claim has been received from any creditors nor are books of account and other requisite documents of the Corporate Debtor accessible to him.

vi. The Operational Creditor, Mr Sunil Kumar has not yet deposited sum of Rs. 2 lakhs as directed by the Hon'ble NCLT for meeting out the immediate expenses of the CIRP.

vii. The applicant has tried to communicate with the counsel of the Operational Creditor, Mr. Deepak Anand due to non-availability of email Id Operational Creditor with respect to the same.

viii. After obtaining the mobile number of the Respondent No.6, the Applicant/IRP has also contacted with the Operational Creditor through phone call for deposit of the sum along with GST as directed by the Tribunal, however, he refused to comply with the same.

ix. The undersigned had filed an application under Section 19(2) and 19(3) of the IB Code, 2016, for issuing necessary directions to the directors of Suspended Board of Corporate Debtor and Operational

Creditor. But neither the directors of the suspended Board of the Corporate Debtor nor the Operational Creditor was present on the hearings dated 12.02.2020, 28.02.2020, 18.03.2020, 17.12.2020 and 15.01.2021 so far.

x. The IRP had received Letter No. ROC/COMP/2020/9563 dated 19.05.2020 from Registrar of Companies, NCT Delhi and Haryana and Ministry of Corporate Affairs, Government of India on 10.06.2020 in the matter of complaint made by Sh. Rampal Singh Grade, Advocate against the corporate debtor. The IRP/Applicant had filed a reply to the above letter vide reply letter dated 18.06.2020 to the Registrar of Companies, NCT Delhi & Haryana, and Ministry of Corporate Affairs, Government of India.

xi. Neither the Operational Creditor has filed his claim nor any other claim been received by the IRP/Applicant. The applicant/ IRP is not able to contact the Suspended Directors of the Corporate Debtor. The mobile number which is available with the applicant is either switched off or remains unanswered. Under these circumstances the IRP/Applicant is facing a lot of difficulty in carrying out the CIR process due to lack of requisite information and documents

xii. The original application was filed by an employee, Mr. Sunil Kumar having gross salary of Rs.15000 per month. On the basis of the circumstances, it seems to be a collusive application to initiate the Corporate Insolvency Resolution Process filed with the malafide intention and motives best known to the Corporate Debtor and its suspended directors.

xiii. The applicant/IRP had incurred an expenditure amount of Rs. 48,202 as an IRP from his pocket towards the CIR process of the Corporate Debtor and is in debt of Rs 1,05,000. Apart from above, the Professional charges as claimed by the Applicant/IRP is Rs. 1,50,000. Inspite of order dated 25.11.2019, respondent No 6, Mr. Sunil Kumar has not deposited amount with the applicant/IRP.

xiv. The Applicant has also filed an application under Rule 11 of NCLT Rules 2016 for contempt of Court order dated 25th November 2019 by Mr. Sunil Kumar and the same is pending for listing.

3. We have heard the Learned Counsel appearing for the applicant and perused the averments made in the application.

4. The Learned Counsel appearing for the applicant submitted that since the IRP has not received any claim even after the expiry of the 365 days from the Corporate Insolvency Resolution Period, therefore, the present application is filed for termination of the CIRP with a prayer to terminate the CIRP of Corporate Debtor and discharge the applicant / IRP of the Corporate Debtor and reimbursed the expenses incurred on the CIRP.

5. On the basis of the averments made in the application, it is an admitted fact that CIRP was initiated on 25th November, 2019 and the applicant was appointed as IRP, and the present application is filed on 20th February, 2021, i.e. after more than one year from the date of initiation of the CIRP.

6. Now the question is if the IRP has not received any claim even by the applicant, on whose application, the CIRP was initiated against the Corporate Debtor, in that case, after the expiry of more than one year, can CIRP be terminated on the request of the IRP?

7. Before Considering the submissions, at this juncture, we would like to refer to Section 23 of the IBC and the same is reproduced below:

Section 23.
Resolution professional to conduct corporate insolvency resolution process. -

(1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:

[Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period,
until an order approving the resolution plan under sub-section (1) of section 31 or
appointing a liquidator under section 34 is passed by the Adjudicating Authority.]

(2) The resolution professional shall exercise powers and perform duties as are vested
or conferred on the interim resolution professional under this Chapter.
(3) In case of any appointment of a resolution professional under sub-sections (4) of
section 22, the interim resolution professional shall provide all the information, documents
and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

8. A bare perusal of the provision shows that the Resolution Professional is authorised to conduct the entire Corporate Insolvency Resolution Process and managed the operation of the Corporate Debtor, during the Corporate Insolvency Resolution Process period. Therefore, at this junction, we would also like to refer to the definition of Insolvency Resolution Process period, defined under Section 5(14) of the IBC 2016 and the same is reproduced below:

Section 5(14)

"Insolvency Resolution Process period" means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day;

9. A bare perusal of the provision shows that Insolvency Resolution Process period means, the period of 180 days beginning from the Insolvency commencement date and ending of 180 days. On conjoint reading of Section 5(14) and Section 12 of the IBC, 2016, we observed that, by amendment, the period of insolvency period is extended upto 330 days. Therefore, in our considered view, in terms of section 5(14) read with Section 12 of the IBC, Insolvency Resolution Process Period means 330 days. Admittedly, the period of 330 days has expired in the case in hand. At this juncture, we would also like to refer to Section 33 of the IBC.

Section 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 45 Authority of the decision of the committee of creditors 1 [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).
2 [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.]

(3) Where the resolution plan approved by the Adjudicating Authority 3 [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, 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,

(6) the provisions of sub-section (5) 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.

(7) The order for liquidation under this section 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.

10. A bare perusal of the provision shows that there are two circumstances under which a liquidation order can be passed by the Adjudicating Authority: -

1. Under Section 33 sub-Section 1 of the IBC and
2. Under Section 33 sub-Section 2 of the IBC

11. Under section 33 sub-Section 1, where the Adjudicating Authority before the expiry of the Insolvency Resolution Process or the maximum period permitted for completion of the CIRP under Section 12 of the fast track CIRP under Section 56, as the case may be, does not receive a resolution plan under sub-Section 6 of Section 30 or reject the resolution plan under Section 31 for non-compliance of requirement specified therein, in that case, the Adjudicating Authority shall pass an order for liquidation and under Section 33 sub-Section 2 of the IBC, the resolution professional at any time during the Corporate Insolvency Resolution Process but before the confirmation of resolution plan intimate the Adjudicating Authority of the decision of the CoC to liquidate the Corporate Debtor, then the Adjudicating Authority shall pass an order for liquidation.

12. Here in the case in hand, admittedly, the CoC is not constituted even after the expiry of more than 365 days and the IRP has also not received any claim during the CIRP. Rather, the IRP has prayed for termination of the CIRP on the ground that he has not received any claim. There is no such provision under the IBC to terminate the CIRP once it is initiated, the only way is either to complete the CIRP by approval of the resolution plan or pass the order of liquidation under Section 33 of the IBC.

13. Here in the case in hand, admittedly, there is no resolution plan as there was no claimant and the CoC was not constituted till the date of filing the application. Under such circumstances, in our considered view, in terms of Section 33 sub-Section 1, the Adjudicating Authority is empowered to pass the liquidation order after the completion of the maximum period. Since, 330 days

has already been completed and no resolution plan is received even the CoC is not constituted, therefore, in stead of termination in the CIRP on the request of the applicant, we think it proper to pass an order under Section 33 of sub-Section 1 of the IBC to pass the liquidation order.

14. Accordingly, by exercising our power under Section 33 sub-Section (1)(a) pass the following order: -

i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016.
ii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
iii. The Provision of Section 33 sub-Section 5,6 and 7 IBC, 2016 shall have come into force with immediate effect. 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;
iv. This Order shall be deemed to be a 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;
v. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
vi. The Registry is directed to communicate a copy of the Order to the Operational Creditor, the Corporate Debtor.

vii. A copy of this Order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;

viii. The Registry is directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

ix. Since IRP has not given his consent to work as Liquidator, therefore list the matter for the appointment of Liquidator.

15. List the matter on 31.01.2022 for the appointment of Liquidator.

Sd/-

Avinash K. Srivastava
(Member Technical)

Sd/-

Abni Ranjan Kumar Sinha
(Member Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – V
Contempt Application No. 2/2021
In
Company Petition (IB) No. 2863/ND/2019

In the matter of :
SUNIL KUMAR

.......Operational Creditor/Applicant

VERSUS

NESA INDIA PRODUCER COMPANY LIMITED

............Corporate Debtor/Respondent

AND
IN THE MATTER OF:

MR. SUDHANSHU GUPTA
311, AGARWAL CHAMBER -2,
PLOT NO. 30-31, VEER SAVARKAR BLOCK,
OPP. METRO PILLAR NO. 58, SHAKARPUR
DELHI-110092

....Applicant/Interim Resolution Professional

VERSUS

MR. SUNIL KUMAR
OPERATIONAL CREDITOR
HOUSE NO. D-157, GALI NO. 10
NEAR SHANTI DAL PUBLIC SCHOOL,
HARPHOOL VIHAR, JAI VIHAR, PHASE-3,
BAPRAULA, WEST DELHI-110043

.........Contemnor/Respondent

ORDER DELIVERED ON: 25.01.2022

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Avinash K. Srivastava, Hon'ble Member (Technical)