



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 1481/2023

IN

Company Petition No. (IB) – 153/ND/2020

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions.

IN THE MATTER OF:

M/S VS & B DOMESTIC CONTAINER SOLUTION LIMITED

.... OPERATIONAL CREDITOR

VERSUS

M/S MAPLE LOGISTICS PRIVATE LIMITED

.... CORPORATE DEBTOR

AND IN THE MATTER OF

Mr. Parveen Kumar Adlakha

Resolution Professional of CD

...Applicant

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)



For the Applicant: Mr. Akash Srivastava, Mr. Sanjay Jain, Ms. Arshita Bansal, Advocates

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER
(JUDICIAL)

Order Pronounced on: 07.11.2023

1. This is an application filed by the Resolution Professional, Mr. Parveen Kumar Adlakha, under Section 33(2) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “IBC, 2016/Code”) for issuance of directions for liquidation of Corporate Debtor, M/s. Maple Logistics Private Limited
2. The facts in brief stated in the application is as under: -
 - I. That this Tribunal vide Order dated 25.04.2022 initiated Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) against the Corporate Debtor and appointed Mr. Vinod Radhakrishnan Nair as Interim Resolution Professional (hereinafter referred to as IRP) in the matter.
 - II. The IRP made Public Announcement in FORM- A on



29.04.2022 in Business Standard (English) New Delhi, Ahmedabad, Bhopal, Chennai, Hyderabad, Kochi, Kolkata & Mumbai Edition and Jansatta (Hindi) New Delhi, Chandigarh & Bhopal Edition (Regional Language Newspaper)

- III. That the first meeting of the Committee of Creditors was convened on 27.05.2022 wherein the IRP proposed the resolution to appoint Mr. Vinod Radhakrishnan Nair or any other Insolvency Professional as the case may be as Resolution Professional and the same has been disapproved by the members of CoC. Therefore, Mr. Vinod Radhakrishnan Nair continued as the Deemed RP in the matter.
- IV. It is submitted that the Deemed RP published Form-G for Invitation of EOI in submitting Resolution Plan of the Corporate Debtor in Financial Express and Jansatta on 09.07.2022 but no EOI was received.
- V. That the CoC in its 3rd meeting dated 16.08.2022, proposed the appointment of Mr. Parveen Kumar Adlakha as the RP replacing the Deemed RP i.e., Mr. Vinod Radhakrishnan Nair. The said resolution was approved by CoC with 68.55% voting shares. The said appointment was also confirmed by this Tribunal vide order dated 25.11.2022.



VI. That since no Expression of Interest or Resolution Plan was received pursuant to publication of Form G on 09.07.2022, the members of CoC decided to file an application for liquidation of Corporate Debtor. Accordingly, in the 7th meeting of CoC held on 19.01.2023, the members of CoC passed the following resolution

RESOLVED THAT the approval of members for liquidation of the company be and is hereby accorded."

FURTHER RESOLVED THAT Mr. Parveen Kumar Adlakha earlier Resolution professional of the company be and is hereby appointed as Liquidator of the company and complete the formalities for liquidation of the company including applying to NCLT, appointing advocate sign documents etc. "

The aforesaid resolution was approved by the members of CoC with 66.82% voting shares.

VII. The Resolution Professional i.e., Mr. Parveen Kumar Adlakha has annexed his Written Consent dated 13.01.2023 with this application to act as Liquidator in the present case.

VIII. That pursuant to the above stated facts and circumstances, the Applicant has preferred the present



application for passing the order of Liquidation of the Corporate Debtor in terms of provisions enumerated under Section 33(2) of the IB Code, 2016.

3. This Tribunal has gone through the application filed by the applicant / Resolution Professional, the present application is filed under section 33(2) of the Insolvency and Bankruptcy Code, 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.]

4. The Hon'ble NCLAT, in its judgement, in the case of Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT) reported in MANU/NL/0788/2022 in para 7 stated as under: -

*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. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. 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.

5. The CoC in the 7th CoC meeting held on 19.01.2023 decided to file an application u/s 33(2) of the IBC for liquidation which was also approved by 66.82% voting shares. Further, it is well settled that decision taken by CoC for liquidation in commercial wisdom of the CoC should not be interfered with by



the Adjudicating Authority. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC.

6. In light of the above, the application is **allowed** by ordering liquidation of the corporate debtor, namely M/s Maple Logistics Private Limited with following directions:

a. That Mr. Parveen Kumar Adlakha, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.

b. That Mr. Parveen Kumar Adlakha, holding Registration No. IBBI/IPA-002/IP-NO1034/2020-2021/13336 is appointed as the Liquidator in terms of Section 32(1) of the Code;

c. 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;

d. 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;

e. 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;

f. The Liquidator 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.

g. 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.

h. 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.

i. 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 (Liquidation Process) Regulations, 2016;

j. Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary



steps;

k. The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.

I.A 1481/2023 filed in CP(IB) 153/ND/2020 is disposed off in terms of the above.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)