

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

IA No. 543/JPR/2022
In CP No. (IB) 176/9/JPR/2019

UNDER SECTION 9 OF IBC, 2016

IN THE MATTER OF:

JAIPUR TRADE EXPOCENTRE PRIVATE LIMITED
...Operational Creditor

VERSUS

M/S METRO JET AIRWAYS TRAINING PRIVATE LIMITED
...Corporate Debtor

AND IN THE MATTER OF:

IA No. 543/JPR/2022

MEMO OF PARTIES

Bhim Sain Goyal, IRP

Address: M- 215, Rear Ground Floor,
Greater Kailash II, New Delhi- 110048

... Applicant/ IRP

VERSUS

Jaipur Trade Expocentre Pvt. Ltd.

I-83 Lajpat Nagar II
New Delhi- 110024

... Non-Applicant/Respondent No. 1

Mr. Satendra Tiwari, Suspended Director

Suspended Director of Metro Jet Airways Training Pvt. Ltd.
102-103, Gopalpur Bypass, Near Trivaninagar Chouraha,

Sd

sd

Jaipur – 302018

... Non-Applicant/Respondent No. 2

Ms. Seema Tiwari, Suspended Director

Suspended Director of Metro Jet Airways Training Pvt. Ltd.

102-103, Gopalpur Bypass Near Trivaninagar Chouraha,

Jaipur – 302018

... Non-Applicant/Respondent No. 3

For the Applicant : Pramod Kumar Sachdeva, Adv.
Bhim Sain Goyal, RP
For the Operational Creditor : Sanjana Saddy, Adv.
For the Respondent : Aditya Vijay, Adv.

Order Pronounced On:31.08.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') bearing IA No. 543/JPR/2022 is filed by the Resolution Professional ('Applicant' / 'RP') for M/s Metro Jet Airways Private Limited ('Corporate Debtor') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') for passing an order of Liquidation.
2. The Adjudicating Authority *vide* Order dated 10.08.2022 ('CIRP Order') had admitted the Application filed by M/s Jaipur Trade Expocentre Private Limited under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Bhim Sain Goyal as Interim Resolution Professional ('IRP'). In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('CoC') under Regulation 17 of the Insolvency and Bankruptcy Board

Sd

Sd

of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and same was taken on record *vide* Order dated 29.09.2022.

3. The IRP published Form – A in Indian Express (English Language) and Jaipur Bureau (Hindi Language) on 14.08.2022 with 24.08.2022 as a cutoff date for submission of claims. Pursuant to the public announcement the IRP received only one claim from the Operational Creditor, M/s Jaipur Trade Expocentre Private Limited ('Original Applicant'). The first meeting of the CoC was held on 03.09.2022, wherein the CoC deliberated on the agenda of appointing 'IRP' as the Resolution Professional of the Corporate Debtor. A copy of the minutes of the first CoC meeting is annexed as Annexure A-2 of the IA.

4. The CoC exercising its right under Section 22(2) of the Code unanimously appointed Mr. Bhim Sain Goyal as the Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority *vide* Order dated 25.11.2022. Meanwhile, the RP tried to file Form 28 on the portal of the Ministry of Corporate Affairs ('MCA'). However, it was found that the status of the Corporate Debtor is reflected as a 'strike off'. Consequently, he filed an application under Section 60(5) of the Code for changing the status to 'under CIRP' and was allowed.

5. The Sole CoC member gave a notice *vide* an email dated 19.09.2022 under Regulation 18 of the CIRP Regulations for liquidating the Corporate Debtor as it has no staff, students, or business, being evident from the bank statements, for many years. Hence, the resolution of the Corporate Debtor through the CIRP would deteriorate the assets' life, incur wasteful expenditure, and prolong the

effective settlement of the operational dues. A copy of the Email dated 19.09.2022 is annexed as Annexure A-3 of the IA.

6. In the second CoC meeting dated 19.09.2022, the CoC noted that the IRP had placed the agenda for the appointment of the registered valuers to determine the fair and liquidation values under Regulation 35 of the CIRP Regulations, 2016 on 13.09.2022. However, the CoC rejected the resolution proposed by the RP and requested for taking up the liquidation of the Corporate Debtor as it is not a 'going concern'. On the account of non-participation of the suspended directors of the Corporate Debtor, the true operational status of the Corporate Debtor could not be deciphered. Hence, the RP proposed another meeting of the CoC giving an opportunity to the suspended management to inform, firstly, the current operational status of the Corporate Debtor, and lastly, such early liquidation will affect the interest of the other stakeholders, if any. A copy of the minutes of the second CoC meeting is annexed as Annexure A-4 of the IA.

7. On the telephonic request of the suspended director, the third CoC meeting was rescheduled to 27.09.2022 for ensuring the engagement of all the stakeholders. The CoC member passed the resolution under Section 33(2) of the Code for liquidating the Corporate Debtor owing to the aforementioned reasons. A copy of the minutes of the third CoC meeting is annexed as Annexure A-5 of the IA. Further, the present RP was appointed as the Liquidator and his fees were fixed. The consent of the RP to act as a Liquidator is annexed as Annexure A-6 of the IA.

Sd

Sd

8. The RP *vide* Diary No. 724/2023 dated 21.03.2023 placed on record the additional documents indicating that Corporate Debtor was non-functional. These documents include the Financial Statements for the Financial Years 2011, 2014, 2015, 2016, and 2017 and the corresponding bank statements. A copy of the financial statements for the Financial Years 2011, 2014, 2015, 2016, and 2017 and the corresponding bank statements are annexed as Annexure A-1, A-2, A-3, A-4, A-5, A-6 of the Additional Documents, respectively.

9. Moreover, the RP upon receiving the aforesaid financial statement observed that *'all the Balance Sheet(s) are signed on 30th September of the respective year and none of the transactions that appeared in Company's Bank Statement in Union Bank of India, Malviya Nagar, Jaipur, is considered while preparing the Balance Sheet. The Bank Balance as of 31.03.2017 is the same as given by the previous Auditor as of 31.03.2011, whereas the actual balance is different.'* Therefore, the RP stated further that the authenticity of these documents cannot be trusted and requested for submission of the books of the account used for preparing such financial statements *vide* an email dated 12.01.2023. A copy of the Email dated 12.01.2023 is annexed as Annexure A-7 (Colly) of the IA.

10. Respondent Nos. 2 and 3, who are suspended directors of the Corporate Debtor filed their reply *vide* Diary No. 1200/2023 dated 12.05.2023 and denied the averments made in the IA, stating that the RP has suppressed material facts from the Adjudicating Authority and is not maintainable as:

- a. The Applicant is not following the due process of law owing to the present application being filed under Section 33 of the Code, within two months of the CIRP Order, without publishing an Expression of Interest under Form-G shows that CIRP Order was obtained not for the revival of the Corporate Debtor but to recover the operational dues of the Original Applicant as enunciated in the table below:

S. No.	Date	Particulars of the event
I.	10.08.2022	Admission of CIRP
II.	12.08.2022	Initiation of Public Announcement
III.	24.08.2022	Last date of submission of claims
IV.	26.08.2022	The CoC was constituted of the single operational creditor ('original applicant')
V.	03.09.2022	First Meeting of the CoC
VI.	16.09.2022	The Sole CoC member writes to the Applicant proposing liquidation.
VII.	19.09.2022	Second Meeting of the CoC for considering liquidation proposal.
VIII.	27.09.2022	Third Meeting of the CoC for approving the liquidation and appointment of the Applicant as the Liquidator.
IX.	10.10.2022	Application for liquidation was filed.

- b. The reasons assigned for initiating the liquidation of the Corporate Debtor are formed without any substantial indication of the Corporate Debtor's fair value and liquidation value. The action of the CoC in rejecting the appointment of the registered valuer under Regulation 27 of the CIRP Regulations raises an eyebrow at the real intention of the

Sd

Sd

the CoC and the conduct of the RP in performing his duties under Sections 17 and 18 of the Code.

- c. The CoC could not have been in the position to formulate an opinion regarding the availability of the prospective buyers without publishing Form – G and for such reasons, CIRP is mandatory before the initiation of the liquidation process as the Code provides every Corporate Debtor a fair chance to stand on their own feet and to come out of the financial distress.
- d. Respondent No. 2 stated that he received a single call from the Applicant wherein he informed the RP of his efforts for completing the books of accounts. However, RP communicated the intentions of the CoC for liquidating the Corporate Debtor. The Corporate Debtor has assets valuing Rs. 13,62,50,000/- (Rupees Thirteen Crores Sixty-Two Lakhs and Fifty Thousand Only). A copy of the list of assets and their corresponding valuation is annexed as Annexure R-1 of the reply.
11. The RP *vide* Diary No. 1449/2023 dated 07.06.2023 filed his Written Submission reiterating his early submissions and elaborated that the alleged audited Financial Statements have the same bank balance as was on 31.03.2011 while there being no change in the status of the Corporate Debtor. Thus, such Financial Statements are not reliable. Moreover, the contention of Respondents



No. 2 & 3 in asserting the value of the assets of the Corporate Debtor being Rs. 13.62 Crores, whose possession has not been handed over, the Balance Sheets shows worth of such assets Rs. 43.43 Lakhs which is inclusive of the scraped aircraft valued at Rs. 35 Lakhs in 2011. Additionally, there has been no depreciation provided on the aircraft in any audited Financial Statements. Hence, the suspended directors are trying to derail the due process of law without any evidence to show the Corporate Debtor as a going concern.

12. The Applicant has relied on the judgment of *Sreedhar Tripathy v. Gujarat State Financial Corporation & Ors., Company Appeal (AT)(Ins) No. 1062 of 2022* where the CoC's decision to initiate liquidation after management did not handover assets of the Corporate Debtor to the RP. The RP could not draw an Information Memorandum and issue an Expression of Interest was upheld. The Hon'ble NCLAT observed that:

'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 indilapidated condition and the CIRP will involving costs. We are not convinced

Sd

Sd

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 no 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.

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. In the present situation extension of time will only result in unnecessary expenses. Further the resolution for liquidation of CD was approved by CoC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC.'

13. Respondents No. 2 & 3 have filed their Written Submissions vide Diary No. 1682/2023 dated 12.07.2023 and has reiterated their early submissions. They have elaborated that as per Section 21 of the Code, the CoC cannot be formed when there is only one operational creditor and relied on *V. Duraisamy v. Jeyapriya Fruits and Vegetables Commission Agent & Ors., (AT)(Ch)(Ins) No. 25 of 2022* wherein the Hon'ble NCLAT has held that:

Sd

Sd

'6. This tribunal is of the earnest view that there is no provision in the Code for the Corporate Debtor to constitute the CoC with a single Operational Creditor, when it is seen from the record that despite the public announcement being made inviting claims from its stakeholders, the Appellant has not received a single 'Claim' from the date of initiation of the Corporate Debtor into CIRP. As the CoC itself is not constituted and in the light of the fact that not a single 'Claim' was received by the IRP even after the public announcement, as well as the fact that the Corporate Debtor Company has been struck off from the Registrar of Companies, this Tribunal is of the considered view that the CIRP may be closed with respect to the subject company.

7. For all the foregoing reasons, this Appeal is 'Allowed' and the order of the 'Adjudicating Authority' is set aside and the 'Company' is released from all rigors of CIRP. All pending Applications and Interlocutory Applications, if any, stand 'Closed'.'

14. Further, in the case of *Mr. Dharm Vir Gupta v. M/s SARE Realty Projects Private Limited*, IA No. 3818/ND/2021 in CP No. (IB)-684(ND)/2020, the coordinate bench of this Adjudicating Authority has relied on the Judgement of Hon'ble Apex Court in *Swiss Ribbons Pvt. Ltd. & Anr. V. UOI & Ors., Writ Petition (Civil) No. 99 of 2018* and emphasised that the early liquidation was proposed due to the non-availability of any prospective buyer for the CD ... until EOI in Form-G is published, there is no mechanism under the regime of IBC to discover Prospective Resolution Applicants for a Corporate Debtor. Without

Sd-

Sd-

publishing Form-G, CoC could not have been in a position to formulate an opinion that there were no prospective buyers available for the Corporate Debtor.

15. The Operational Creditor has filed his Written Submission, being the sole member of the CoC, in addition to the submissions made by the RP *vide* Diary No. 1682/2023 dated 12.07.2023 and stated that the CoC was informed that the Corporate Debtor was not a going concern, has not been doing any business for considerable years and has had no statutory filings from 31.03.2011. Accordingly, the CoC exercised its power as prescribed under Section 33(2) of the Code.

16. In addition, the arguments of Respondents No. 2 & 3 that Section 21 of the Code does not stipulate the constitution of CoC by the Operational Creditors flouts the principle of law as the proviso to Section 21(8) of the Code read with Regulation 18 of the CIRP Regulations suggests that there is no bar on the CoC being of comprised sole one operational creditor if no further claims received by the RP pursuant to publication of Form – A. Furthermore, in V. Duraisamy (Supra) not a single creditor had filed the claim form despite the public announcement vis-à-vis no CoC was not constituted.

17. On careful perusal of the abovementioned facts, documents placed on record before us, submissions made and arguments advanced, we find that the present application under Section 33 of the Code is filed without following the letter and spirit of the IBC. It is apparent from the documents that in the third CoC meeting, the sole Operational Creditor, without any cogent reasons, has not

Sd-

Sd-

appointed any valuers as required under Regulation 27 of the CIRP Regulations. The Operational Creditor has given a notice for liquidation *vide* email dated 19.09.2022 roughly within one month of the CIRP Order. The application of the liquidation was filed within two months of admission order without exploring the options of resolution of the Corporate Debtor. Such steps indicate the real intent of the CoC in recovering the dues rather than the resolution of the Corporate Debtor in accordance with the IBC. In any case, the non-cooperation of the suspended management is no grounds for liquidation of the Corporate Debtor.

18. The Adjudicating Authority must keep the interest of the Corporate Debtor paramount when there are assets lying while the CoC consists of the sole operational creditor. The Hon'ble NCLAT in *Hero Fincorp Limited v. M/s Hema Automotive Private Limited, Company Appeal (AT)(Ins) No. 1540 of 2022* has observed that:

'13. There is no doubt that in Section 33, sub-sections (1) and (2) legislature has used the expression 'shall'. However, the obligation of the Adjudicating Authority to direct liquidation shall rise only when the decision of the CoC is in accordance with the Code. Judicial review of the decision of the CoC in a particular is not precluded.'


19. In view of the foregoing narratives, it is prima facie that the present application of the liquidation is filed in non-conformity and opposed to the IBC. Hence, we dismiss the present application as being arbitrary and unsustainable. Additionally, we direct that the CoC shall take steps following the Code in

Sd-

Sd-

successfully resolving the Corporate Debtor including publication of Form – G and appointment of valuers. Furthermore, the Applicant is also directed to strictly act in accordance with the provisions of the Code and proceed with the CIRP of the Corporate Debtor as per the provisions of the Code.

20. Consequently, IA No. 543/JPR/2022, stands disposed of with the aforesaid observations and a copy of this Order may be placed in the file of the said IA. Copy of this Order is to be furnished to the parties.


**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**


**ATUL CHATURVEDI,
TECHNICAL MEMBER**