

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA/(IBC)/1518/CHE/2023 in CP/IB/25/CHE/2023

(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of *LSML Private Limited*

AJAY S JAIN
Resolution Professional of
M/s LSML Private Limited.
Flat-10G, 10th floor,
Bhavyablock, Sri Maha lakshmi Utsav Apt,
33 9.KHRoad, Ayanavaram,
Chennai-600 023.

... Applicant /Resolution Professional

Present:

For Applicant : Jeyanthi K Shah, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 12th October 2023

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

Hearing conducted through VC

This is an application filed under Section 33(2) and 60(5) of the
Insolvency and Bankruptcy Code, 2016 seeking relief as follows:

- (i) To pass an order of liquidating the Corporate Debtor as per Section 33 (2) of the IBC,2016 considering the decision of the COC in the 6th meeting held on 23.06.2023 to liquidate the Corporate Debtor and appoint the RP as the Liquidator as recommended by the COC;



(ii) *pass such other orders which are deemed fit and necessary in the nature and circumstances of the case and thus render justice.*

2. It is submitted that pursuant to an application filed under Section 9 of IBC 2016, the Corporate Insolvency Resolution Process was ordered against the Corporate Debtor viz. M/s. LSML Private Limited, by this Tribunal vide its order dated 14.10.2022 and one Mr. N. Venkatesh was appointed as the IRP. Subsequently, the Applicant herein was appointed as the Resolution Professional (RP) pursuant to this Tribunal order dated 02.02.2023.

3. It is stated that the Applicant made a Public Announcement in accordance with Section 15 of the Code read with Regulation 6 of Chapter III of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 20.10.2022 and also in the website of the Insolvency and Bankruptcy Board of India.

4. It is stated that the 1st CoC in the meeting held on 16.11.2022, proposed Ajay S Jain as the Resolution professional of the Corporate Debtor. Subsequently, this Tribunal vide order dated 02.02.2023 confirmed Mr. Ajay S Jain as the Resolution professional of the Corporate Debtor.



5. It is stated that, Form G and EOI calling for Resolution plans was published on 23.03.2023. Copy of EOI and Form G is placed as Annexure 4 & 5 of the Application typeset.

6. It is stated that pursuant to the 5th COC meeting, IA/859/CHE/2023 was filed before this Tribunal seeking extension of the CIRP of the Corporate Debtor for 90 days and the same was allowed by this Tribunal vide order dated 15.06.2023.

7. It is stated in para 10 of the Application that, as no resolution plan was pending for perusal before the committee, the COC in the 6th meeting dated 23.06.20223 unanimously resolved to go for liquidation of the Corporate Debtor. The said resolution is as follows:-

“Deliberation on the move to the Hon'ble NCLT, Chennai Bench, referring with an application for liquidation of the Corporate Debtor under Section 33 of the IBC, 2016 and approving the following resolution:

The Chairman informed members that based on Form G released in the newspapers; no entitles had submitted their expression of interest (EoI) for the corporate debtor. In view of this, it was decided by the committee to arrange for committee meeting to discuss the future course of action in detail including passing the resolution for liquidation of the Corporate Debtor under Section 33 of & B Code, 2016.

The Chairman Informed CoC that there were no resolution plans available before CoC for approval and members advised the Chairman to file an application for liquidation of the Corporate Debtor.





The following resolution was passed by the Chairman and approved by the COC unanimously:

"Resolved that an Application for Liquidation of the Corporate Debtor to be filed to the Hon'ble NCLT, Chennai under Section 33 (1) (a) of IBC, 2016"

LSML Private Limited

06th COC Meeting dated 23rd June 2023

Voting sheet for Item No.8 - move to the Hon'ble NCLT, Chennai Bench, referring with an application for liquidation of the Corporate Debtor under Section 33 of the IBC, 2016;

| S.No | COC Member | Voting Share % | Decision | Signature |
|------|--|----------------|----------|--|
| 1 | M/s Shashvatha Renewable Energy Pvt Limited – Financial Creditor | 60.67% | Yes |  |
| | | | No | |
| 2 | M/s Vahlth Information Technology Services Pvt Limited- Financial Creditor | 39.33% | Yes |  |
| | | | No | |

8. The written consent of the Applicant to act as the Liquidator of the Corporate Debtor is placed at Page 45 & 46 of the Application.

9. From the Form-H placed at Page 47 of the Application typeset, it is evident that Form H, it is evident that there is No PUF E Applications pending for consideration with regard to the Corporate Debtor before this Tribunal.

10. In reference to the facts mentioned above, Section 33 (2) of the IBC, 2016 is extracted hereunder for reference:-





Section 33 (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 percent 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. In view of the observed facts, the Corporate Debtor is hereby ordered for liquidation as the CoC has unanimously passed a resolution to liquidate the Corporate Debtor.

12. It is also relevant to refer the Hon'ble SC judgement in K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150 in which it has been categorically held that commercial wisdom of the COC is paramount

Para 33

“The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC muchless to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely



continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code.

... They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

13. Although the Applicant RP has annexed the written consent & AFA to act as the Liquidator of the Corporate Debtor but the IBBI vide its power vested under Section 34 (4) (b) of IBC,2016 has recommended that a different Insolvency Professional shall be appointed other than the RP, in all cases where an order of liquidation is passed.

14. We hereby appoint **Poosaidurai S**, with (*Reg. IBBI/IPA-001/IP-P-01965/2019-2020/12995 and e-mail id: poosaidurai@gmail.com*) as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy



(Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be



filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

- j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

15. With the above said directions IA (IBC)/1518/CHE/2023 stands allowed and disposed off.

— Sd —

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

Vinita Varshini.K