

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA – 4592/2022

In

IB – 619(ND)/2019

Order under Section 33(1) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

M/s. Intec Capital Limited

...Applicant / Financial Creditor

Versus

M/s. Jagtar Singh & Sons Hydraulics Private Limited

...Respondent / Corporate Debtor

AND

Piyush Moona

...Applicant/ RP for Corporate Debtor

Order Pronounced On: 21.11.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

Present:

For the Applicant: Mr. Vinod Kumar Chaurasia, Advocate Mr. Piyush

Moona, for RP



O R D E R

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant under Section – 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking relief as follows: -

a. Allow the present application and pass an order to initiate the Liquidation Process of the Corporate Debtor under Section 33(1)(a) pursuant to completion of approved CIRP period of 300 days.

b. Allow the appointment of current Resolution Professional i.e. Mr. Piyush Moona bearing IBBI Registration No.- IBBI/IPA-001/IPP00990/2017-2018/11630) to act as the Liquidator in the Liquidation Process of the Corporate Debtor.

c. Direct the COC for the payment of the expenses & cost, including fees of RP on the basis proposed by RP before COC, for the period from filing of this application & till the date of final liquidation order in this matter, to be part of CIRP cost.

d. Pass an appropriate order for compliance of order dated 31/05/2022 passed in IA-3285/2021, to include the unpaid CIRP costs of Rs 8.67 Lacs from 1st CIRP process of this matter, in the current CIRP costs of the Corporate Debtor and that the same shall rank equally with current CIRP costs under waterfall mechanism as defined in Sec 53 of IBC, 2016.

e. Pass such other order or further orders as may be deemed fit and proper by this Hon'ble Tribunal in the matter.

2. This Adjudicating Authority vide Order dated 03.09.2019 admitted the Application IB – 619(ND)2019 filed by Applicant/Financial Creditor against the Respondent/Corporate Debtor and by the virtue of the said order IRP was appointed.



3. The Hon'ble NCLAT vide order dated 19.09.2019 stayed the constitution of CoC & directed the IRP to maintain the Company as a going concern and also ordered for initiation of mediation and appointed Justice A. K. Sikri, former judge of Apex Court as Mediator.

4. The Settlement Agreement was executed between the parties vide dated 02.12.2019. The Corporate Debtor violated the payment terms mentioned in the order of NCLAT dated 13.03.2021 and hence, Financial Creditor filed IA 2096/2021 before this Adjudicating Authority for seeking revival of the CIRP in terms of order of Hon'ble NCLAT.

5. The CIR process was revived against the Corporate Debtor on 23.11.2021 and Mr. Piyush Moona was appointed as IRP. The IRP made a public announcement for the invitation of claims in Form-A vide dated 27.11.2021.

6. The 1st CoC meeting was convened on 22.12.2021 wherein CoC inter alia resolved to appoint the IRP as RP with 100% votes. The RP in accordance with the section 29 of IBC, 2016 read with regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016, prepared the Information Memorandum containing the details of the Corporate Debtor and shared the same with the CoC on 15.01.2022.

7. The 2nd CoC meeting was convened on 28.01.2022, wherein the members of the CoC inter alia approved the publication of Form G, eligibility criteria of Prospective Resolution Applicants ("PRA") & appointed new statutory Auditor. Further, on 04.02.2022, RP invited EOIs from the prospective resolution applicants to submit their resolution plans through an advertisement in Form-G (as per Regulation 36A(I) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016) and



same was published in newspapers namely Financial Express - English and Jansatta – in Hindi, both in Delhi NCR edition.

8. The 3rd COC meeting was convened on 25.02.2022 wherein the members of the COC inter alia approved bid evaluation matrix and requested for resolution plan document (“RFRP”).

9. The 4th meeting was convened on 28.04.2022 wherein the members of the CoC inter alia approved CIRP extension by 90 days, further resolved for publication of fresh Form G/EOI (3 PRA’s were shortlisted after publishing of 1st Form G, but they failed to submit the resolution plan).

10. The IA-2377/2022 was filed for an extension of 90 days by the RP, which was allowed by this Adjudicating Authority vide Order dated 26.05.2022. The 5th CoC meeting was convened on 27.05.2022 wherein the RP apprised the CoC for issuing of Fresh Form G (2nd time) which was approved by CoC inviting the PRA to submit their expression of interest (EOI) to participate in the resolution process of the Corporate Debtor.

11. This Adjudicating Authority was pleased to pass an order dated 31.05.2022 in IA-3285/2021 wherein, this Adjudicating Authority ordered to include the unpaid CIRP costs of Rs 8.67 Lacs from 1st CIRP process of this matter, in the current CIRP costs of the Corporate Debtor.

12. The 6th meeting was convened on 07.07.2022 wherein the RP apprised the CoC about NCLT order dated 31.05.2022 in previous CIRP cost matter. Further, the final list of PRA after 2nd EOI was issued wherein, two plans were submitted one by M/s. Simran Machine Tools and another one by M/s. Sunride Industries. The CoC noted that both the RA’s had submitted the



Resolution plans for Corporate Debtor, along with the provision of transfer of Land on which the factory of Corporate Debtor is situated and is in name of Director of Corporate Debtor, together with the assets of Corporate Debtor. Accordingly, the plans provided for exclusive payment to SBI for transfer of land in their name and separate payment for resolution of Corporate Debtor. The CoC also approved the filing of Avoidance application u/s 43 & 66 by RP basis the final report dated 04.07.2022 received from Forensic Auditor.

13. The 8th meeting was convened on 10.08.2022 wherein Revised Resolution Plans were submitted by Resolution Applicants and process of inter-se bidding on the Resolution Plans was done between 2 PRAs. The 9th meeting was convened on 22.08.2022, wherein CoC directly negotiated with representative of H1 bidder (M/s. Simran Machine Tools) after inter-se bidding, as decided in last CoC meeting.

14. The Ld. Counsel Appearing for the Applicant submitted that, both the Resolution Plans were placed before CoC for e-voting in the 10th CoC held on 29.08.2022. Resolution Plans garnered 0% votes in favour hence, no resolution plan could be approved. Further, in 12th CoC meeting, Resolution Professional placed the issue regarding liquidation of the Corporate Debtor before CoC, however said Resolution Plans for liquidation could only able to garner vote of 51.7% in favour which was less than the statutory requirement of 66%.

15. The sole question now before us is, whether an order for liquidation can be passed in this IA – 4529/2022 as neither Resolution Plan is approved by the CoC nor the Resolution for liquidation of the Corporate Debtor is passed by the CoC since it is still pending before us. In the light of the facts enumerated above we would like to refer the decision of NCLT Hyderabad Bench wherein it was held that CoC Resolution with 66% voting share is not




share is not a pre-condition for liquidation when no Resolution Plan is received by the Adjudicating Authority. It is pertinent at this stage to refer the decision given in ***State bank of India vs. M/s. Suryajyoti Spinning Mills Limited (IB-166/HDB/2019)***. The relevant extract is reproduced below for reference:-

11. The Id. Counsel for the respondent draws our attention to clause (2) of section 33, which is as under:

“(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 subsection (1).”

13. The Id. Counsel for the Petitioner counters the argument of the Id. Counsel for the respondent by contending that the said condition is applicable only when an application for liquidation is filed during the insolvency resolution process and when a resolution plan is pending and it does not apply when the maximum period permitted for completion of the corporate insolvency resolution process is over and when no resolution plan is received. We are convinced with the above argument of the Id. Counsel for the petitioner, when, under section 33(1)(a), the Adjudicating Authority has power to order for liquidation when no resolution plan is submitted to it, it implies that the Adjudicating Authority has to only see whether any resolution plan has come up before it for approval prior to the order for liquidation under section 33(1)(a).

14. As no resolution plan is received by the Adjudicating Authority, the questions whether CoC has resolved for liquidation or whether there is



no coordination between RP and CoC, are immaterial for the Adjudicating Authority to order for liquidation u/s 33(1)(a).

15. In view of the above, we do not find any reason to reject the request made by the RP to order for liquidation of the Corporate Debtor.

16. In the light of the decision referred to **supra**, we are of the considered view that dismissing this application and directing the Resolution Professional to place this Resolution of Liquidation of Corporate Debtor before CoC again would hamper the process of liquidation and would be jeopardized. This could be a never ending process and will create a deadlock which will make Resolution process more difficult. Keeping in view of the object of IBC which is resolution of the Corporate Debtor in time bound manner to maximise the value so, dismissing this IA at this stage would defeat the very purpose of IBC.

17. In light of the above facts and circumstances, it is hereby ordered as follows:

i. The **IA-4592/2022** filed by Mr. Piyush Moona, the Resolution Professional of M/s. Jagtar Singh & Sons Hydraulics Private Limited, the Corporate Debtor is **allowed**.

ii. The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code has recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.

iii. Therefore, this Adjudicating Authority appoints Mr. Kamall Ahuja as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The



Registration number of the Liquidator is IBBI/IPA-002/IPP01025/2020-2021/13389, and the e-mail id of the Liquidator is nclt.srassociate@lawmax.in. Therefore, the Liquidator shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order. Accordingly, Mr. Kamall Ahuja is appointed as the Liquidator.

iv. Mr. Piyush Moona, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.

v. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.

vi. The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

vii. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in Liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees can also be informed of this Liquidation order through their association.

viii. All the powers of the Board of Directors, and of key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.



ix. The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.

x. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

xi. In accordance with Section 33(7) of the Code, this Liquidation order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the Liquidation process by the Liquidator.

xii. 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.

xiii. The Liquidator shall also follow up the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

xiv. 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.

xv. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.



xvi. It is further directed that, as per the compliance of the order dated 31.05.2022 passed in IA-3825/2021 the unpaid CIRP cost of Rs. 8.67 lakhs from 1st CIRP cost shall be the part of current CIRP cost of the Corporate Debtor and the above mentioned amount shall come under waterfall mechanism as defined in section – 53 of IBC,2016.

xvii. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

xviii. The Registry is further directed to send a copy of this order to the IBBI for their record.

xvix. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities. No order as to costs.

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**