

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 07.12.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/71/2023 in CP (IB) No.384/7/HDB/2020
NAME OF THE COMPANY	Bartronics Global Solutions Ltd
NAME OF THE PETITIONER(S)	Infokall Enterprises Solutions Ltd
NAME OF THE RESPONDENT(S)	Bartronics Global Solutions Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/71/2023

Present: Ld. Counsel Mr. K. Purna Chandra Rao for the Applicant.

Ld. Counsel Dr. SV Ramakrishna for the Respondent.

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed. However, Liquidator is directed to call the meeting as per the Regulation 31(A).

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

**IA No.71/2023 in
CP(IB) No.384/7/HDB/2020**

*[Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with
Regulation 31A(11) of IBBI Liquidation Process) Regulations 2016]*

In the matter of :

M/s.Bartronics Global Solutions Limited,
Plot No.193, Block -B, Kavuri Hills,
Guttala Begumpet, Madhapur,
Hyderabad – 500 081

....Corporate Debtor

AND

M/s.Infokall Enterprise Solutions Limited
8-2-260/4/W, Plot No.4, Road No.2,
Women's Co-operative Society,
Banjara Hills,
Hyderabad - 500 034.

....Applicant/Financial Creditor

VERSUS

1. Mr.Matta Pedda Srinivas,
H.No.8-5-317/103, Sri Venkateshwara
Apartments, Near Kalyana Theatre,
Old Bowenpally,
Secunderabad – 500 011,
Telangana.

...Respondent No.1/Liquidator

2. M/s.Bartronics Global Solutions Limited,
Plot No.193, Block -B, Kavuri Hills,
Guttala Begumpet, Madhapur,
Hyderabad – 500 081 represented
by its Liquidator Mr.Matta Pedda Srinivas

**....Respondent No.2/Corporate Debtor
(under Liquidation)**

Date of Order: 07.12.2023

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr.K.Purna Chandra Rao, Advocate
For the Respondent No.1/: Dr.S.V.Rama Krishna, Mr.S.V.Vanshi Krishna,
Liquidator Ms.Oorvi Agarwal, Advocates

Heard on : 23.11.2023

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

1. The question involved in the present IA filed under Section 60(5)(c) of the IBC, 2016 read with Regulation 31A (11) of IBBI (Liquidation Process) Regulations by M/s.Infokall Enterprise Solutions Limited, Financial Creditor (hereinafter referred to as the applicant) is whether Mr.Matta Pedda Srinivas, Respondent No.1/Liquidator can be removed on the ground of delay in conducting liquidation process and violation of Regulation 31A(1) of the IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to as CIRP Regulations, 2016).
2. Briefly, the application under Section 7 of the Insolvency and Bankruptcy Code against M/s.Bartronics Global Solutions Limited, (hereinafter referred as Corporate Debtor/CD) was admitted vide order dated 04.08.2021.

3. The liquidation process was started against the CD on 6th September, 2022 and then Resolution Professional was also replaced with the respondent No.1 as the liquidator.
4. It is alleged that even after expiry of 4 months after the appointment of the liquidator, no effective steps were taken for the liquidation of the CD. Similarly, the respondent No.1 has also not constituted the Consultative Committee of all the Creditors of the CD during the 60 days period from the liquidation commencement date.
5. Being aggrieved by the inaction of the liquidator and non-compliance of the regulations as to the public announcement, valuation of claims, constitution of SCC, finalizing the list of stakeholders etc., the present application has been moved for the replacement of the liquidator.
6. The respondent by filing a reply has denied the allegations of the applicant and submitted that the present application has been filed in counter-blast to the IA No.39 of 2023 on 14-12-2022, wherein the respondent No.1 has explained about the conduct of the applicant acting in concert with the group of companies by entering into number of sham transactions. There are also other fraudulent transactions and avoidance of huge amounts due to the central government authorities such as GST, ESI and Income Tax. It appears that the petition is collusive and filed with oblique motive to conceal the bogus transactions.
- 6.1 Even the IRP/RP failed to collect the information about the bogus transactions and further has also not prepared information memorandum which is mandatory in law, for which he has charges Rs.3 lakhs. The

IRP/RP had done nothing, but he has been paid about Rs.25 lakhs from 29.09.2021 upto 06.09.2022.

- 6.2 When the RP was replaced with the applicant as liquidator, he only executed handing over and taking over report and relevant documents like vouchers, agreements etc., were not given to the liquidator. This has been done so that the misdeeds committed by the RP and the applicant could not be exposed. The RP has also failed to recover about Rs.2.73 crores from holding company and huge amounts pending from the sundry debtors. He has even gone to the extent of writing off Rs,12,67,351/- towards advance rent lying with the lessor of the premises of the corporate debtor, where it had its office. This action has no approval of the competent authority.
- 6.3 There is also collusion between the financial creditor and the corporate debtor because Mr.Ramnath Reddy Kisti, Director of the financial creditor was an employee in the corporate debtor company drawing salary. He has filed gratuity claims with the liquidator on 18.11.2022. Even the registered office is also not recorded in the master data available at MCA Webportal which is showing it as non-existent.
- 6.4 M/s.Bartronics India Limited (flagship company of M/s.Bartronics Group) which went through CIRP separately claimed an amount of Rs.64,25,913/, but the respondent No.1 has disallowed the claim and till date that Company has not approached this authority under Section 42 of the IBC. It also shows sham transaction on paper and suppression of relevant documents.
- 6.5 On the role of the liquidator by the CoC, it is submitted that the latter cannot remove him. It is explained that due to the non-availability of the

relevant documents, i.e., members register, creditors register, list of debtors, contractors, court cases etc. and preparation of the information memorandum, stakeholders consultation committee (SCC) was not constituted. Even, in the IA No.39/2023, the respondent No.1 has mentioned certain fraudulent transactions and further that the directors of the corporate debtor are not cooperating with the liquidator.

In view of the above circumstances, the respondent No.1 has claimed that he has carried out his duties of liquidator with utmost responsibility and was instrumental in reducing the claims of ESI from Rs.14,13,676/- to Rs.5,16,991/- and relied upon the decision in *M/s.Punjab National Bank versus Mr.Kiran Shah, Liquidator of OBC Informatics Limited, 2020 SCC online NCLAT 155* wherein it was stated that CoC cannot move an application for the removal of the liquidator.

7. Heard both the Learned Counsels and gone through the entire records.
8. The CIRP process was started vide order dated 04.08.2021 and IRP was also accordingly appointed, who was later confirmed as RP vide order letter dated 29.09.2021. The company went into liquidation vide order dated 06.09.2022 and on the same date, the respondent No.1 was appointed as liquidator.
9. The present application for the removal of the liquidator was filed on 16.01.2023 on the following grounds:
 - a) The liquidator has not taken any effective steps for conducting liquidation process, and
 - b) The liquidator has not complied with Regulation 31A(1) of the CIRP Regulations

10. In reply to the allegations levelled, the applicant has pointed out various irregularities and illegalities committed by the financial creditor in connivance with others and for which the respondent No.1 filed IA No.39/2023. He has taken various grounds to deny the claims of the applicant:
- a. Avoiding payment of huge amounts due to central government authorities such as GST, ESI and Income Tax by the financial creditor.
 - b. Filing of the collusive petition with oblique motive to conceal bogus transactions.
 - c. Payment of nearly Rs.25 lakhs w.e.f. 29.09.2021 to 06.09.2022 to RP without virtually doing any work. Even, information memorandum (IM) has not been prepared by him.
 - d. Unauthorised writing off Rs.12,67,351/- towards advance rent lying with the lessor of the premises of the corporate debtor.
 - e. The corporate debtor's registered office as shown in the master data available in the MCA Web-portal is not existing.
 - f. No effort was made by the RP to recover the amount from the sundry debtors, but wrote off huge amount of Rs.83 lakhs and further non-recovery of Rs.2.73 crores from the holding company.
 - g. Mr.Ramanath Reddy Kisti, Director of the financial creditor was an employee in the corporate debtor's company and he also drew salary. He has also filed claims of gratuity with the liquidator on 18.11.2022. This also shows the collusion between the financial creditor and the corporate debtor.
 - h. M/s.Bartronics India Limited (flagship company of M/s.Bartronics Group) which went through CIRP separately claimed an amount of Rs.64,25,913/, which was rejected by the liquidator in October, 2022. Non-challenging of the said order further proves the connivance between the financial creditor and the corporate debtor.
11. When the liquidator was appointed, all the documents relating to CIRP were not handed over by the RP and the list of taking over of the files (Annexure

R1-Page Nos.13-15 of the counter) shows that some of the important documents are missing. The steps taken by the liquidator after his appointment as reflected by filing of IA No.39/2023 and further exposing the misdeeds despite non-availability of the relevant documents go to show that there is something fishy which the liquidator intends to expose, but the other parties are opposing it. It is for this reason, the applicant approached this authority after about 3 months of the appointment of the liquidator, while remained silent for about one year during the appointment of resolution professional, who has not even prepared the information memorandum. Alacrity with which the application is filed raises doubt about the reason behind this.

12. When the provisions of the IBC and the liquidation regulations are read together, it becomes clear that there is no provision for the removal of the liquidator. On the question of consultation or taking directions from the CoC/stakeholders there are only few provisions in the IBC i.e., section 35(2) of IBC and Regulation 31(A) of the IBBI (Liquidation Process) Regulations 2016:

Section 35(2)

The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator.

Regulation 31A: *Stakeholders' consultation committee.*

31A. (1) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-

- (a) remuneration of professionals appointed under regulation 7;*
- (b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;*
- (c) fees of the liquidator;*

(d) valuation under sub- regulation (2) of regulation 35;

(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed.]

Provided that the decision(s) taken by the liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting.

(1A) The committee of creditors under section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee under sub-regulation (1).

(2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim:

Provided a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee;

Provided that the promoters, directors, partners or their representatives may attend the meeting of the consultation committee, but shall not have any right to vote.

Provided further that a financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.

(3) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.

(4) If the stakeholders of any class fail to nominate their representatives, under sub-regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.

(4A) the representative under sub-regulation (3) or (4) shall vote in proportion to the voting share of the stakeholders it represents.]

(5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).

(6) The liquidator shall convene the first meeting of the consultation committee within seven days of the liquidation commencement date and may convene other meetings, if he considers necessary, on a request received from one or more members of the consultation committee:

Provided that when a request is received by the liquidator from members, individually or collectively, having at least thirty three percent of the total voting rights, the liquidator shall mandatorily convene the meeting.

(7) The liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.

(8) The liquidator shall place the recommendation of committee of creditors made under sub-regulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.

(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, 10[voting].

(10) The advice of the consultation committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report].

(11) The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator :

Provided that where a liquidator is proposed to be replaced, he shall-

(a) continue to work till his replacement; and

(b) be suitably remunerated for work performed till his replacement.

Provided that where a consultation committee under Regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall reconstitute the consultation committee as required under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution.

[Explanation. - It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.]

13. Regulation 31A came into force after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019. However, the liquidator has not constituted the said committee even 60 days after he was appointed as the

liquidator. It is this provision which the learned counsel for the applicant has relied upon to say that the consultation committee has not been constituted. On the other hand, learned counsel for the respondent submitted that there is no use to form such committee because no fruitful purpose is going to take place in the absence of non-handing over of the relevant documents by the RP.

14. If a statute provides for a thing to be done in a particular way, then it has to be done in that manner alone and in no other manner. Therefore, the respondent can't put his own whims or fancies to say that constituting the committee or calling the meeting would not be useful.
15. About the other reason for removal of the liquidator is that he has not adhered to the timeline fixed for completing the CIRP. It is to noted that it is for this Authority to see as to whether the time for completing the process is to be extended or not. There may be genuine grounds for not completing the CIRP process. Time period of about 3 months is too short to judge that one is not doing enough when we see that the liquidator has tried his best to put the things in order.
16. About the removal of the liquidator, there is no provision in IBC. When the IBC is silent, we may refer to Section 16 of the General Clauses Act,1897 which states as follows:

16. Power to appoint to include power to suspend or dismiss- Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

17. Hence, when this Authority has power to appoint a liquidator, it has also implied authority to dismiss or remove him.
18. Similar to the absence of specific provision about the dismissal or removal of the liquidator in IBC, there is also no provision as on what ground (s) the liquidator can be removed. Here, we may profitably refer to Section 276 of the Companies Act, 2013 which contemplates such situation:

276. Removal and replacement of liquidator.- (1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:-

- (a) misconduct;*
- (b) fraud or misfeasance;*
- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;*
- (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;*
- (e) conflict of Interest or lack of independence during the term of his appointment that would justify removal.*

(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

19. Thus, under the Companies Act, the liquidator can be removed under the following grounds:

- (a) misconduct;
- (b) fraud or misfeasance;

- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
 - (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
 - (e) conflict of Interest or lack of independence during the term of his appointment that would justify removal.
20. The grounds as detailed above have direct link with the functioning of the liquidator and if he treads the path which clash with the interests of the stakeholders or shock the conscience of the common man, he can be removed. On the same analogy, the liquidator can also be removed under the IBC on any of the above grounds. The Hon'ble NCLAT in ***Dr. K.V. Srinivas, Resolution Professional of M/s. Sainath Estates Private Limited (AT) (CH) (INS) No.319/2022*** even went to the extent to say that apart from the grounds mentioned for change of Liquidator under the Companies Act, change can be done on grounds other than those mentioned under Section 34(4) of the I & B Code, 2016.
21. Now the question arises whether the acts and conduct of the liquidator are sufficient to remove him.
22. As far as violation of Regulation 31 A(1) of IBBI (Liquidation Process) Regulation, 2016 is concerned, this is not such infraction which may be considered misconduct etc., judged in view of non-availability of the relevant documents and intention of the liquidator to expose the truth. However, he is directed to constitute the committee and follow the spirit of law. Non-completion of the CIRP process is also not misconduct etc as the liquidator has within such a short period of time has tried to clear up the mess and he is trying to expose the misdeeds which has caused the company to put into liquidation. If the contention of the application is

accepted, it would also put the things under wrap which the respondent No.1 tried to expose by filing of IA No.39/2023.

23. Accordingly, the **IA No.71/2023** in Company Petition bearing No. **CP(IB) No.384/7/HDB/2020** with the above observations, is dismissed

SD/-

SANJAY PURI
MEMBER (TECHNICAL)

Vinod

SD/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)