

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

IA-4652/2022

In

IB-78(ND)/2021

IN THE MATTER OF IB-78(ND)/2021:

M/s. LH Asian Trade Finance Fund Limited **Financial Creditor**

Versus

M/s. Worlds Window Trading Private Limited **Corporate Debtor**

AND IN THE MATTER OF IA-4652/2022:

Mr. Alok Murarka

(Resolution Professional of the Corporate Debtor) **Applicant**

Versus

Committee of Creditors of M/s. Worlds Window Trading Private Limited

..... **Respondent**

Order Pronounced On: 19.09.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

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

PRESENT:

For the RP : Mr. Uday Bedi, Ms. Niharika Sharma, Advs.

For the CoC : Mr. Rajesh Rattan, Mr. Aditya Kumar, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Alok Murarka (Resolution Professional of the Corporate Debtor), the Applicant herein, under Section 33 of the Insolvency and Bankruptcy Code, 2016 seeking Liquidation of the Corporate Debtor. The Applicant seeks the following reliefs:

“a) Pass an order of liquidation of Corporate Debtor, M/s Worlds Window Trading Pvt. Ltd., under Section 33 of IBC, 2016 and appoint a liquidator;

b) Pass any other order as this Hon'ble Adjudicating Authority may deem fit and proper in the premises of this case.”

2. Brief Background of the Case:

The facts that are relevant for the determination of the issues involved in this application are stated as follows:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. LH Asian Trade Finance Fund Limited against the Corporate Debtor i.e. M/s. Worlds Window Trading Private Limited and the said application was admitted vide order dated 07.01.2022 by this Adjudicating Authority and a moratorium was declared. As proposed by the Financial Creditor, the Applicant herein, Mr. Alok Kumar Murarka was appointed as the Interim Resolution Professional. Subsequently, Mr. Alok Kumar Murarka was confirmed as the Resolution Professional of the Corporate Debtor.
- 3.** The Applicant is constrained to approach this Adjudicating Authority by way of the present Application as the 180 Days period for completion of CIRP has expired and no resolution in the present case is possible. The Applicant was appointed as the Interim Resolution Professional vide Order dated 07.01.2022 and his appointment as the Resolution Professional was confirmed in the 1st meeting of the Committee of Creditors held on 15.02.2022. In the said meeting held on 15.02.2022, the remuneration of the Applicant was also fixed at Rs. 2,75,000/- per month and the CIRP cost incurred from 10.01.2022 to 09.02.2022 amounting to Rs. 2,86,109/- also came to be approved by the Committee of Creditors.

4. It is submitted that in the 2nd meeting of the COC held on 05.04.2022, the claim filed by the Punjab National Bank, DIFC, Dubai (PNB) was also approved by the Applicant thereby inducting the PNB in the Committee of Creditors of the Corporate Debtor having 91.23% voting share in the COC.
5. It is contended that in the 3rd COC meeting held on 14.04.2022 there was no representation from the side of PNB. The Applicant informed the COC that he had prepared the information memorandum and that steps were being taken by him to secure access to the registered address of the Corporate Debtor which was under the custody of M/s. Hero FinCorp Ltd. A discussion was also held on the approval of evaluation matrix and the request for resolution plan for the Corporate Debtor. The total CIRP cost had risen to Rs.8,95,809/-.
6. It is further contended that in the 6th COC meeting, PNB suggested to initiate liquidation process against the Corporate Debtor. It was decided to keep the following agenda items for voting:

AGENDA ITEMS TO BE VOTED UPON:

"Resolution 1 - Resolved that remuneration of Rs. 2,75,000/- p.m. for 5 months of Resolution Professional be approved."

"Resolution 2 - Resolved that the publication of Form G be approved."

"Resolution 3 - Resolved that the fees of valuers of Rs. 47,200 be ratified."

"Resolution 4 - Resolved that Transactional Auditor be appointed."

"Resolution 5 - Resolved that CIRP cost of Rs. 15,20,561/- as discussed in the meeting be approved."

"Resolution 6 - Resolved that Evaluation Matrix as discussed in the meeting be approved."

"Resolution 7 - Resolved that Request for Resolution Plan (RFRP) as discussed in the meeting be approved."

"Resolution 8 - Resolved that liquidation be initiated against the Corporate Debtor."

- 7.** The above-mentioned agenda was voted upon and only the Resolution 8 was approved by a majority vote for the liquidation of the Corporate Debtor, however, the COC has not prepared any liquidation plan to the Applicant. Therefore, the carrying on of CIRP for the Corporate Debtor is no longer viable and therefore, prayer has been submitted to issue directions under Section 33 of IBC.
- 8.** We have heard the submissions of Ld. Counsel appearing for the Applicant. We have also perused the records.
- 9.** The Present Interlocutory Application has been filed to enable the Applicant to perform his duties under the Code.
- 10.** During the course of Arguments, this Adjudicating Authority vide order dated 09.08.2024 recorded the following:

"IA-4652/2022

We have heard the submissions made by Ms. Niharika Sharma, Ld. Counsel appearing for the Applicant/Resolution Professional and Mr. Rajesh Rattan, Ld. Counsel appearing for the Respondent/ Punjab National Bank.

The Respondent/Punjab National Bank in its affidavit dated 03.07.2024 has stated that "the above Corporate Debtor M/s Worlds Window Trading Pvt. Ltd is the Corporate Guarantor of the Principal Borrower of the PNB namely M/s Everest Metal FZE and in view of the above ground reality of the assets of the Corporate Debtor the Bank does not want to carry out the Liquidation process of the Corporate Debtor and the same be dissolved as per law per under the Code."

Ms. Niharika Sharma, Ld. Counsel appearing for the Resolution Professional has submitted that the Resolution Professional has no objection if the company is dissolved as per law.”

11. We rely on the Order passed by the Coordinate Bench in the matter of **M/s. Air Pegasus Private Limited [I.A. No. 198/2020 in C.P.(IB) No. 180/BB/2018]**, wherein NCLT Bengaluru Bench had approved the direct dissolution of the Corporate Debtor without going through the Liquidation Process. On an appeal by the Managing Director of the Corporate Debtor, the Hon’ble NCLAT, Chennai in **Shyson Thomas vs. Mr. Madhugiri Venkatarayappa Sudarshan** [T.A. (AT) No. 8 of 2021 in C.A.(AT)(CH)(INS)/925/2020; order dated 01.06.2023] had upheld the National Company Law Tribunal, Bengaluru Bench's order dated 24.06.2020 of passing an Order of Dissolution of the Corporate Debtor (M/s. Air Pegasus Private Limited), with immediate effect. While upholding the order of direct dissolution passed by the Adjudicating Authority, Hon’ble NCLAT, Chennai had observed, which are as follows:

“43. It cannot be lost sight off that the ‘Corporate Debtor’, had ‘No Realisable Financial Assets’, and the only ‘Valuable Asset’, was of ‘Intangible’ in nature of the ‘Air Operator Permit’, a ‘License’, issued by the ‘DGCA’ and the ‘Validity’ of the said ‘License’, had lapsed on 23.03.2020.

44. It cannot be brushed aside that the ‘Dissolution’ of the ‘Corporate Debtor’, was approved by the ‘Financial Creditor’ with ‘100% Voting Rights’, and in IA No. 198 of 2020, filed by the 1st Respondent/Resolution Professional (under Section 54 of the I & B Code, 2016), an ‘Order’, dissolving the ‘Corporate Debtor’/M/s. Air Pegasus Private Limited’ (Applicant Company), was passed with an immediate effect, etc.

45. At this juncture, this ‘Tribunal’, pertinently points out that there is no fetter that the ‘Corporate Debtor’, cannot be ‘Dissolved’, without undergoing the ‘Process of Liquidation’.

53. Suffice it for this ‘Tribunal’, to make a pertinent mention that in the absence of any ‘Asset(s)’/the ‘Resolution Plan(s)’, the Resolution Professional, had no other go, but to pray for an ‘Order of Dissolution’, to be passed by the ‘Adjudicating Authority’. After all, the end of ‘Liquidation’, requires complete ‘Dissolution’ of an ‘Entity’.”

12. Further, in the case of **M/s. GMM BARTER PVT. LTD. vs. M/s. VALUE SOLAR ENERGY PVT. LTD.** in IA-4855/2023 In (IB) – 280(ND)/2022 vide order dated 29.11.2023, the NCLT New Delhi Bench, Court-III had allowed direct dissolution of the Corporate Debtor.

13. We are of the considered view that the Judgment passed by the Hon’ble NCLAT leads us to the view that the ultimate objective of the Code is either to resolve the Corporate Debtor by way of the Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible.

14. In view of the above facts and circumstances, there is no impediment to the Corporate Debtor being dissolved in the exercise of powers under Rule 11 of the NCLT Rules, 2016 to meet the ends of justice and to prevent abuse of the process of the Adjudicating Authority.

15. For the sake of convenience Rule 11 of NCLT Rules, 2016 is reproduced below:-

“11. Inherent powers. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

16. The language used in Rule 11 of NCLT Rules, 2016 clearly shows that the Tribunal has the inherent power to pass such orders as may be

necessary for meeting the ends of justice or to prevent abuse of the process of the Adjudicating Authority.

17. The Hon'ble NCLAT while dealing with the power conferred under Rule 11 of the NCLAT Rules, 2016, in the case of **Action Barter Private Limited Vs. SREI Equipment Finance Limited and Another**, reported in *2020 NCLAT Del 2734 in IA No. 811/2020 in Company Appeal (AT)(Insolvency) No. 1434 of 2019*, has held that- *“Rule 11 is merely declaratory in the sense that this Tribunal is armed with inherent powers to pass orders or give directions necessary for advancing the cause of justice or prevent abuse of the Appellate Tribunal's process. Even in the absence of Rule 11 this Appellate Tribunal, being essentially a judicial forum determining and deciding rights of parties concerned and granting appropriate relief, has no limitations in exercise of its powers to meet ends of justice or prevent abuse of its process. Such Powers being inherent in the constitution of the Appellate Tribunal, Rule 11 can merely be said to be declaring the same to avoid ambiguity and confusion.”*

18. From the above, it is very clear that this Tribunal is clothed with powers under Rule 11 of NCLT Rules, 2016 to pass any order in order to meet the ends of justice or to prevent abuse of the process of the Tribunal.

19. This Adjudicating Authority finds that it would be just and proper to order the dissolution of the Corporate Debtor as per Section 54 of the Code. Hence, the Corporate Debtor is ordered to be **dissolved**. **IA-4652/2022** shall stand **disposed of** in accordance with the above directions. The Corporate Debtor stands dissolved from the date of this Order.

20. The Resolution Professional is directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, immediately and, in any case, within fourteen days of receipt of this

order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

- 21.** The Resolution Professional shall stand discharged from his responsibilities, subject to procedural compliances.
- 22.** The Registry is directed to send copies of this order to all the parties for information, for taking necessary steps and to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- 23.** 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)