

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

**IA No.292/2023
In
CP (IB) No.275/Chd/Pb/2020
(Admitted Matter)**

**Under Section 33(2) read with
Section 60(5) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:-

Intec Capital Ltd.

...Petitioner-Financial Creditor

Vs.

Ten K Overseas Ltd.

...Respondent-Corporate Debtor

And in the matter of IA No. 292/2023:-

**MR. RAJIV KHURANA
RESOLUTION PROFESSIONAL
FOR M/S TEN K OVERSEAS LIMITED
HAVING OFFICE AT:
HOUSE NO. 1299, SECTOR 15B,
CHANDIGARH –160015**

...Applicant

Order delivered on: 18.08.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:-

For the Applicant in IA No. 292/2023

: Mr. Viren Sharma

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 292/2023

The present Application is being filed by MR. RAJIV KHURANA, Resolution Professional (RP) of **M/S TEN K OVERSEAS LIMITED** (Corporate Debtor) under section 33(2) read with Section 60(5) of Insolvency and Bankruptcy Code, 2016 ('IBC'), for initiation of liquidation of the corporate debtor.

2. It is prayed by the applicant to issue an order for liquidation in terms of Section 33(2) of the Code be passed as approved by the CoC in its 11th meeting dated 09.01.2023 with 100% voting share and appoint the Applicant i.e. Mr. Rajiv Khurana, Registration Number – IBBI/IPA-001/IP-P00126/2017-18/10268, as the Liquidator for the Corporate Debtor.

3. The brief facts of the case are that this Adjudicating Authority vide Order dated 22.04.2022 admitted the application for initiation of the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor and appointed Mr. Vivek Bansal as the Interim Resolution Professional ("IRP"). The IRP issued a Public Announcement dated 24.04.2022 in prescribed Form – A under Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") to invite claims from the creditors of the Corporate Debtor and the last date of submission of claim was stipulated as 06.05.2022. The Committee of Creditors ("CoC") was constituted and the first meeting of was convened on 21.05.2022, wherein the IRP apprised the

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members of the CoC with regard to the steps taken by the IRP in the Corporate Insolvency Resolution Process in the matter of the Corporate Debtor. The IRP further informed the status of claims collated by the IRP and the constitution of CoC in the matter of the Corporate Debtor. That the IRP placed the agenda for the appointment of IRP as the Resolution Professional, however the same was deferred by the CoC to be decided in the next meeting.

4. The IRP placed the agenda for the appointment of IRP as the Resolution Professional in the second meeting of the Committee of Creditors which was convened on 27.05.2022, however, the same was deferred to the next meeting. The IRP further apprised the members of the CoC with regard to the steps taken by the IRP in the Corporate Insolvency Resolution Process in the matter of the Corporate Debtor.

5. The third meeting of the Committee of Creditors was convened on 03.08.2022, wherein the IRP placed the agenda for the appointment of IRP as the Resolution Professional. That the members of the CoC decided to replace the IRP and appoint Mr. Rajiv Khurana as the Resolution Professional in the matter of the Corporate Debtor. However, voting on the resolution for the replacement of IRP with a new resolution professional could not be done.

6. On 29.08.2022, the fourth meeting of the Committee of Creditors was convened, wherein the IRP placed the resolution for the replacement of IRP with Applicant as the Resolution Professional in the matter of the Corporate Debtor as proposed by the members of the CoC in the last meeting. The following Resolution was placed for voting before the members of the CoC:

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"RESOLVED THAT Mr. Rajeev Khurana, Insolvency Professional (IP Regn No. IBBI/IPA-001/IP-P-00126/2017-2018/10268) be and is hereby appointed as Resolution Professional (RP) in the replacement of Mr. Vivek Bansal Interim Resolution Professional (IRP) for Corporate Insolvency Resolution Process of Ten K Overseas Limited in accordance with provisions of Section 22(3)(b) of the IBC, 2016".

7. The resolution was placed for e-voting which commenced on 29.08.2022 at 03.30 pm and ended on 31.08.2022 at 03.30 pm. The above resolution was unanimously approved by the Committee of Creditors in the matter of the Corporate Debtor with 100% voting share. Thereafter, the Committee of Creditors filed an Application bearing I.A. No. 1166 of 2022 under Section 22(3)(b) of the Code seeking the replacement of Interim Resolution Professional and appointment of Applicant namely Mr. Rajiv Khurana as approved by the CoC with 100% voting share and this Adjudicating Authority pleased to allowed the Application vide Order dated 15.09.2022 thereby appointing the Applicant as the Resolution Professional in the matter of the Corporate Debtor. The Applicant convened the fifth CoC meeting dated 06.10.2022, wherein the Applicant apprised the members of the CoC about the status of the CIRP process in the matter of the Corporate Debtor. The Applicant placed the agenda for valuation of the assets of the Corporate Debtor wherein it was deliberated that there was certain information which is yet to be ascertained and the agenda for valuation was deferred to the next meeting. Thereafter, the Applicant placed the agenda for an extension of the CIRP period by 90 days beyond 180 days expiring on 19.10.2022. The following resolution was placed before the members of the CoC for voting:

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“Resolved that consent of members of committee of creditors is hereby accorded, in accordance with Section 12(2) of the Insolvency and Bankruptcy Code, 2016 to extend the period of the Corporate Insolvency Resolution Process by further 90 days beyond the specified period of 180 days.

Further, resolved that the Resolution Professional through his counsel shall file the appropriate application before the Hon'ble National Company Law Tribunal, Chandigarh Bench seeking for extension of Corporate Insolvency Resolution Process for further 90 days”

Upon discussions and deliberations, the members of the CoC approved the above resolution with a 77.20% voting share.

8. This Adjudicating Authority vide Order dated 20.10.2022 allowed the Application and extended the CIRP period by 90 days beyond 180 days. The Applicant convened the sixth meeting of the Committee of Creditors on 03.11.2022, wherein the Applicant apprised the members of the CoC about the steps taken in the COC process in the matter of the Corporate Debtor and regarding the valuation of the assets of the Corporate Debtor is required to be conducted. Upon discussions and deliberations, the members of the CoC requested the Resolution Professional to invite quotations from registered valuers and place the agenda for the appointment of valuers in the matter of the Corporate Debtor in the next meeting.

9. The Applicant convened the seventh meeting of the Committee of Creditors on 09.11.2022, wherein the Applicant apprised the members of the CoC that he has received quotations of 4 registered valuers which were shared with the COC members. Upon discussions and deliberations, the members of the CoC directed the Applicant to appoint registered valuers for determining the valuation of the

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assets of the Corporate Debtor in terms of CIRP Regulations. The Canara Bank further informed the Applicant that they will be filing Export Credit Guarantee Corporation (hereinafter referred to as 'ECGC') Claim positively by 15.11.2022 and the Applicant requested the Bank to provide a copy of the claim form when filed.

10. The Applicant convened the eighth meeting of the Committee of Creditors on 16.11.2022, wherein Canara Bank informed that they have sent a copy of the record of default and stated that they shall file a claim with ECGC within 30 days from the date of filing the record of default on 15.11.2022. The Applicant further apprised the members, that the registered valuers shall submit their report within 7 days pursuant to which a copy shall be shared with the members of the CoC. The Applicant convened the ninth meeting of the Committee of Creditors on 22.12.2022, wherein Canara Bank informed that the Corporation did not accept the claim form as certain information was missing. Canara Bank further apprised the members that the ECGC claim shall be filed by 28.12.2022.

11. The Applicant convened the tenth meeting of the Committee of Creditors on 30.12.2022, wherein Canara Bank informed that a claim of Rs. 1.33 crore had been filed with the ECGC and receipt of the same has been shared with the Applicant and other members of COC. The Applicant enquired as to why a claim of Rs. 1.33 crore was filed when the outstanding was in excess of 28 crore to which Canara Bank apprised that in terms of internal discussion, only this claim was tenable. Upon discussions and deliberations, Canara Bank was requested to file a complete claim before 07.01.2023.

12. The Applicant convened the eleventh meeting of the Committee of Creditors on 09.01.2023, wherein the Applicant placed the agenda for Publication of Form G to invite expression of interest in the matter of the Corporate Debtor. Upon discussions and deliberations, the members of the CoC were of the opinion that the Corporate Debtor is not a going concern and has no physical assets and rejected the resolution for publication of Form G. Thereafter, the Applicant placed the agenda for Liquidation of the Corporate Debtor before the CoC. Upon discussions and deliberations, the members of the CoC requested the Applicant to place the resolution for liquidation of the Corporate Debtor for voting. The following resolution was placed before the COC members:

“Resolved that, subject to the approval by the Adjudicating Authority, the members of the Committee of Creditors do hereby accord their approval for the Liquidation of the Corporate Debtor, in accordance with the provisions of Section 33(2) of the Insolvency and Bankruptcy Code, 2016”

The above resolution was approved by the CoC members with 100% voting share.

13. The Applicant convened the twelfth meeting of the Committee of Creditors on 12.01.2023, wherein the Applicant placed the agenda for approval of the estimate of Liquidation Cost in terms of Regulation 39B of the CIRP Regulations before the members of the Committee of Creditors. Upon discussions and deliberations, the members of the CoC approved the estimate of liquidation cost in the matter of the Corporate Debtor. Further, since no liquid assets are available in the matter of the Corporate Debtor, the members of the CoC agreed to defray their

part of the Liquidation Cost in the Liquidation Account of the Corporate Debtor. Thereafter, the Applicant placed the agenda for the sale of corporate debtor as a going concern in terms of Regulation 39C of the CIRP Regulations. Upon discussions and deliberations, the members of the CoC rejected the resolution for the sale of the corporate debtor as a going concern since there are no physical assets of the Corporate Debtor and Corporate Debtor has not been a going concern for some time. The Applicant further placed the agenda for approval of the fee of the Liquidator in terms of Regulation 39D of CIRP Regulations. The Applicant consented to act as a liquidator in the matter of the Corporate Debtor. Upon discussions and deliberations, the members of the CoC approved the resolution for the appointment of the Applicant as the Liquidator in the matter of the Corporate Debtor and approved the fee to be paid to the Liquidator.

14. The Corporate Insolvency Resolution Process in the matter of the Corporate Debtor is expiring on 17.01.2023 and the Committee of Creditors in its commercial wisdom has approved the resolution for liquidation of the Corporate Debtor in its 11th meeting convened on 09.01.2023 with 100% voting share. It is submitted that there are no physical assets such as Land & Buildings or Plant & Machinery in the matter of the Corporate Debtor.

15. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and the relevant provision is reproduced below:

"Section 33(2): Initiation of liquidation
(1)

(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).

[Explanation. - For the purpose of this sub-section, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

16. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. before the expiry of the Insolvency Resolution Process period;
- ii. before the expiry of the maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12 or the fast-track Corporate Insolvency Resolution Process under Section 56, as the case may be;
- iii. If no resolution plan is received under sub-section (6) of Section 30; and
- iv. after the CoC approval of the proposal for the liquidation with not less than sixty-six per cent of the voting share.

17. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

18. The Liquidator's Fee shall be structured in the manner as ratified in the 12th Meeting of CoC. Further, since no liquid assets are available in the matter of the

Corporate Debtor, the members of the CoC agreed to liquidate the corporate debtor and to defray their part of the Liquidation Cost in the Liquidation Account of the Corporate Debtor.

19. In the 12th meeting of CoC, the present applicant has been resolved to be appointed as Liquidator. The consent of Mr. Rajiv Khurana in Form AA dated 07.12.2020 is attached as Annexure A-18 of the present application. However, in view of the guidelines dated 18.07.2023 issued by the Insolvency and Bankruptcy Board of India, Mr. Ankur Bansal bearing Registration No. IBBI/IPA-003/ICAI-N-00370/2021-2022/13820, Mobile No.- 9988251003, email Id:- ip.caankur@gmail.com is proposed by the petitioner counsel to be appointed as the liquidator.

20. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, i.e. **M/S TEN K OVERSEAS LIMITED**, is directed to be liquidated in the manner as laid down in Chapter III of the Code.

21. Accordingly, by exercising our power under Section 33(2) pass the following order:-

- I. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- II. The law research associate of this Adjudicating Authority has checked the credentials of Mr. Ankur Bansal bearing Registration No. IBBI/IPA-003/ICAI-N-00370/2021-2022/13820, Mobile No.- 9988251003, email Id:- ip.caankur@gmail.com and nothing adverse has been found

against him. In view of the same, he is hereby appointed as liquidator; subject to his written consent to be filed within 7 days of this order;

- III. Mr. Ankur Bansal, Shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations
- IV. Mr. Ankur Bansal, is directed to file his written consent along with an affidavit within 7 days, stating therein that no disciplinary proceedings have been initiated against him by the Board or the insolvency professional agency;
- V. The liquidator is directed to take custody and control of the assets, and property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- VI. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect, and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- VII. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

- VIII. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- IX. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;
- X. The Liquidator shall take necessary legal action to recover the trade receivables and other credits, such as loans and advances from the parties, which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.
- XI. 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 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.
- XII. That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator;
- XIII. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing

the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional

- XIV. The liquidator will be entitled to the protection of action taken in good faith as per the provisions of Section 233 of the Insolvency and Bankruptcy Code 2016
- XV. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;
- XVI. A copy of this order be sent by the Registry to the concerned Registrar of Companies (RoC) for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT, within a period of 30 days.
- XVII. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.
- XVIII. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.
22. Thus, IA No. 292/2023 stands allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)
August 18 , 2023
PKA/TBG

Sd/-

(Harnam Singh Thakur)
Member (Judicial)