

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 2863(ND)/2019
IA/989/2021

IN THE MATTER OF:

SUNIL KUMAR

House no. D-157, Gali no. 10
Near Shanti Dal Public School,
Harphool Vihar, Jai Vihar, Phase-3,
Bapraula, West Delhi-110043

...OPERATIONAL CREDITOR/APPLICANT

VS

NESA INDIA PRODUCER COMPANY LIMITED

Corp Office: 103 KH No.47/22
Akash Vihar Nangloi,
Near Kali Mata Mandir,
New Delhi-110041

...CORPORATE DEBTOR/RESPONDENT

SECTION: U/S 9 OF IBC, 2016

Order Delivered on: 21.02.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

PRESENT:-

For the Applicant: Adv. Mansij Arya and Adv. Priyanka

For the Respondent: Adv. Manas Tripathi

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. This matter was heard on 31.01.2022 and when the erstwhile IRP declined to act as Liquidator then the order was reserved for appointment of Liquidator.
2. Before passing any order, we would like to refer Section 34 of IBC, 2016 which relates to the appointment of Liquidator and the same is reproduced below:-

Section 34: Appointment of liquidator and fee to be paid.

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under '[Chapter-II]'[or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

(2) On the appointment of a liquidator under this section, all 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.

(3) 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 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.

(4) The Adjudicating Authority shall by order replace the resolution professional, if—



(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded ³[in writing; or]

(c) the resolution professional fails to submit written consent under sub-section (1).

(5) For the purposes of ⁵[clause (a) and (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

(6) The Board shall propose the name of another insolvency professional ⁴[along with written consent from the insolvency professional in the specified form,] within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

(7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

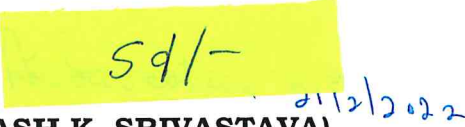
3. A bare perusal of the provision shows that in terms of Section 34 (1) whenever a Liquidation order is passed under Section 33 of IBC, then the Resolution Professional appointed for the CIRP shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4) of Section 34 of IBC 2016. His appointment is subject



to condition that the Resolution Professional is required to submit a written consent for his appointment as Liquidator. Here in the case in hand, the IRP has not submitted the consent even in this matter no CoC was constituted and this fact was considered while passing the order of liquidation on 25th January, 2022 and the matter was listed to appoint the Liquidator on 31.01.2022, but the erstwhile IRP declined to act as Liquidator.

4. As it is seen that neither the CoC was constituted nor there is other claimant, therefore, in the peculiar facts and circumstances of the case in hand, we think it proper to exercise the powers under Rule 11 of NCLT Rules. Accordingly, by exercising the powers under Rule 11 of NCLT Rules, we hereby appoint Mr. Lekhraj Bajaj having Registration No.- IBBI/IPA-002/IP-NO0039/2016-2017/10078 & email Id lekhrajbajaj@rediffmail.com to act as Liquidator. The office is directed to handover a copy of this order and order of liquidation to the Liquidator appointed and inform the Liquidator.

5. **Accordingly, in terms of aforesaid order, the IA bearing No. IA-989/2021 stands disposed off.**


(AVINASH K. SRIVASTAVA)
Member (T)


(ABNI RANJAN KUMAR SINHA)
Member (J)