

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPANY APPEAL (AT)(INS) NO.822/2021**

(Arising out of judgement dated 04.01.2020 passed in IA No.5289(ND)/2021 in CP No.(IB)No.979(ND) of 2019 by National Company Law Tribunal, New Delhi Bench)

In the matter of:

1. Rakesh Gupta,
H.No.C-7, Pushpanjali Enclave,
Pitampura,
Delhi-110034.

2. Nidhi Gupta,
H.No.C-7, Pushpanjali Enclave,
Pitampura
Delhi-110034

Appellants

Vs

1. Mr Nitin Narang,
Liquidator of M/s Gupta Marriage Halls Pvt Ltd
B-101, Ground Floor,
Old Gupta Colony,
Model Town,
New Delhi-110009

2. Mahesh Bansal,
Erstwhile Resolution Professional,
SCF 24, 1st Floor, Bhadaur House,
Ludhiana 141008

3. Punjab National Bank,
Plot No.4, Sector 10,
New Delhi-110075.

Respondents

For Appellant: Mr. Vikas Mehta, Mr. Ashish Choudhury, Mr SC Dass and Mr Anand Kamal, Advocates.

For Respondent: Mr Mohak Sharma and Mr Abhishek Anand, Advocates.

JUDGEMENT
(9th September, 2022)

JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL)

The present appeal has been preferred under Section 61 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the IBC) by two Appellants claiming to be ex-Directors of M/s Gupta Marriage Halls Pvt Ltd (Corporate Debtor) against an order dated 04.01.2021 passed by the Adjudicating Authority, National Company Law Tribunal, Division Bench, Court III, New Delhi. By the said order the Adjudicating Authority has allowed the petition filed under Section 33(2) of the IBC in IA No.5289(ND)/2020 in CP (IB) No.979 (ND) of 2019. The Adjudicating Authority while allowing the petition filed by Resolution Professional namely Mr. Mahesh Bansal ordered for initiation of liquidation proceeding against the Corporate Debtor i.e. Gupta Marriage Halls Pvt Ltd. The operative portion is in para 9 of the impugned order which runs as follows:-

“ORDER

9. In view of the facts and circumstances, this Authority is satisfied that the Application IA/5289(ND)/2020 filed for initiation of Liquidation proceedings against the Corporate Debtor is a fit case for ordering liquidation of the Corporate Debtor namely, M/s. Gupta Marriage Halls Private Limited in the manner laid down in the Chapter II of Part II of IBC, 2016 and is allowed with the directions as follows: -
I. This Authority appoints the Insolvency Professional Mr.

Nitin Narang whose name appears in the list of the Insolvency Professionals provided by the BBI to NCLT Delhi, having Registration number: 1BB/IPA-002/1P NO0828/2019-2020/12629 E-mail ID: advocatenitinnarang@gmail.com

II. The Resolution Professional viz., Mr. Mahesh Bansal is discharged as he has not given consent and is directed to handover the charge to the Liquidator appointed by this Authority.

III. Mr. Nitin Narang is appointed as Liquidator in terms of Section 34 (1) of BC, 2016. Therefore, all the powers of Board of Directors, key Managerial Personnel, and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested with the Liquidator. The Personnel of the Corporate Debtor are hereby directed to extend all corporations to the Liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for the conduct of liquidation proceedings in the proportion to the value of the liquidation estate assets as specified under Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of 1BC, 2016.

IV. Mr. Nitin Narang is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

V. Since this Liquidation Order has been passed, no suit or other legal proceedings shall be initiated by or against the corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub section 6 of the Section 33 of the Code

VI. This Authority makes it clear that Para (V) herein above shall not apply to legal proceedings in relation to such transactions as notified by Central government in consultation with any financial sector regulator.

VII. This liquidation Order shall be deemed to be the notice of discharge to the officers, employees, workmen of the Corporate Debtor except to the extent of the business of the

Corporate Debtor is continued during the liquidation process by the Liquidator.

VIII. The Counsel and erstwhile RP are directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana, to the Insolvency and Bankruptcy Board of India and IT Department including Assessing IT Officer of the IT Circle for which the Liquidator shall provide the details of the address.

IX. The Order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect from the date of the order and that a fresh Moratorium under Section 33(5) of IBC, 2016 shall commence.

X. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter II of Part of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

XI. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 () of the Code.

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

XIII. The Liquidator shall submit a 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.

XIV. Copy of this Order shall be sent by the Counsel and erstwhile RP to the financial creditor, corporate debtor, and the Liquidator for taking necessary steps.”

On perusal of record certain important facts have been emerged which need to be incorporated herein. Earlier prior to the impugned order on an application filed by Punjab National Bank, who is Respondent No.3 herein, under Section 7 of IBC by order dated 03.09.2019 the Adjudicating Authority initiated

Corporate Insolvency Resolution Process (CIRP) against Corporate Debtor namely M/s Gupta Marriage Halls Pvt Ltd. It was disclosed before the Adjudicating Authority in application filed under Section 7 of the IBC that in the year 2012 a term loan to sum of Rs.6.62 crores and Overdraft of Rs.1.50 crore was sanctioned. Subsequently from time to time it was enhanced in the year 2014 to the tune of Rs.4.60 crores, out of which Rs.4.5 crore was released in term loan in favour of the Corporate Debtor. It was enhanced to Rs.10 crore. However, on 29.07.2016 the account of the Corporate Debtor was declared NPA. Thereafter on declaration of the account as NPA a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was sent which was followed by issuance of notice under Section 13(4) of the Act. However, in the meanwhile on the request of the Corporate Debtor on 31.03.2017 the same was re-structured as follows:-

Facility	Restructured amount
OD	4,50,00,000.00
Term Loan-1	1,79,66,986.22
Term Loan-2	6,78,89,143.00
WCTL	65,97,200.00
FITL	1,75,06,940.00

Total	15,49,60,269.22
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It was asserted by the Punjab National Bank/Respondent No.3/Financial Creditor that despite acknowledgement of debt by Corporate Debtor it remained outstanding. Subsequently, the petition under Section 7 of the IBC was filed and the same was admitted. Despite the notices were validly served on the Corporate Debtor, the Corporate Debtor did not enter appearance and as such the Adjudicating Authority proceeded with the matter ex parte against the Corporate Debtor and finally the CIRP proceeding was initiated against the Corporate Debtor by order dated 03.09.2019. In the CIRP since no Resolution Plan was approved as per authorisation of COC the Resolution Professional filed petition under Section 33(2) of the IBC on which impugned order was passed by the Adjudicating Authority which has been assailed in the present appeal.

Mr. Vikas Mehta, learned counsel appearing on behalf of Appellant assailing the impugned order has argued that the basic object of the IBC is to continue Corporate Debtor in running condition and liquidation is the last resort. However, the RP without exhausting all the remedies hurriedly approached the Adjudicating Authority with a plea to initiate liquidation proceeding. He further submits that the Adjudicating Authority has also committed error in admitting the same. It has been

reiterated by the Learned Counsel for the Appellant that the Resolution Professional/Respondent has not at all taken any sincere efforts for obtaining appropriate resolution plan and without approval of resolution plan in arbitrary manner the RP has approached the Adjudicating Authority for initiating liquidation proceeding and the Adjudicating Authority has also committed same error and admitted the same. It has further been argued by the Learned Counsel for the Appellant that the RP during CIRP had never given any opportunity to the Appellant for revival of the Corporate Debtor.

Learned Counsel appearing on behalf of Respondent supporting the impugned order submits that the impugned order itself reflects that the Appellant never render any assistance to the RP. He submits that despite the repeated requests made by the RP, the appellants were not providing any information to the RP and this was the reason that RP was constrained to file the Petition under Section 19 of the IBC against the appellants. He has also drawn our attention to order dated 2nd March, 2022 passed in CA 871/2019 in IB 979(ND)/2019 passed by the Adjudicating Authority and submits that due to non-cooperation and not handing over books of accounts and other information to the RP a fine of Rs.5 lakhs was imposed on the Corporate Debtor/Appellants. However, he fairly admitted that the order dated 02.03.2020 passed by the Adjudicating Authority was

assailed by the appellants herein before this Tribunal vide Company Appeal (AT)(Ins) No.40/2022 and a Bench of this Tribunal has stayed imposition of fine by its order dated 11.04.2022. Learned counsel for the Respondent submits that the said appeal is still pending. Learned Counsel for the Respondent has raised preliminary objection on the point of maintainability of the present appeal. He has argued that Appellants who are claiming to ex-directors are not entitled to maintain the present appeal. According to Learned Counsel for the Respondent after initiation of liquidation proceeding officers/employees of the Corporate Debtor are considered to under discharge notice and as such it is fit case to be rejected on the ground that the appellants are incompetent to pursue the present appeal.

Besides hearing Learned Counsel for the parties we have minutely examined material available on record. Before proceeding further it would be appropriate to reproduce the impugned order as follows:-

“1. Under consideration is an Application filed by the Resolution Professional viz., Mr. Mahesh Bansal (hereinafter referred as "Applicant"), under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC, 2016") seeking liquidation of the Corporate Debtor viz., M/s. Gupta Marriage Halls Private Limited (hereinafter referred as "Corporate Debtor"), based on the resolution passed by the Committee of Creditors in its' 6th CoC Meeting on 02.11.2020. The other prayers made in the Application are:

"b) To pass an Order for appointment of the Liquidator of the CD.

c) To pass such other Orders/direction as this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the present case."

2. On perusal of this Application, it appears that CP (IB)-979 (ND)/2019 was filed by the Financial Creditor viz., M/s. Punjab National Bank (hereinafter referred as "Financial Creditor) against the Corporate Debtor viz., M/s. Gupta Marriage Halls Private Limited (hereinafter referred as "Corporate Debtor) under Section 7 of BC, 2016 R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) to initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), declare moratorium and appoint Interim Resolution Professional (hereinafter referred as "IRP"). This Adjudicating Authority vide Order dated 03.09.2019, admitted the Application, initiated the CIRP against the Corporate Debtor and appointed one Mr. Mahesh Bansal as the IRP.

3. It is averred that pursuant to the Order of this Authority which was received by the IRP on 23.10.2019. The 1st meeting of the Committee of Creditors (hereinafter referred as "CoC") was held on 22.11.2019 wherein, it was resolved to appoint IRP namely, Mr. Mahesh Bansal as the Resolution Professional.

4. The 2nd CoC Meeting was convened on 27.12.2019 wherein the approval for publication and eligibility criteria for FORM-G was settled. The FORM -G was published on 28.12.2019 in two newspapers namely "Jansatta" (Hindi) and "Financial Express" (English) and intimated about the same to IBBI and IPA of ICAI under Section 208 (2) (d) of IBC, 2016. The Resolution Professional on approval of CoC appointed two personnel (i) Mr. Ashok Juneja as Legal Advisor and representer before this Authority (ii) Mr. Ramesh Wadhwa as Consultant to carry out the CIRP Process.

5. Two registered Valuers were appointed for the purpose of valuation of the fixed assets, Financial and Current assets of the Corporate Debtor. It is submitted that the valuation could not be done as the assets of the Corporate Debtor were not handed over by the Suspended Directors to the Applicant.

6 The Applicant appointed M/s. Raj Gupta & Co., Chartered Accountants and 1BA approved Forensic Auditor, Ludhiana

as the Transaction auditor of the Corporate Debtor, however the transaction audit has not been carried out due to non-availability of the information. The RFRP, eligibility criteria, Evaluation Matrix etc., were prepared and were approved in the 2nd CoC Meeting. The Applicant published Form -G, Invitation for Expression of Interest in two newspapers namely 'Financial Express' (English) and 'Jansatta' (Hindi) on 28.12.2019. The Applicant had received 2 responses, till the last date of submission however, none submitted Resolution Plans. The 3rd CoC Meeting was convened on 03.03.2020 wherein, the CoC approved the Revised Form-G (with extended timelines) and RFRP, eligibility criteria, Evaluation Matrix etc., remaining unchanged. The revised Form -G was published on 10.03.2020 in two newspapers namely 'Financial Express' (English) and 'Jansatta' (Hindi). The Applicant had received 6 responses, till the last date of submission however, none submitted Resolution Plans. In the 4th CoC Meeting held on 27.05.2020 the CoC deliberated on the publication of Revised Form-G for maximisation of the interests of all the stakeholders and authorised the Applicant to publish. Therefore, the publication of Form -G, Invitation for Expression of Interest was done on 21.06.2020 in two newspapers namely 'Financial Express' (English) and 'Jansatta' (Hindi). In response publication 6 responses were received till the last date of submission however, none submitted Resolution Plans.

7. It is noted that this Authority vide Order dated 31.08.2020 extended the period of CIRP for further 90 days from 31.08.2020. The 6h CoC Meeting was convened on 02.11.2020 wherein the Financial Creditor voted against the resolution for publishing Form-G with RFRP, eligibility criteria, Evaluation Matrix etc., remaining unchanged and to authorise the Applicant to file an application for exclusion/extension of 60 days from the CIRP period. The other resolution that was passed by the member of the CoC with 100% voting share to liquidate the Corporate Debtor is as under:

"RESOLVED THAT, since no resolution plans were received, CoC hereby recommends that the Corporate Debtor should be liquidated u/s 33 of IBC, 2016 and RP be and is hereby authorised to file an application before the Hon'ble NCLT to obtain necessary orders."

8. In compliance with Regulations 39B, 39C, 39D of IBBI (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 the Applicant convened 7th CoC Meeting on 18.11.2020 wherein the CoC disapproved the fees of the liquidator proposed by the Applicant and the estimation of liquidation cost as per Regulation 398 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is stated that the Applicant is not willing to become liquidator of the Corporate Debtor due to non-sustainability of liquidator's fees and liquidation expenses.

“ORDER

9. In view of the facts and circumstances, this Authority is satisfied that the Application IA/5289(ND)/2020 filed for initiation of Liquidation proceedings against the Corporate Debtor is a fit case for ordering liquidation of the Corporate Debtor namely, M/s. Gupta Marriage Halls Private Limited in the manner laid down in the Chapter II of Part II of 1BC, 2016 and is allowed with the directions as follows: -

I. This Authority appoints the Insolvency Professional Mr. Nitin Narang whose name appears in the list of the Insolvency Professionals provided by the BBI to NCLT Delhi, having Registration number: 1BB/IPA-002/1P NO0828/2019-2020/12629 E-mail ID: advocatenitinnarang@gmail.com

II. The Resolution Professional viz., Mr. Mahesh Bansal is discharged as he has not given consent and is directed to handover the charge to the Liquidator appointed by this Authority.

III. Mr. Nitin Narang is appointed as Liquidator in terms of Section 34 (1) of BC, 2016. Therefore, all the powers of Board of Directors, key Managerial Personnel, and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested with the Liquidator. The Personnel of the Corporate Debtor are hereby directed to extend all corporations to the Liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for the conduct of liquidation proceedings in the proportion to the value of the liquidation estate assets as specified under Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of 1BC, 2016.

IV. Mr. Nitin Narang is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

V. Since this Liquidation Order has been passed, no suit or other legal proceedings shall be initiated by or against the corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub section 6 of the Section 33 of the Code

VI. This Authority makes it clear that Para (V) herein above shall not apply to legal proceedings in relation to such transactions as notified by Central government in consultation with any financial sector regulator.

VII. This liquidation Order shall be deemed to be the notice of discharge to the officers, employees, workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

VIII. The Counsel and erstwhile RP are directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana, to the Insolvency and Bankruptcy Board of India and IT Department including Assessing IT Officer of the IT Circle for which the Liquidator shall provide the details of the address.

IX. The Order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect from the date of the order and that a fresh Moratorium under Section 33(5) of IBC, 2016 shall commence.

X. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter II of Part of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

XI. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 of the Code.

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

XIII. The Liquidator shall submit a 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.

XIV. Copy of this Order shall be sent by the Counsel and erstwhile RP to the financial creditor, corporate debtor, and the Liquidator for taking necessary steps.”

10. In terms of the above, IA/5289(ND)2020 filed in IB-728(ND) is allowed.”

On going through the impugned order it is evident that CIRP was initiated long back on 03.09.2019. As per scheme of IBC and also statutory provisions mentioned therein, such proceeding is required to be concluded within a specified time. The impugned order quoted hereinabove reflects that even after expiry of statutory period 90 days further time was granted but no resolution plan could be approved. In such situation the RP was having no alternative than to proceed with a petition under Section 33(2) of the IBC. At this juncture we propose to reproduce Section 33(2) as follows:-

“S.33(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 per cent, 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 purposes 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.)”

On bare perusal of aforesaid provision i.e. Section 33(2) of the IBC once Resolution Professional in compliance with the conditions mentioned in sub-section (2) with a prayer to liquidate Corporate Debtor, the Adjudicating Authority has no option but to pass an order for liquidation. The word “shall” in sub-section (2) has been inserted and as such on being intimated by the RP, in the present case, the COC has resolved for liquidation in terms of sub-section (2) of Section 33 and as such the Adjudicating Authority was having no option but to pass order for initiation of the liquidation proceeding. Moreover, on examination of the impugned order itself it is evident that there was complete non-cooperation by the appellants who were suspended directors of the corporate Debtor. It is further evident that COC resolution was with 100% voting for liquidation of the Corporate Debtor and as such we do not find any justification to interfere with the impugned order.

To some extent we are also in agreement with the submission of the Learned Counsel for the respondent that the

appellants were not entitled to pursue the present appeal claiming to be ex suspended directors of the Corporate Debtor. The status of appellant as suspended directors was available only during the period of CIRP in view of Section 17(1)b) of IBC. It would be appropriate to reproduce Section 17(1)(b) as follows:-

“17. Management of affairs of corporate debtor by interim resolution professional-(1) From the date of appointment of the interim resolution professional-

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(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;”

After initiation of liquidation proceeding under Section 33(2) of IBC the status of appellant may not be maintained as suspended directors. The suspension of director of a Corporate Debtor comes to an end after conclusion of proceeding initiated either under Section 7 and Section 9 of IBC. Once liquidation proceeding is initiated under Section 33(2) of IBC, officers/employees and workmen of the Corporate Debtor shall be deemed to be under discharge notice. Section 33(7) of IBC is reproduced hereinbelow:

“S. 33(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees

and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.”

Admittedly in the present case liquidation proceeding has already been initiated and as such the claim of the appellant as suspended director has ceased to be in existence. However, without recording any specific finding on the maintainability of the appeal by the appellant since we have noticed no error in the impugned order rather satisfied with the reasoning of the Adjudicating Authority in the impugned order there is no reason to pass order in favour of the appellant. Accordingly the appeal stands dismissed without cost.

(Justice Rakesh Kumar)
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member (Technical)

Bm