

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH
Court III
NEW DELHI**

CA. No. 1507/C-III/ND/2020 filed in **IB-429(ND)/2019**
under Section 33 (2) of the IBC Code, 2016.

In the matter of Tristar Global Infrastructure Private Limited (CD)

Mr. Arvind Garg, -Resolution Professional for the CD.

.... Applicant.

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Shri, NARENDRA KUMAR BHOLA, MEMBER (TECHNICAL)

For Applicant: Mr. Kamal Mehta (Advocate)

For Resolution Professional: Mr. Arvind Garg (Resolution Professional)

Order delivered on 12th October, 2020.

ORDER

(Through Video Conferencing)

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL).

1. The Application is filed by the Resolution Professional viz., *Mr. Arvind Garg*, under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC, 2016"). The prayer made is to allow this application and pass an Order under Section 33 (2) of the IBC, 2016, to liquidate the Corporate Debtor, appoint the Resolution Professional *Mr. Arvind Garg* as the Liquidator and to pass such other Orders as this Authority may deem appropriate.
2. The factual matrix of the case is that an application under section 7 of IBC, 2016 was filed by the Financial Creditor Viz., *Punjab National Bank* against the Corporate Debtor viz., *Tristar Global Infrastructure Private Limited*, to initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), to declare moratorium and appoint Interim Resolution Professional (hereinafter referred as "IRP"). This Adjudicating Authority vide Order dated 28.08.2019, admitted the Application, initiated the CIRP against the Corporate Debtor and appointed one *Mr. Arvind Garg* as IRP.
3. It is averred that pursuant to the Order of this Authority the IRP made public announcement in newspapers on 04.09.2019. The IRP collated all the claims submitted by the creditors in response to the public announcement and constituted the Committee of Creditors (hereinafter referred as "CoC") on 26.09.2019. The CoC comprises of - three Financial Creditors. There are two Operational Creditors and nine Workmen/Employees. In the 1st meeting of the CoC convened on 26.09.2019, the IRP was appointed as Resolution Professional and on 18.12.2019 the fees and appointment was once again ratified through e-voting.
4. The Resolution Professional on 07.11.2019 appointed valuers registered with IBBI as envisaged under the relevant provisions, to determine the liquidation value in accordance with Regulation 35 of the CIRP Regulations. It is stated that the Resolution Professional prepared an Information Memorandum (hereinafter referred as "IM") in relation to the Corporate Debtor which was shared via E-mail dated 19.10.2019 with the members of the CoC as per the timeline provided under Regulation 36. The Expression of Interest in Form -G was published by the Resolution Professional. The members of the CoC further fixed criteria at net worth of Rs. 5 Crore and an Average turnover of Rs. 10 Crore on the basis of the potential Resolution Applicant's last three years financial statements. The Resolution Professional invited prospective lenders, investors and

other persons to submit an Expression of Interest to put forward a Resolution Plan for the Corporate Debtor via advertisement dated 09.11.2019 for which the last date of receipt was 02.01.2020.

5. The 3rd Meeting of the CoC was convened on 16.12.2019, wherein the appointment of Chartered Accountants. M/s. Sanjay Deep & Associates as the Transaction Review Auditor was confirmed which was unanimously voted upon by all Financial Creditors. The e-voting in this regard was duly conducted on 18.02.2019 by the Resolution Professional. In the 4th meeting of the CoC convened on 18.02.2020, it was suggested that since the Corporate Debtor has not been a going concern for a prolonged period and the forensic audit was in progress, it would be appropriate to await the forensic audit report in order to include the observations in the application for avoidance of transactions that is required to be filed in the relevant provisions.

6. In the 4th meeting of the CoC decided not to issue another Expression of Interest as the Corporate Debtor does not have any worthwhile assets either tangible or intangible and the current assets were mostly irrecoverable and litigation against the Corporate Debtor would have further discouraged in acquiring the Corporate Debtor. The members of the CoC subsequently directed the Resolution Professional to put the Resolution of Liquidation of Corporate Debtor along with the resolution for appointment of Liquidator on e-voting. The voting was open on 20.02.2020 and the member of the CoC unanimously voted upon liquidating the Corporate Debtor and the resolutions passed is as under:

“The Committee of Creditors of the Corporate Debtor Tristar Global Infrastructure Private Limited hereby resolves that no expression of interest or resolution plan has been received for corporate debtor Tristar Global Infrastructure Private Limited, the Resolution Professional be and hereby is directed to file an application under Section 33 of the Insolvency & Bankruptcy Code, 2016, before Hon’ble National Company Law Tribunal, praying for liquidation of Corporate Debtor.”

“The Committee of Creditors of corporate debtor Tristar Global Infrastructure Private Limited hereby decides and resolves that the Resolution Professional Mr Arvind Garg, IP Registration No.: IBBI/IPA-003/IP-N00029/2017-18/10189 be and is hereby appointed to act as the liquidator for the purpose of liquidation of corporate debtor Tristar Global Infrastructure Private Limited.”

“Committee of Creditors of corporate debtor Tristar Global Infrastructure Private Limited, in accordance with the provisions of Section 34 (8) of the Insolvency and Bankruptcy Code, 2016 and regulation 4 of the Insolvency Bankruptcy Board of India (Liquidation Process) Regulations, 2016, hereby decides and resolves that the liquidator shall be paid the following fees:

- I. Table specified in Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 shall apply.*
- II. Liquidator will be paid a monthly remuneration of Rs. 75,000 (Rupees Seventy-five Thousand Only) plus GST as applicable from the date of liquidation order passed by the Adjudicating authority in accordance with Section 33 of the Insolvency & Bankruptcy Board Code, 2016 till the date of dissolution order by the Adjudicating Authority in accordance with Section 54 of the Insolvency & Bankruptcy Code, 2016.*
- III. The monthly remuneration paid/payable to the liquidator will be adjusted from Liquidator’s fee, calculated in accordance with table specified in regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to the extent of fee calculated is available.”*

The above-mentioned resolutions were passed with 100% voting share by the COC.

7. This Authority has not received any Resolution Plan under Sub-Section (6) of Section 30 of IBC, 2016 and the since CIRP has ended on 24.02.2020 the Corporate Debtor viz., Tristar Global Infrastructure Private Limited has to be ordered for Liquidation

ORDER

8. In view of the facts and circumstances recorded by the Resolution Professional in this CA. No. 1507/C-III/ND/2020, filed under section 33 (2) of the Code for initiation of Liquidation proceedings against the Corporate Debtor is **allowed** by ordering liquidation of the corporate debtor, namely *Tristar Global Infrastructure Private Limited* in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 with the directions as follows:

a. Mr Arvind Garg, IP Registration No.: IBBI/IPA-003/IP-N00029/2017-18/10189 is appointed as Liquidator in terms of Section 34(1) of the Code. 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 cooperation 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, as has been decided by the COC;

b. Mr. Arvind Garg, 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;

- c. 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;
- d. This Authority makes it clear that Para (c) 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;
- e. 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;
- f. The Liquidator is 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 information and record;

- g. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect from the date of the order and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- h. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations;
- i. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (I) of the Code;
- j. 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; and
- k. 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.

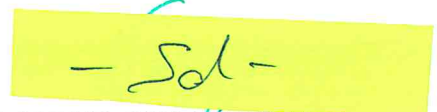
9. Copy of this order shall be sent by the Registry to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

10. In terms of the above, CA. No. 1507/C-III/ND/2020 filed in IB- 429(ND)/2019 is **disposed of**.

11. Order is pronounced.



NARENDRA KUMAR BHOLA
Member (Technical)



CH. MOHD SHARIEF TARIQ
Member (Judicial)