



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. No. 5515/2022
IN
C.P.(IB)No. 2691/ND/2019

[Under Section 33 of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions]

IN THE MATTER OF:

M/s. Laxmi Steels

... Operational Creditor

Versus

M/s. Adjoin Built & Developers Private Limited

...Corporate Debtor

AND IN THE MATTER OF:

Mr. Aditya Kumar,

Resolution Professional of Adjoin Built & Developers Private Limited

...Applicant

Versus

M/s. Adjoin Built & Developers Private Limited

...Non-Applciant/Respondent

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 14.11.2024

PRESENT:

For the RP

: Adv. Roshan Kumar for the RP



ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The instant application i.e., I.A./5515/ND/2022 is filed by Mr. Aditya Kumar ('Applicant') Resolution Professional of M/s. Adjoin Built & Developers Private Limited ('Corporate Debtor') seeking liquidation of M/s. Adjoin Built & Developers Private Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') and praying for the following relief(s):-
 - A) To pass an Order under Section 33(1) and 33(2) of the Insolvency and Bankruptcy Code, 2016 allowing the liquidation of the Corporate Debtor, namely M/s. Adjoin Built and Developers Pvt. Ltd.;
 - B) To pass an Order appointing any Insolvency Professional except the Applicant/ RP, Mr. Aditya Kumar, as the Liquidator as per the provisions of the Code;
 - C) Pass such other and further Order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstance of the present case and in the interest of justice.
2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:
 - i. The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Adjoin Built & Developers Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 20.03.2020 in an application C.P.(IB)/2691/ND/2019 under Section 9 of the Code, 2016 and Mr. Aditya Kumar was appointed as the Interim Resolution Professional of the Corporate Debtor.
 - ii. The applicant submits that the public announcement was made in Form-A inviting the claims from public, consequent to which, Committee of Creditors was constituted consisting of operational creditor M/s Adjoin Built & Developers Private Limited. However, subsequently, no claim apart from the claim of the operational creditor was received and CoC was constituted on 31.03.2022.



- iii. It is pertinent to mention that Mr. Pramod Goel, the husband of ex-director Mrs. Savita Goel, is currently under judicial custody, whose bail was denied by the Hon'ble High Court of Delhi vide its Order dated 19.01.2021 passed in CrI. Rev. P. No. 333 of 2020. Till date neither has the ex-management of the Corporate Debtor appeared before this Adjudicating Authority nor have they provided any information/document sought by the RP vide its numerous letters/emails.
- iv. In light of the non-cooperation of the ex-directors and promoters of the Corporate Debtor, the Applicant has filed IA (IBC) No. 1505 of 2022 seeking appropriate directions under Section 19(2) of the Code against the ex-directors and promoters of the Corporate Debtor. The said application is pending adjudication before this Adjudicating Authority.
- v. The bank account of the Corporate Debtor with ICICI Bank shows a balance of Rs. 6,19,664.86/- and term deposits of Rs. 11,65,713/- and the bank account with Canara Bank has a balance of Rs. 5,537/- which is insufficient for reviving the Corporate Debtor and running it as a going concern.
- vi. Upon accessing the statutory record of the Corporate Debtor, the Applicant had found certain transactions with related parties for which the Applicant has approached this Adjudicating Authority for directions. One of the related party transactions is with M/s. Victory Infraedge Pvt. Ltd. wherein Rs. 4,34,00,000/- is owed to the Corporate Debtor as operational debt as is reflected in the last Audited Balance Sheet for the FY 2017-18 and Inventory worth Rs. 1,58,64,792/- of the Corporate Debtor, supplied by the Operational Creditor in the usual course of business to the address in possession of the said related party. The RP had filed I.A. (IBC) No. 3948/2022 under Section 60(5) of the Code seeking, inter alia, return of the said inventory of Rs. 1,58,64,792/- and an operational debt of Rs. 4,34,00,000/-. The said application is pending adjudication before this Hon'ble Tribunal.
- vii. The other related party transaction is with M/s. Nanda Parbat Finlease Ltd. wherein the RP came across certain transactions that can be labelled as Undervalued transactions as per Section 45(2) of the Code for defrauding



creditors of the Corporate Debtor amounting to Rs. 25,86,87,588/- . RP had filed I.A. (IBC) No. 2316/2022 under Section 49 r/w Section 60(5) of the Code seeking, inter alia, for restoration of the position of the account of the Corporate Debtor as it existed before the impugned undervalued transactions for defrauding creditors of Rs. 25,86,87,588/- . The said application is pending adjudication before this Hon'ble Tribunal.

- viii. In 3rd CoC Meeting dated 22.09.2022 wherein it is stated that after considering the overall state of affairs of the Corporate Debtor, were of the opinion that revival of the Corporate Debtor as a going concern may not be commercially feasible. Accordingly, the members of CoC had approved the Liquidation of the Corporate Debtor under Section 33 of the Code, 2016. The relevant extract of the said resolution is extracted below: -

“RESOLVED THAT the consent of the members be and is hereby accorded to initiate the filing of application for liquidation of the Corporate Debtor.”

- ix. Furthermore, the CoC and the Applicant have mutually agreed for appointing any other insolvency Professional except the Applicant/RP, as the Liquidator of the Corporate Debtor.
- x. The Applicant submits that the Applicant/ RP neither has access to the books of accounts, any other record of the business of the Corporate Debtor nor its registered office. It is evident that the Corporate Debtor has not been running any business for at least the previous 4 years, i.e., approximately since FY 2017-18. It is apprehended that the Corporate Debtor had entered into multiple transactions to defraud creditors which have alienated a lot of assets of the from the reach of the Applicant/ RP.
3. Heard the learned counsel for the applicant in IA No. 5515 of 2022. The provisions of Section 33(2) of the Code are reproduced below:

“..(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 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.]”.

4. Further, in the matter of **Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT): MANU/NL/0788/2022**, the Hon’ble NCLAT in para 7 has stated as under: -

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC’s decision is an arbitrary decision. CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.***

5. In light of the above judgment, the CoC in the legislative scheme is empowered to take decision to liquidate the Corporate Debtor, any time after constitution



and before confirmation of the resolution plan. The aforesaid resolution was approved by the member of CoC with 100% voting share, in its 3rd CoC meeting held on 22.09.2022. It is well settled that decision taken by the CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority. Further, the resolution for liquidation of the Corporate Debtor was approved unanimously by COC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC. Therefore, we are of the view that no fruitful purpose would be served in continuing the CIRP of the Corporate Debtor.

6. In light of the above, we hereby order for liquidation of the M/s Adjoin Built & Developers Private Limited ('Corporate Debtor') with the following directions:

- i. Mr. Neeraj Kumar Jain, having registration no. IBBI/IPA-001/IP-P-02354/2021-2022/13615, is hereby appointed as per the panel suggested by IBBI for this Bench for the period of 1st July, 2024 to 31st December, 2024. Mr. Neeraj Kumar Jain shall file a valid AFA, consent form and disclosure about non-initiation of any disciplinary proceedings against him, within five (5) days of pronouncement of this order.
- ii. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iii. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter cease to exist. All these



powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.

- iv. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - v. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
 - vi. On having liquidation process initiated, 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.
 - vii. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
 - viii. The Liquidator shall submit 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.
7. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator and RoC, NCT of Delhi & Haryana for taking necessary steps.



8. With the above directions, this application i.e., **I.A./5515/ND/2022** in **Company**
Petition No. (IB)-2691/ND/2019 is hereby **allowed and disposed of**.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)