

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)**

**IA No. 164/2022
In
CP (IB) No. 523/Chd/Hry/2019
(Admitted u/s 7 of IBC)**

**Under Section 33(1) (A) read with
Section 60(5) of the IBC, 2016**

In the matter of:

Sentinel Consultants Pvt. Ltd.

...Petitioner/Financial Creditor

Vs.

Nestor HR Services Pvt. Ltd.

...Respondent/Corporate Debtor

In the matter of IA No. 164/2022

Alok Kaushik, Interim Resolution Professional

having its Registered Address at
G-105, Sai Baba Apartments, Sector-9
Rohini, Delhi-110085

...Applicant/Interim Resolution Professional

Vs.

1. Rajesh Kumar Sharma
Suspended Director
M/s. Nestor HR Services Pvt. Ltd.
having its registered office at
Flat No. 1201 Tulip Tower
Omaxe Forest Spa Sector 43
Faridabad, Haryana-121003
2. Madhu Sharma
Suspended Director
M/s. Nestor HR Services Pvt. Ltd.
having its registered office at
Flat No. 1201 Tulip Tower
Omaxe Forest Spa Sector 43
Faridabad, Haryana-121003

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3.Sentinel Consultants Pvt. Ltd.
having its registered office at
504, Ashok Bhawan,
93 Nehru Place
New Delhi-110019

4.Pradeep Sharma
Managing Director of Sentinel Consultants Pvt. Ltd.
504, Ashok Bhawan,
93 Nehru Place
New Delhi-110019

... Respondents

Judgement delivered on: 03.01.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

Present:

For the Applicant in IA No. 164/2022 : Mr. Vishav Bharti Gupta, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

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The present application has been filed vide Diary No. 01591 dated 27.12.2021 by the Interim Resolution Professional to liquidate the corporate debtor under Section 33(1) of the Insolvency and Bankruptcy Code, 2016. Further, the applicant is seeking direction against the petitioner-financial creditor in the main company petition to pay for the fees of the IRP and CIRP expenses incurred till the commencement of the liquidation process. The applicant-IRP is not proposing himself as the liquidator in the instant matter and seeks direction to appoint a liquidator from the empanelled list of Insolvency Professionals.

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2. In this case, the petition for initiation of the CIRP process filed by Sentinel Consultants Private Limited under Section 7 of the IBC, 2016 was admitted by this Adjudicating Authority vide order dated 20.09.2021. Accordingly, Mr Alok Kaushik was appointed as IRP. The IRP made a public announcement dated 29.09.2021 in prescribed Form A, In accordance with Regulation 6 of IBBI (CIRP) Regulations, 2016 (hereinafter referred to as Regulations) read with Section 13(1)(b) and 15 of the Code (**Annexure 3**).

3. It is submitted that the corporate debtor in an unlisted public limited company dealing in the manpower and security services industry, having its registered address at SCO-18, 2nd floor, Sector-16, Faridabad, Haryana-121003. Pursuant to the public announcement, the applicant-IRP received a claim from a related party financial creditor i.e. Sentinel Consultants Private Limited, the claim was for Rs. 25,00,000/- plus interest amount of Rs. 13,84,110/-. However, the claimant is a related party, it could not be made a part of the CoC even though it is a financial creditor on whose application the CIRP has been admitted.

4. It is further submitted that the IRP did not receive any other claim within the specified last date i.e. 13.10.2021. The provisional balance sheet as on 31.03.2021, signed by the directors, shows no revenue during the year 2020-21 and no expenses pertaining to manpower have been incurred. The IRP approached the other financial creditors and operational creditors and informed them about the CIRP and asked them to submit their claims if any. However, no additional claim has been received yet.

5. It is submitted that the corporate debtor has only a few old mobile phones as advised by the Managing Director and there is an outstanding amount of Rs.

73.8 Lakhs to be recovered from Sundry debtors. The only asset under the custody of IRP is cash and cash equivalents amounting to Rs. 63,333/-. An amount of Rs. 72.00 Lakhs has been given as an unsecured loan to an associate company by the corporate debtor with the same directors, the IRP approached the debtors, but there is no response from any of the debtors. It also comes to the knowledge of IRP that the above said associate company does not have any assets left and there are no operations and no employees at the associate company either.

6. The applicant-IRP that the CoC could not be constituted within 23 days of the CIRP commencement as mandated by Regulation 40A of the IBBI (CIRP) Regulations, 2016. Further, 80 days have passed after the commencement of CIRP, and CoC could not be constituted due to the non-receipt of viable claims. Therefore, it is not possible to conclude the CIRP within 180 days with further no prospects of formation of a CoC and Resolution Plan.

7. It is further submitted by the applicant-IRP that CIRP expenses for the first month of the CIRP, including the fees of IRP, other professionals appointed and worked in the CIRP and other misc. expenses have been borne by the related party-financial creditor i.e. Sentinel Consultants Private Limited.

8. The IRP has further stated that there are no land and building assets on the balance sheet. The balance sheet indicates one vehicle as an asset, but the same was not handed over by the Suspended Directors. Moreover, the IRP has filed applications under Sections 43 & 66 of IBC, 2016 before this Adjudicating Authority. It is submitted that the CoC was constituted with the Income Tax Department and one CoC meeting was held. However, the department is not

taking decisions on the agenda placed in the first CoC meeting. Later HDFC Bank submitted its claim as a financial creditor, and the CoC was reconstituted. A notice for the second CoC meeting was sent, but the HDFC Bank asked to withdraw their claim.

9. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(1) of IBC and the same is reproduced below:-

“Section 33: Initiation of liquidation.

33. (1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or 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, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

10. 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 or;
- ii. 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; and

- iii. if does not receive a resolution plan under sub-section (6) of Section 30.

11. In the instant matter, it may be noted that there are no assets available with the corporate debtor, except cash and cash equivalent amounting to Rs. 63,333/-. Moreover, no CoC has been formed as no claims have been received from any of the operational and financial creditors except one related party-financial creditor i.e. Sentinel Consultants Private Limited.

12. We are conscious of the decision in the matter of **Mr. Sudhanshu Gupta, IRP of Nesa India Producer Company Ltd.** (2022) ibclaw.in 75 NCLT, wherein it held that;

“A bare perusal of the provision of Section 33 of the IBC shows that there are two circumstances under which a liquidation order can be passed by the Adjudicating Authority. (a) under Section 33(1) of the IBC and (b) under Section 33(2) of the IBC. Under section 33(1), where the Adjudicating Authority before the expiry of the Insolvency Resolution Process or the maximum period permitted for completion of the CIRP under Section 12 of the fast track CIRP under Section 56, as the case may be, does not receive a resolution plan under Section 30(6) or reject the resolution plan under Section 31 for non-compliance of requirement specified therein, in that case, the Adjudicating Authority shall pass an order for liquidation under Section 33(2) of the IBC, the resolution professional at any time during the CIRP but before the confirmation of resolution plan intimate the Adjudicating Authority of the decision of the COC to liquidate the Corporate Debtor, then the Adjudicating Authority shall pass an order for liquidation.

Here in the case in hand, the CoC is not constituted even after the expiry of more than 365 days and the IRP has also not received any claim during the CIRP. Rather, the IRP has prayed for termination of the CIRP on the ground that he has not received any claim. There is no such provision under the IBC to terminate the CIRP once it is initiated,

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the only way is either to complete the CIRP by approval of the resolution plan or pass the order of liquidation under 33 of the IBC.

Here in the case in hand, there is no resolution plan as there was no claimant and the CoC was not constituted till the date of filing the application. Under such circumstances, in our considered view, in terms of Section 33(1), the Adjudicating Authority is empowered to pass the liquidation order after the completion of the maximum period. Since, 330 days has already been completed and no resolution plan is received even the COC is not constituted, therefore, in stead of termination in the CIRP on the request of the applicant, we think it proper to pass an order under Section 33(1) of the IBC to pass the liquidation order.”

13. In the case at hand, there is no claim received by the IRP except from one related party. Moreover, the COC has not been constituted so far. Further, it is seen that there is no asset/fund available with the corporate debtor. Keeping these facts in mind, we are of the considered view that the present case is fit for liquidation in the manner as laid down in Chapter III of the Code. The expenses for CIRP including the fees of the IRP, other professionals appointed and worked in the CIRP and other misc expenses have already been borne by the applicant and duly received by the IRP. Since admittedly there are no assets left with the corporate debtor except cash and cash equivalent amounting to Rs. 63,333/-, which may be required to meet out the liquidation process expenses. Therefore, no orders with respect to CIRP cost including fees of IRP is passed.

14. After going through the facts, we are of the considered view that no useful purpose would be served by placing the corporate debtor under a lengthy liquidation process as there are no realisable assets in possession of the corporate debtor and no progress in this regard has been made since the

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initiation of CIRP on 20.09.2021. Even the CoC could not be formed. Thus, invoking the inherent powers under Rule 11 of NCLT Rules, 2016, we direct the liquidator to take up the dissolution process of the corporate debtor and file an application for dissolution enclosing his final report and the compliance certificate in Form H within 30 days of receipt of this order.

15. It is seen that there are pending applications including avoidance transactions applications. The liquidator is directed to file a statement from the creditor(s) as to how these litigations /applications are proposed to be pursued and who will receive the proceeds, if any, from the above litigations/applications and who will meet the expenses on these proceedings after the dissolution of the corporate debtor. The same be filed along with the application for dissolution of the corporate debtor.

16. Accordingly, by exercising our power under Section 33(1) pass the following order:-

- i. Since the Interim Resolution Professional has not given his consent to act as Liquidator, therefore, Mr Harmanjit Singh bearing Registration No.IBBI/IPA-001/IP-P-02034/2020-2021/13080, Mobile No.9988445464 e-mail: caharmanghai@gmail.com is hereby appointed as Liquidator. The Law Research Associate of this Tribunal has checked the credentials of the proposed Interim Resolution Professional, and nothing has been found adverse against Mr Harmanjit Singh.

- ii. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- iii. 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;
- iv. 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;
- v. 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 with the jurisdiction prescribed under Section 33(5) of the Code.
- vi. 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 the 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.

- vii. 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 an effect and shall be vested in the Liquidator;
- viii. 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;
- ix. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;
- x. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi and Haryana for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;
- xi. The Liquidator is directed to issue a public announcement stating the Corporate Debtor is in liquidation;

- xii. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record; and
- xiii. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

17. Thus, IA No.164/2022 is allowed and stands disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 03, 2023
PB/ASH