THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV
AT NEW DELHI

IA No. 2826/ND/2021

IN

Company Petition No. (IB)-2690(ND)/2019

Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor

IN THE MATTER OF:

Mr. Aishwarya Mohan Gahrana

Resolution Professional ....Applicant/RP

AND IN THE MATTER OF

Syndicate Steel Traders

...Operational Creditor

Versus

VGA Developers Private Limited

...Corporate Debtor

Order delivered on:01.09.2021

Coram:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal नई दिल्ली पीठ New Delhi Bench

Vishal Rana 7/9/2021

ORDER

Dr. Deepti Mukesh, Hon'ble Member (J)

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as the "Code")** for issuance of directions for liquidation of the corporate debtor, VGA Developers Private Limited.
2. The facts in brief are that the operational creditor, Syndicate Steel Traders had filed an application bearing no. IB 2690(ND)/2019 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 06.01.2020 and Mr. Pankaj Kumar Singhal appointed as Interim Resolution Professional (IRP).
3. The RP submits that in compliance of Section 15 of the I & B Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, made Public Announcement in Financial Express (English Edition) and Jansatta (Hindi Edition) on 11.01.2020.
4. The 3rd meeting of the CoC was held on 17.08.2020 wherein, IRP Mr. Pankaj Singhal was replaced by Mr. Aishwarya Mohan Gahrana, who was appointed as the RP. The 5th meeting of the CoC was held on 25.01.2021 wherein, RP submits that due to Covid-19 pandemic, the CIRP of the corporate debtor delayed and hence the publication of prescribed Form-G was made in Dainik Hindustan in Hindi and Mint in English on 30.01.2021, inviting expression of interest from the prospective resolution applicants. However, no EOI was received.

5. In the 6th meeting of the CoC held on 05.02.2021, CoC re-issued the prescribed Form-G on 12.02.2021 inviting expression of interest from the prospective resolution applicants. However, till the last date of the receipt of the expression of interest, only one expression of interest was received from Kundan Care Products Limited. The proposed resolution applicant submitted its plan which was put before the CoC in its 8th meeting held on 16.06.2021. The said plan was rejected with 93.187% voting share by CoC, as the plan was not viable for the corporate debtor.

6. The CIRP of 180 days in the present was to expire on 04.07.2020 but the exclusion period of 128 days was granted by the bench from the period 25.03.2020 till 31.07.2020 on the ground of covid-19 pandemic lockdown and restrictions on all activities imposed by the government through notification from time to time. The IBBI regulation was also amended and as per regulation (40C) of CIRP regulation the said exclusion was introduced. Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, prescribe relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed thereunder, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

> *"40C. Special provision relating to time-line: Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process."*

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Therefore, the revised date for CIRP expiration of 180 days fell on 09.11.2020. Further, the extension of 90 days was granted by this bench and 270 days of CIRP expired on 07.02.2021. Further, 330 days of CIRP was availed and same expired on 08.04.2021. The an application filed by the RP seeking appropriate order/direction to complete CIRP of the Corporate Debtor within period of 330 days. The bench vide order dated 26.04.2021 observed that IRP/RP has a duty to complete the process of CIRP within 330 days for which no directions or orders are required. Hence, the application was dismissed with the cost of Rs. 5,000/- to RP for filing such frivolous application. The only option left with CoC to resolve for liquidation of corporate debtor. It was submitted while hearing of this application, by RP that due to second wave of Covid-19 pandemic lockdown from April 2021 to June 2021, the CoC could not meet to decide liquidation and only after unlock in June 2021, the lenders in their meeting held on 16.06.2021 decided and passed resolution and approached Adjudicating Authority for order of liquidation. Because no resolution plan was forthcoming, as per the provisions of IBC, 2016 it is to seek the liquidation as provided under the provisions of section 33 of IBC, 2016 of which the relevant sub-section 1 of section 33 is reproduced hereunder;

"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."

7. The RP submits that in the 8th meeting of the CoC held on 16.06.2021, CoC with 85.68% voting share passed resolution for initiation of liquidation process of the corporate debtor. The relevant Resolution passed in the meeting are reproduced herein:

"RESOLVED THAT in pursuant to Section 33 (2) of IBC 2016 and the Rules made thereunder, the consent of members of the COC *be and is hereby accorded to approve the filing of application with Hon'ble NCLT, New Delhi Bench, seeking initiation of the liquidation of* Corporate *Debtor and the existing Resolution Professional, subject to submission of his consent to act as liquidator, as the liquidator of the Corporate Debtor.*

RESOLVED FURTHER THAT in pursuant to Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016, the liquidator shall be entitled to a *monthly fee of Rs. 1,25,000/- (Rs. One Lakh Twenty-Five Thousand only) plus fee as per Regulation4(2) (b)*

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, *deeds and things as may be required or considered necessary or incidental thereto."*

8. In above circumstances, taking into consideration the provisions of law as well as the facts on record, we order for liquidation of the corporate debtor and in the circumstances the corporate debtor stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

    a. Mr. Aishwarya Mohan Gahrana, Resolution Professional of the corporate debtor having IBBI registration number IBBI/IPA-002/IP- N00135/2017-18/10351 has consented to act as the liquidator of the corporate debtor and who is be and hereby appointed as liquidator of the corporate debtor. Written Consent of Mr. Aishwarya Mohan Gahrana, Resolution Professional of the corporate debtor under section 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, signifying his intention to act as the liquidator of the corporate debtor is annexed.

    b. It 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;

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c. The Registry is directed to communicate this order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly in relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation

e. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

f. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

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

h. 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

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Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

i. Copy of this order be sent to the operational creditor, corporate debtor and the Liquidator for taking necessary steps.

j. I.A. 2826(ND) /2021 filed in IB 2690(ND)/ 2019 is disposed of in the aforesaid terms.

k. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor and the Liquidator at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

(MS. SUMITA PURKAYASTHA)
MEMBER (T)

SD/-

(DR. DEEPTI MUKESH)
MEMBER (J)

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FREE OF COST COPY

Vishal Rana
7-9-2021

07.9.2021
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003