IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

Item No. 105
IA/1534/ND/2022 in IB/72/ND/2021

IN THE MATTER OF:

Balaji Digital Solution Pvt. Ltd. … Applicant

Order under Section 10 of IBC, 2016.

Order delivered on 31.10.2023

CORAM:
MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

IA/1534/ND/2022 in IB/72/ND/2021 stands allowed.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

<u>IN THE NATIONAL COMPANY LAW TRIBUNAL</u>
<u>NEW DELHI BENCH</u>

<u>COURT-IV</u>

I.A.(IBC)/1534/2022
IN
C.P.(IB) No.72/ND/2021

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

<u>IN THE MATTER OF:</u>

Mr. Rohit Sehgal
Resolution Professional
M/s. Balaji Digital Solutions Private Limited)
... Applicant

<u>IN THE MATTER OF:</u>

M/s. Balaji Digital Solution Private Limited
...Corporate Debtor

CORAM:
<u>SH. MANNI SANKARIAH SHANMUGA SUNDARAM,</u>
<u>HON'BLE MEMBER (JUDICIAL)</u>

<u>DR. BINOD KUMAR SINHA,</u>
<u>HON'BLE MEMBER (TECHNICAL)</u>
<u>Order Delivered on:31.10.2023</u>

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

The instant application i.e., I.A./1534/ND/2022 is filed by Mr. Rohit Sehgal ('Applicant') Resolution Professional of M/s. Balaji Digital Solution Private Limited seeking liquidation of M/s. Balaji Digital Solution Private Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') praying for the following relief(s):-

a) Allow the present application
b) b) To pass an order for liquidation of the Corporate Debtor in terms of Section 33(2) of the Insolvency and Bankruptcy Code, 2016.
c) To pass an order for appointment of Resolution Professional as the liquidator of the Corporate Debtor.
d) Pass any such order as the Hon'ble Tribunal may deem fit.

SUBMISSIONS OF THE APPLICANT

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:
   a) The Corporate Insolvency Resolution Process against M/s. Balaji Digital Solution Private Limited ('Corporate Debtor') was initiated vide this Adjudicating Authority Order dated 06.04.2021 in C.P. (IB)72/2021 on an application filed under Section 10 of the Code, 2016 thereby appointing Mr. Mahesh Agarwal as the IRP of the corporate debtor, who was replaced by Mr. Rohit Sehgal ('applicant') having registration no. IBBI / IPA-001 / IP-P00528/ 2017-2018 / 10953, vide order dated 24.08.2021.
   b) The Public Announcement was published in two newspapers in English (Financial Express) and Hindi (Jansatta), for initiation of CIRP dated

09.07.2021 and the Committee of Creditors was duly constituted. The constitution of the CoC of the Corporate Debtor is extracted below:-

Sl No.	COC Members	Updated Voting Share (%)
1	Tata Capital Financial Services Limited	56.09
2	RBL Bank Limited	14.34
3	InCred Financial Services Limited	13.20
4	Standard Chartered Bank	12.76
5	HDFC Bank limited	2.57
6	Kotak Mahindra Bank Limited	1.05
		100

(Constitution of Committee of Creditors)

c) The Form G for invitation of Expression of Interest was published on 27-09- 2021 in English language and Hindi language in Business Standard (Delhi NCR Edition), wherein the last date for submission of Expression of Interest was 12.10.2021 and the last date of submission of Resolution Plan was 16.11.2021, which was extended 01.12.2021. The Resolution Professional had received Expression of Interest from two (2) Prospective Resolution Applicants.

d) The 180 days of Corporate Insolvency Resolution Process was completed on 01.01.2022 and an application was preferred by the Resolution Professional before this Hon'ble Adjudicating Authority, for extension which was allowed hereby giving 90 days extension vide order dated 03.01.2022.

e) The two resolution plans were received and placed before the Committee of Creditors and the Committee of Creditors after deliberations, in the seventh COC meeting held on 10.03.2022, had disapproved both the Resolution Plans i.e., Resolution Plan submitted by M/s. Sunrise Industries with 85.66 % voting and the Resolution Plan submitted by M/s.

Beyond Tele Private Limited with 100% voting. The COC was of the opinion that both the Resolution Plans are not meeting their expectations and that the Value realization in Liquidation would be greater, then in such a scenario, Liquidating the Corporate Debtor would be the only feasible alternative.

f) The COC in its 8th CoC meeting held on 21.03.2022, had approved the resolution for filing of application for initiation of liquidation proceedings against the Corporate Debtor and further appointing the Resolution Professional as the Liquidator of the Corporate Debtor with 83.19 % voting in favor. The relevant extract of the resolution passed by the COC members is reproduced below:

> "RESOLVED THAT Mr. Rohit Sehgal, having IP Registration No. - IBBI/IPA001/IP-P00528/2017-2018/10953, the Resolution Professional in the matter of Corporate Insolvency Resolution Process of Balaji Digital Solution Private Limited be and is hereby proposed as liquidator for carrying out the liquidation process Balaji Digital Solution Private Limited.
>
> "RESOLVED FURTHER THAT the members of the Committee of Creditors be and herby authorize the Resolution Professional to file an application for liquidation of the Corporate Debtor under Section 33 of Insolvency and Bankruptcy Code, 2016 with the Hon'ble NCLT, New Delhi Bench."

3. This Adjudicating Authority vide order dated 13.05.2022 had issued notice to the Suspended Board of Directors as well as to the Unsuccessful Resolution Applicants.

4. M/s. Beyond Tele Private Limited ('Unsuccessful Resolution Applicant), ('objector No.1') and Mr. Rishi Pal Ruhil, Suspended Director of the Corporate Debtor ('objector No.2') had submitted the following objections:-
   a) That the third and final version of the plan submitted by the objector No.1 to the Resolution Professional on 09.03.2022 was revised to Rs.9,47,00,000/- (Rupees Nine Crores and Forty-Seven Lakhs) which is higher than the estimated liquidation value of the Corporate Debtor. Further, as per the estimate of the Objector No.1, the liquidation value of Corporate Debtor is approx. Rs.7 ,50,00,000/- (Rupees Seven Crores and Fifty Lakhs), which is much less than the proposed resolution amount of Rs. 9,47, 00,000/- proposed by the Objector No.1 under the Resolution Plan dated 09.03.2022.
   b) That there is a sufficient time in the CIRP of the Corporate Debtor as the 330 days of the CIRP period were to expire on 30.05.2022. Therefore, in-spite of the sufficient time remaining under the outer time limit within which the CIRP of the Corporate Debtor has to be completed and without undertaking further efforts for resolution of the Corporate Debtor, the CoC of the Corporate Debtor had resolved for liquidation of the Corporate Debtor which is against the aims and objectives of the Code.
   c) The present resolution plan covers payment of all necessary dues payable by the Corporate Debtor to its financial creditors and to other creditors in order to discharge itself from all obligations and resolve the insolvency of Corporate Debtor. Further, the law in this respect is clear as to if the resolution plan is ex facie viable and the Committee of Creditors rejects the same, such exercise of power would be subversive and contrary to the policy of the Code, and such abdication of duty by the Committee of Creditors to consider the feasibility and viability projected in the proposed resolution plan would be fatal.

5. We have heard the Learned Counsels for the Applicant and objectors. The relevant documents annexed with the Application and objections raised by the objectors are meticulously perused.

6. On perusal and examination of the objector's submissions as described herein above, the sum and substance of the objections as raised by the Objector No.1 and Objector No.2 is that the action of the Committee of Creditors of rejecting the Resolution Plan as submitted by the Unsuccessful Resolution Applicant and going for liquidation of the Corporate Debtor is unjustified, especially when the value of the proposed Resolution Plan is higher than the estimated liquidation value of the Corporate Debtor.

7. Undisputedly, in the statutory framework of IBC, the grounds on which the Liquidation can be ordered by the Adjudicating Authority has been set out in Section 33 of the Code, 2016. The relevant provisions of Section 33 of the Code, 2016 are extracted below for ready reference: -

> ***"33. Initiation of liquidation –***
> *(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.*

(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."

8. When we come to the facts of the present case, the 180 days of Corporate Insolvency Resolution Process of the Corporate Debtor was completed on 01.01.2022, and an extension of further 90 days was allowed by this Adjudicating Authority vide order dated 03.01.2022. Admittedly, the CoC in its 7th CoC Meeting conducted on 10.03.2022 after considering the viability and feasibility of the proposed resolution plans as submitted by both PRA's i.e., (i) M/s Sunrise Industries and (ii) Beyond Tele Pvt. Ltd ('objector No.1') had rejected the same with 85.66% vote share and 100% vote share respectively. The CoC in its 8th COC meeting conducted on 21.03.2022, had passed a resolution with 83.19 % voting share, for proposing the Resolution Professional as the liquidator of the Corporate Debtor, along with filing of application for initiation of liquidation proceedings against the Corporate Debtor under Section 33(2) of the Code, 2016. The extended period of 90 days of CIRP was getting over on 31.03.2022.

9. The Adjudicating Authority must work within the framework of IBC which broadly aims at timely resolution of the Corporate Debtor for realizing the maximum value while respecting the commercial wisdom of the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon'ble Supreme Court in a catena of judgments. The decision as

to whether the Corporate Debtor is to be revived or not by acceptance of a particular resolution plan is essentially a business decision and hence should be left to the CoC so long as it musters the required voting share i.e., more than 66% vote share.

10. In the present case, when the CoC had rejected the Resolution Plan of the Objector No.1 by 100% voting share after considering its feasibility and viability, such decision of CoC is a commercial decision. There can be no fetters on the commercial wisdom of the CoC. It is settled law that commercial wisdom of CoC in approving/rejecting the Resolution Plan is not to be interfered with in the exercise of jurisdiction of judicial review by the Adjudicating Authority.

11. Further, once the Resolution Plan of the Prospective Resolution Applicant is rejected by the CoC, the Unsuccessful Resolution Applicant/Objector No.1 is out of the process. The Objector No.1 has neither locus to call in question any decision of the CoC nor to object to the instant application seeking Liquidation of the Corporate Debtor. In view of the aforesaid discussion, we are unable to accept the contentions of the Objectors.

12. Further, in light of the facts of the present case, this Adjudicating Authority has not received any application for approval of Resolution Plan within the timeline prescribed under Section 12 of the Code, 2016 and the Resolution Professional under Section 33(2) of the Code, 2016 had intimated this Adjudicating Authority of the decision of the Committee of Creditors to liquidate the Corporate Debtor being approved with 100% votes in favor in the 8th CoC Meeting held on 21.03.2022.

13. Pertinently, Hon'ble NCLAT in **Dr. C. Bharath Chandran v. Ms. Sabine Hospital and Research Centre Pvt. Ltd & Ors. [Company Appeal (AT) (CH) (Ins) No. 320 of 2022; judgment dated 19.10.2022],** here categorically held that once the Adjudicating Authority receives a rejected Resolution Plan, the Adjudicating Authority is not expected to do anything more, but is obligated to initiate the Liquidation Process under Section 33(1) of the I&B Code, 2016. The relevant paras are extracted below:-

> 27. Hence, it is clear from the above discussion that the 'Adjudicating Authority' has no jurisdiction and/ or authority to analyse or evaluate the decision of the 'Committee of Creditors' to enquire into the justness of the rejection of the `Resolution Plan' by the dissenting `Financial Creditors'.
>
> 28. Upon receipt of a "rejected" Resolution Plan, the `Adjudicating Authority' is not expected to do anything more, but is obligated to initiate the `Liquidation Process' under Section 33(1) of the I&B Code. Similarly, in the present case, since the `Resolution Plan' was not approved by the 'Committee of Creditors' and did not meet the requirements of Section 30 (4) of the I & B Code, 2016, The 'Adjudicating Authority' now is to proceed for `Liquidation' under Section 33 (1) of the I & B Code, 2016."

14. In view of the above discussion and reasons, the instant application **I.A./1534/ND/2022 is allowed and M/s. Balaji Digital Solution Private Limited ('Corporate Debtor') is ordered to be liquidated** with the following directions:

    a. Mr. Rohit Sehgal, having IBBI Registration No. IBBI/IPA-001/IP-P00528/2017-2018/10953, having e-mail id: iamrs101@gmail.com is hereby appointed as the Liquidator of the Corporate Debtor as provided under Section 34(1) of the Code, 2016. Mr. Rohit Sehgal, having IBBI Registration No. IBBI/IPA-001/IP-P00528/2017-2018/10953, 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

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator, IBBI and RoC, NCT of Delhi & Haryana for taking necessary steps.

With the above directions, this application i.e**., I.A./1534/ND/2022 in Company Petition No. (IB)- 72/ND/2021** is hereby allowed and disposed.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

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