

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
BENCH-II**

IA NO. 607 OF 2021

IN

CP NO.(IB)/480/(AHM)/2019

[An application filed under section 33(2) of the Insolvency and Bankruptcy Code,2016 for initiation of liquidation of the Corporate Debtor]

IN THE MATTER OF:

Mr. Sapan Mohan Garg
(The Resolution Professional of
Sort India Enviro Solutions Limited)
Office of RP:
D-54, 1st Floor,
Defenc Colony
New Delhi 110 024
Professional

...

Applicant/ Resolution

Order Pronounced on: 25/08/2022

Coram:

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



MEMO OF PARTIES

IN THE MATTER OF:

Mr. Sapan Mohan Garg
(The Resolution Professional of
Sort India Enviro Solutions Limited, Corporate Debtor)
[IP Reg. No. IBBI/IPA-002/IP-N00315/2017-18/10903]

Office of RP:

D-54, First Floor,
Defence Colony
New Delhi 110 024

... Applicant/ Resolution Professional

Present:

For the RP: Mr. Shashvata Shukla, Adv. a/w. Mr. Parth Shah, Adv.

For the FC: Mr. Masoom Shah, Advocate

For the RP: Mr. Milan Negi, Advocate
Mr. Sapan Garg (present in person)

ORDER

- 1 This is an application filed by the Resolution Professional (brevity as “RP”) under Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code”) for passing an order of liquidation of the Corporate Debtor, M/s. Sort India Enviro Solutions Limited and also appoint present RP/applicant as liquidator of corporate debtor.



2. The facts in brief are as under:

- (i) The Operational Creditor, M/s. Jain Sons Finlease Limited had filed an application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against the Corporate Debtor, M/s. Sort India Enviro Solutions Limited, which was admitted vide order dated 23.09.2020 and Mr. Manish Shah was appointed as Interim Resolution Professional (hereinafter referred to as "IRP").
- (ii) The IRP under Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on 27.09.2020.
- (iii) The IRP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the "COC") as per Regulation 16 of CIRP Regulations. In 1st COC meeting, CoC with voting share of 96.99%, unanimously resolved to replace IRP and appoint the applicant herein, Mr. Sapan Mohan Garg, as the Resolution Professional of the corporate debtor. The said appointment was also confirmed by this Tribunal in the order dated 27.11.2020.



- (iv) The applicant submits that on taking charge as the Resolution Professional, the applicant learnt that the last audited financial statements of the corporate debtor were available upto FY 2015-16. For complete non-cooperation from the suspended management, applicant filed an application being IA 42/2021 under Section 19 (2) of the IBC. However, the suspended management did not co-operate with the applicant. In absence of the updated financial statements, the applicant prepared Information Memorandum (IM) on 16.11.2020 with limited information available which was modified subsequently by the applicant by issuing addendums on receipt of further information. Accordingly, the eligibility criteria and Request for Resolution Plan (RFRP) were prepared and approved by CoC during relevant time. Copy of IM, eligibility criteria and RFRP as approved by the CoC are annexed. The applicant published Form G for invitation for Expression of Interest (EOI) on 10.02.2021. The last date for submission of EOI was kept on 25.02.2021. Eight Prospective Resolutions Applicants (PRAs) approached out of which four were found to be eligible to whom RFRP was issued on 10.03.2021 and as per Form – G, the final list of PRAs was published on 19.03.2021.



- (v) The applicant further submits that the statutory period of 180 days was expiring on 22.03.2021. The CoC, in their 5th meeting held on 08.02.2021, passed a resolution with requisite majority to extend the time period of CIRP by another 90 days in accordance with Section 12 (2) of the Code and an application was allowed vide order dated 09.03.2021 extending CIRP period by 90 days which was to expire on 20.06.2022. As per form G, last date for submission of resolution plans was 09.04.2021, however, the CoC from time to time extended the last date for submission of resolution plan and the last date for submission of resolution plan was finally on 26.06.2021.
- (vi) The applicant further submits that during the second wave of COVID 19, the applicant was also infected with the said virus and had to undergo for medical supervision for 32 days (15.04.2021 to 16.05.2021). Exclusion application IA 367/2021 seeking exclusion of 32 days was allowed vide order dated 14.06.2021, thereby CIRP time of 270 days was to expire on 22.07.2021.
- (vii) The applicant further submits that despite extending the last date for submission of resolution plans and having four eligible PRAs, no resolution plans were submitted with the applicant. The applicant further submits that one Mr. Parekh, suspended director of the corporate debtor, vide email dated 04.07.2021 had proposed to



submit a resolution plan by 13.07.2021. The applicant had shared the said proposal with the CoC members in the 10th meeting of the CoC on 05.07.2021, wherein the CoC members pointed out that the suspended director Mr. Parekh did not meet the eligibility criteria set by CoC and taking into account the cost of CIRP, resolved to liquidate the corporate debtor. The suspended director Mr. Parekh again approached the applicant on 07.07.2021 for permission to submit a resolution plan.

- (ix) The above proposal came to be discussed and deliberated upon by the CoC in their 11th meeting dated 17.07.2021, wherein the applicant informed the members that the proposal of Mr. Parekh was not a resolution plan as per the relevant provisions of IBC, as the same did not comply the requirements envisaged under IBC. The CoC members were of the view that the proposal was just one page proposal without giving any details with the condition that upon confirmation from the CoC on the said proposal, Mr. Parekh would give full binding offer. The CoC opined that there was no occasion to consider such proposal, especially in view of the fact that Mr. Parekh (suspended director) was not meeting the eligibility criteria, the proposal was not a resolution plan as per the RFRP, value offered was not worth considering as per commercial wisdom of CoC and



also conduct of the suspended management as revealed in the transaction audit.

- (x) Thereafter, having received no resolution plan in accordance with the provisions of Section 33 (2) of IBC, the agenda of liquidating corporate debtor was deliberated by CoC.
- (xi) The applicant also proposed that if the agenda for liquidating the corporate debtor is approved, the Resolution Professional shall be eligible to become the liquidator in terms of Section 34 of IBC. Further, the agenda for fixing fee of liquidator as per Regulation 39D as per CIRP Regulations was put to vote. In addition to above, as required under Regulation 39B of CIRP Regulations, the CoC deliberated and discussed the estimated liquidation cost. Upon such deliberations and discussions, the liquidation cost is estimated at Rs. 29,45,000/- (other than the liquidator fee) for first six months. The CoC members with a voting share of 78.12%, in the 11th CoC meeting held on 17.07.2021 passed the resolution for liquidating the corporate debtor and appointment of the applicant as the Liquidator was approved. The applicant has placed on record his consent form to act as liquidator with appropriate disclosures. Copy of consent form of the applicant to act as liquidator along with relevant certificates are annexed to the application.



3. For the sake of ready reference, the relevant provision of Section 33 (2) of the Code, which is applicable is reproduced hereunder:

(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 66% 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 purposes 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. Suspended management inspite of various opportunities did not file any reply/objections.
5. Considering the submissions and documents on record, since the COC in its commercial wisdom has decided to take the Corporate Debtor into liquidation, we do not find any reason that the decision of COC should be interfered with. The present application seeking liquidation of the Corporate Debtor M/s Sort India Enviro Solutions Limited, in the manner laid down in Chapter III of Part II of the Code, is allowed.



6. The applicant having registration no. IBBI/IPA-002/IP-N00315/2017-2018/10903 and having an address at C-585 Basement No. Z-94, Defence Colony, New Delhi 110 024 has filed his written consent, to act as liquidator of corporate debtor, in terms of Section 34 (1) of the Code.

7. In view of the above discussions we hereby appoint the applicant Mr. Sapan Mohan Garg to act as Liquidator of the corporate debtor with the following directions:

(a) The liquidator to make a 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.

(b) The liquidator 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 rules and regulations made thereunder.



- (c) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions etc.
- (d) 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.
- (e) The Liquidator to 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.

8. As a consequence of the application being allowed, the moratorium as envisaged 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, 2016 shall commence.



9. A copy of the order shall be communicated to the applicant RP and the corporate debtor as well as to the liquidator above named. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal. IBBI shall send a compliance report to the Registrar, NCLT.

10. Accordingly, this application is allowed and disposed of.

Sd/-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)



Sd/-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Certified to be True Copy of the Original
[Signature] 5.9.22
Joint Registrar
NCLT, Ahmedabad Bench
Ahmedabad

Nair/Mansi (LRA)