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

IA No. 1313/ND/2021
IN
Company Petition No. (IB)-946(ND)/2019

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

IN THE MATTER OF:

Mr. Radhey Shyam Yadav

Resolution Professional ....Applicant/RP

AND IN THE MATTER OF

Sahil Garg & Ors

...Operational Creditor

Versus

Wave Global Educational Services Private Limited

...Corporate Debtor

Order delivered on:11.08.2021

Coram:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

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, Wave Global Educational Services Private Limited.
2. The facts in brief are that the operational creditor, Sahil Garg & Ors had filed an application bearing no. IB 946(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 18.011.2019 and Mr. Radhey Shyam Yadav 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 02.01.2020.
4. The RP submits that for non-cooperation, the members of the suspended Board of Directors and the Statutory Auditor, an application under Section 19(2) was filed, wherein vide order dated 01.07.2021, it was stated that statutory auditor cooperatedLearned Counsel for respondent No. 3 Mr.Kailash Sharma states that statutory auditor cooperate throughout the process and have filed their compliance affidavit which has not come on record. Learned Counsel is directed to take appropriate steps and bring it on record. throughout the process and have filed their compliance affidavit.

5. The RP submits that until the last date of submission of claims, i.e., 14.01.2020, the IRP had received only five claims from the Operational Creditors which includes four applicants.

6. The RP submits that 1st meeting of CoC was held on 28.01.2020, in which the CoC confirmed IRP as RP with 100% of consent.

7. The RP made publication of Form-G in Financial Express (English) and Jansata (Hindi) inviting Expression of Interest from the prospective Resolution Applicants on 14.03.2020. Last date for receiving the EOI was 28.03.2020. That in response to Public Announcement, two persons had shown some interest. However, after discussion with them, they appeared to be not serious to submit their Resolution Plans in view of no physical assets of the corporate debtor, being found by RP.

8. The RP submits that Information Memorandum could not be finalized due to non-availability of accounts and other details of corporate debtor for 2018-19 and 2019-20 on account of non -cooperation from the members of the suspended Board of Directors of the corporate debtor.

9. The 4th Meeting of CoC was held on 13.02.2021 and it was deliberated that since there is no resolution plan and the extended CIRP period has already expired, the only option left is to seek initiation of Liquidation of the Corporate Debtor. The CIRP of 180 days in the present matter expired on 20.01.2021 and the extension of 90 days was granted by this bench on 28.01.2021, completing 270 days of CIRP. The CoC with 97.93% voting power

approved the following resolution vide agenda item No. 6 of the 4th meeting held on 13.02.2021:

"RESOLVED THAT pursuant to section 33(2) of the IBC, 2016 the, Committee of Creditors be and hereby authorizes the RP to file an application before the Hon'ble NCLT for initiation of Liquidation of the Corporate Debtor and take all necessary actions for the purpose.

RESOLVED THAT the existing Resolution Professional, i.e., *Mr. Radhey Shyam Yadav having Registration No. IBBI/IPA-001/IP-P-01496/2018-2019/ 12255 who has expressed his willingness to continue* as *Liquidator be and* is *hereby approved to be appointed as Liquidator.*

FURTHER RESOLVED THAT the fees payable to the Liquidator, Mr. Radhey Shyam Yadav, including the fee of the IPE, from the date of the liquidation order of the Hon'ble NCLT till the date of the dissolution of the Company shall be Rs. 60,000- per month plus applicable taxes and out of pocket expenses.

FURTHER RESOLVED THAT the expenses *(other than* fees *of the RP/ Liquidator including fee of IPE) incurred and to be incurred will be paid by the* members *of the* COC *in proportion to their claims and the* fees *of the IRP/RP/Liquidator including IPE shall be paid out of the sale proceeds of the* assets *of the CD."*

10. Further, because no resolution plan was forthcoming, it is seen from the provisions of IBC, 2016 the option left with CoC is the liquidation mode 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."

11. This Tribunal in the circumstances taking into consideration the provisions of law as well as on facts on record to 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. Radhey Shyam Yadav, Resolution Professional having Registration No. IBBI/IPA-001/IP-P-01496/2018-2019/ 12255, has to give his consent to act as the liquidator under section 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, and hence is appointed as Liquidator.

b. Mr Radhey Shyam Yadav 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;

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 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. 1313(ND) /2021 filed in IB 946(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)