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IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT-III

IA-2514/2023
In
(IB) – 429(ND)/2019

Order under Section 54(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 45(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

IN THE MATTER OF (IB) – 429(ND)/2019:

Punjab National Bank .... **Operational Creditor**

VERSUS

M/s. Tristar Global Infrastructure Private Limited
.... **Corporate Debtor**

AND IN THE MATTER OF IA-2514/2023:

Mr. Arvind Garg

Liquidator of M/s. Tristar Global Infrastructure Private Limited

...... **Applicant**

Order Pronounced On: 28.08.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Ms. Jaismeen Sharma, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by Mr. Arvind Garg, the Liquidator of M/s. Tristar Global Infrastructure Private Limited before this Adjudicating Authority under Section 54(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 45(3) of Insolvency

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and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The Applicant seeks the following reliefs:

"a) That the Hon'ble National Company Law Tribunal may be pleased to pass an order with directions to dissolve the Corporate Debtor.

b) That the Hon'ble National Company Law Tribunal may be pleased to take the final report and Form-H filed herewith on record and to pass appropriate directions thereon.

c) That the Hon'ble National Company Law Tribunal may be pleased to take minutes of consultation with stakeholders on record.

d) That the Hon'ble National Company Law Tribunal may be pleased to pass an order allowing assignment/ transfer of rights underlying provisions for preferential and fraudulent transactions under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 bearing Interlocutory Application No. IA-520/2021 to Mr. Chander Shekhar Arya and grant permission for perusal of such proceedings after closure of liquidation process and dissolution of the Corporate Debtor.

e) That the Hon'ble Tribunal may be pleased to issue such other directions, as may be deemed appropriate."

2. The Corporate Debtor namely M/s. Tristar Global Infrastructure Private Limited was incorporated on 03.04.2003 as a Private Company Limited by Shares (Non- govt. Company) having CIN: U72203DL2003PTC119728 under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Corporate Debtor is Rs. 1,80,00,000/- and the Paid-up Share Capital of the Corporate Debtor is Rs. 1,71,61,500/-.

3. **<u>Brief Background of the Case</u>**

   i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e., Punjab National Bank against the Corporate

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Debtor i.e., M/s. Tristar Global Infrastructure Private Limited and the said application was admitted by the order of this Adjudicating Authority vide order dated 28.08.2019 and a moratorium was declared under Section 14 including the appointment of Mr. Arvind Garg as an Interim Resolution Professional. Subsequently, his appointment was confirmed as Resolution Professional.

ii. Thereafter Mr. Arvind Garg filed an Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC") for seeking Liquidation of the Corporate Debtor. This Adjudicating Authority vide order dated 12.10.2020 allowed the Application filed under Section 33(2) of IBC and a moratorium was declared under Section 33(5) including the appointment of Mr. Arvind Garg as the Liquidator of the Corporate Debtor.

4. It is submitted that the assets of the Corporate Debtor have been completely liquidated. Hence, in accordance with Section 54(1) of IBC read with Regulation 45(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations'), the liquidator is making this application to this Adjudicating Authority praying for dissolution of the Corporate Debtor in accordance with Section 54(2) of IBC.

5. In accordance with Regulation 45(1) of Liquidation Regulations, the Liquidator has filed the Final report prior to the dissolution of the Corporate Debtor, showing how it has been conducted and how the Corporate Debtor's assets have been liquidated. In accordance with Regulation 45(3)(b) of Liquidation Regulations, the liquidator has submitted this application along with the Final Report and the compliance certificate in Form-H before this Adjudicating Authority praying for dissolution of the Corporate Debtor.

6. In accordance with Regulation 41 of the Liquidation Process Regulations, 2016, the liquidator opened a bank account in the name of the Corporate Debtor followed by the words 'in liquidation'

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in State Bank of India, Ajmal Khan Road, Karol Bagh, New Delhi-110005.

7. It is contended that an application seeking dissolution of the Corporate Debtor after closure of affairs of Corporate Debtor was filed before this Adjudicating Authority on July 18. 2022. However, this Adjudicating Authority sought clarification as to the treatment of pending avoidance application before passing the order for dissolution of the Corporate Debtor.

8. In accordance with the order passed by this Adjudicating Authority and with Regulation 44A of the Liquidation Process Regulations. 2016, the 7th meeting of the Consultative Committee of Stakeholders was convened on December 23, 2022 in order to decide on to the treatment of avoidance provisions application. In the meeting, PNB and Dhanlaxmi Bank (having a cumulative voting share of 98.79% of the Financial Debt only) decided to make an exploratory attempt in order to assign/transfer the assets/rights underlying avoidance provisions application. The relevant extract of the minutes of the meeting is reproduced below:

   "Thus the matter was placed before the member(s) to decide the treatment of the avoidance provisions application. Authorized representative of PNB and Dhanlaxmi Bank (having a cumulative voting share of 98.79% of the financial debt only) were of the opinion that an exploratory attempt may be made to assign/ transfer the assets underlying proceedings under Sections 43, 45, 50 and 66. Liquidator apprised the members that the liquidation period of the Corporate Debtor has already ended. Thus the Liquidator informed the members that he will first seek permission of the Hon'ble NCLT and if Hon'ble NCLT permits adoption of this course of action, he will be moving ahead for publication of notice seeking offers for assignment/ transfer of the proceedings underlying Provisions application."

9. Vide order passed by this Adjudicating Authority on January 31, 2023, the earlier filed Dissolution Application by the liquidator was

declared infructuous and the liquidator was allowed to explore the possibility of assignment/transfer of the rights underlying the avoidance transactions as mentioned in the application bearing IA-520/2021 as a Not Readily Realisable Assets ('NRRA') of the Corporate Debtor.

10. On February 01, 2023, in pursuance to the order passed by this Adjudicating Authority on January 31, 2023, the liquidator made a Public Announcement in Financial Express (English) and Jansatta (Hindi) Delhi NCR Edition issuing an invitation to submit offers for "Not Readily Realizable Assets" of the Corporate Debtor i.e. Transfer/Assignment of rights underlying proceedings for preferential and fraudulent transactions under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 filed before the National Company Law Tribunal (NCLT), New Delhi Bench-III against erstwhile promoter Directors of the Company (Corporate Debtor) bearing Interlocutory Application No. IA-520/2021 in CP (IB) No. IB-429(ND)/2019.

11. Pursuant to the publication made one Mr. Chander Shekhar Arya submitted an offer to acquire the rights underlying the avoidance provisions application by depositing an EMD amounting to Rs. 80,000/- on the following terms and conditions:
    Upfront payment: Rs. 8 lakh
    Subsequent payments: 45% of the gross amount recovered under the litigation along with 3% of the gross amount to the liquidator as his fees in the capacity of being an observer.

12. The abovementioned offer was put forth for voting in the 9th meeting of the Consultative Committee of Stakeholders held on April 11, 2023 wherein PNB (having a voting share of 91.15%) voted in favor of the assignment/transfer of rights pertaining to proceedings in respect of the undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading to Mr. Chander Shekhar Arya on the stipulated abovementioned terms and conditions.

13. Application for avoidance of transactions filed vide IA 520 of 2021 is sub-judice before this Adjudicating Authority. The application for avoidance of transactions has been assigned to Mr. Chander Shekhar Arya through Deed of Assignment against the complete payment of offered amount i.e. Rs. 8,00,000/- made by the latter on April 24, 2023. On April 24, 2023, total offered amount to the tune of Rs. 8,00,000/- has been credited into the liquidation account of Corporate Debtor by Mr. Chander Shekhar Arya in furtherance to the offer submitted by him to acquire rights pertaining to avoidance provisions application bearing IA No. 520 of 2022.

14. The proceeds in the Liquidation Account No. 2447112117 of the Corporate Debtor maintained with Kotak Mahindra Bank, Arya Samaj Road, New Delhi have been distributed towards payment/ reimbursement of liquidation cost/fee to the liquidator for the period from July, 2022 to April, 2023 totaling to Rs 5,00,000/- plus GST (@Rs 50,000/- per month as approved by CCS towards liquidator's monthly fees) in accordance with Section 53 of the IBC, 2016. The balance amount available in the liquidation account of the Corporate Debtor has been distributed to PNB, the only secured Financial Creditor of the Corporate Debtor.

15. It is contended that there are no funds available in the liquidation account of the Corporate Debtor post distribution of funds and the liquidation account stands closed. The Applicant vide Affidavit dated 05.08.2024 submitted the copy of the Bank Closure Certificate as sought by this Adjudicating Authority vide order dated 24.07.2024.

16. The Present Interlocutory Application appears to be bonafide and in the interest of the Corporate Debtor and to enable the Applicant to perform his duties under the Code.

17. Upon hearing the Applicant and on perusal of the documents annexed to the application, it appears that the affairs of the

Corporate Debtor have been completely wound up and its assets have been completely liquidated.

18. In view of the above facts and circumstances, there is no impediment to the Corporate Debtor being dissolved.
19. In the above circumstances, this Adjudicating Authority finds that it would be just and proper to order the dissolution of the Corporate Debtor as per Section 54 of the Code.
20. In light of the above facts and circumstances, the prayer sought in the present application **stands allowed** and Accordingly, the Applicant Company is ordered to be **dissolved**.
21. **IA-2514/2023** and **IB-429(ND)/2019** shall stand **disposed of** in accordance with the above directions.
22. The Liquidator is directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order. The Liquidator shall stand discharged from his responsibilities, subject to procedural compliances.
23. The Registry is directed to send copies of this order to all the parties for information, for taking necessary steps and to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
24. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
25. File be consigned to the record.

No order as to costs.

Sd/-	Sd/-
(ATUL CHATURVEDI)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Prashant Kumar 03-09.2024

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

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