IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 224
(IB)-637(PB)/2020
IA-2654/2023

IN THE MATTER OF:
M/s. Guadian Finance Pvt. Ltd. ... **Applicant/Petitioner**

Versus

M/s. Temple Leasing & Finance Ltd. ... **Respondent**

Under Section: 7 of IBC, 2016 (CIRP)

Order delivered on 16.06.2023

CORAM:
SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. L. N. GUPTA
HON'BLE MEMBER (T)

PRESENT:
For the RP : Mr. Vinod Kumar Chaurasia, Adv.

ORDER

IA-2654/2023: The previous IA-5874/2021 filed by the Applicant under Section 33(2) of the IBC, 2016 was rejected in terms of the order dated 19.12.2022. The deficiency noticed by this Adjudicating Authority qua the said application was a lack of service of notice regarding the application upon the Suspended Board of Directors. Thus, the Applicant has preferred the present application, enclosing therewith the proof of service of notice upon the Suspended Board of Director dated 20.02.2022 i.e., before filing the IA-5874/2021 and dated 05.05.2023 regarding the service of notice upon them qua the present application.

Ld. Counsel for the Applicant could draw our attention to the resolution passed by CoC on 01.12.2021 taking a decision to liquidate the CD. He could also make reference to the voting sheet in this regard. It is observed that the resolution was passed with 100% voting share. The relevant excerpts of the minutes of the meeting of the CoC of Temple Leasing and Finance Limited dated 01.12.2021 in that regard reads thus:

> ***"B. RESOLUTIONS TO BE PASSED AT THE MEETING:***
>
> *Following Resolutions were passed at the sixth meeting of the Committee of Creditors of Temple Leasing and Finance Limited held via video conferencing on Wednesday, 1st December, 2021 at 05:00 P.M.*

UPASANA

Resolution No.1

To initiate liquidation process against Temple Leasing and Finance Limited

Facts and Explanatory statement:

The CoC in the last CoC meeting had unanimously rejected the resolution plan submitted by Mekaster Finlease Limited therefore in the absence of any resolution plan the CoC after deliberation decide to initiate the liquidation process against the Corporate Debtor.

Therefore, following resolution was proposed for the consideration of the COC:

Resolution:

To consider and if found fit, to pass with or without modification the following Resolution.

"RESOLVED THAT *Temple Leasing and Finance Limited, the Corporate Debtor be liquidated under section 33(2) of Insolvency and Bankruptcy Code, 2016."*

"FURTHER RESOLVED THAT*, the resolution professional be and is hereby authorized to file an application under Section 33(2) of Insolvency and Bankruptcy Code, 2016 before the Hon'ble NCLT."*

VOTING RESULT: The CoC member unanimously voted in favour of above Resolution and above Resolution was passed with 100% votes in favour."

As can be seen from section 33(2) of the IBC, 2016, on being informed by the RP regarding the decision of the CoC to liquidate the CD, this Adjudicating Authority is required to pass the order in terms of the provisions of Section 33(1) of the IBC, 2016 i.e. on liquidation on the CD. The section 33(1) & 2 of the IBC, 2016 reads thus:

"**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 -

UPASANA

(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."

Accordingly, liquidation of the CD is ordered and **Mr. Arvind Mittal** with **Registration No: [IBBI/IPA-001/IP-P01358/2018-2019/12081] (e-mail ID: arvindmittal81@yahoo.in) (Phone No. 9958061149)** is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions, inter alia:

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.

UPASANA

d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;

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

f) 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.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation. 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that the fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

With this, the present IA stands allowed.

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

UPASANA