IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

IA No.91/2023 IN CP (IB) No. 354/ALD/2018

IN THE MATTER OF:

(An Application under Section 33(1) of the Insolvency and Bankruptcy Code, 2016)

AND IN THE MATTER OF:

PARAG SINGHAL

Insolvency Professional

IBBI/IPA-001/IP-P02127/2020-21/13322

1002-B, Eldeco Apartments, Plot No. 11,

Sector-4, Vaishali, Ghaziabad,

U.P.-201010

...APPLICANT

IN THE MATTER OF:

EMBEE SOFTWARE PVT. LTD ....Operational Creditor

VERSUS

SPARTA INFOTECH SOLUTIONS PVT LTD .....Corporate Debtor

Order pronounced on 23rd November, 2023

CORAM:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

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Appearances

Sh. Deep Bisht, Adv. For the Resolution Professional/ Applicant in IA No.91/2023

ORDER

1. The present application (I.A. No.91/2022) has been filed by Mr. Parag Singhal, the Resolution Professional (RP) of the Corporate Debtor i.e. **M/s Sparta Infotech Private Ltd**, seeking direction for initiating liquidation proceedings of the Corporate Debtor in terms of Section 33(1) of the Code and to appoint the Liquidator of the Corporate Debtor.

2. Briefly stated facts of the case are that in pursuance of an application filed U/s 9 by the Operational Creditor i.e. M/s Embee Software Private Limited for Corporate Insolvency Resolution Process of the Corporate Debtor, the application was admitted vide order dated 23.05.2022 passed by this Tribunal and an Interim Resolution Professional (IRP) was appointed to conduct the CIRP of the Corporate Debtor. In pursuance of the admission order, the public announcement of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, appointment of IRP and invitation of claims from the creditors were called by advertising in the newspaper.

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3. As per Section 18 of the Code, the Applicant is entrusted with the responsibility of assuming control and custody of all assets belonging to the Corporate Debtor. The Applicant made an attempt to locate the registered office of the Corporate Debtor but encountered difficulties due to incomplete or unclear addresses associated with the company. Furthermore, it was discovered that there were multiple addresses associated with the Corporate Debtor. On 23.06.2022, the Applicant and their team visited a specific address, namely Plot No.2, Village Bakhtawarpur, Section 127, Noida, where they met Mr. Kuldeep, who claimed to be the property owner. However, the office premises of the Corporate Debtor were found to be locked, and Mr. Jatinder Rishi Tandon, the suspended director, did not provide access to the keys. During their visit, the Applicant observed that the plot was in a state of disarray, with a significant amount of scrap material lying scattered. The office of the Corporate Debtor remained inaccessible. To document this, the Applicant took photographs and recorded a video of the premises.

4. Despite facing resistance from the landlord, the Applicant affixed a Public Notice on the main gate of the plot. Eventually, the landlord agreed to this after receiving an explanation. As per the

information provided by the landlord, the Corporate Debtor had only been rented a room within the plot, while the open area contained goods, scrap, vehicles, and machinery belonged to other individuals, including the landlord. It was evident that the Corporate Debtor's business was not operational and was not a viable concern. The Applicant also informed the Committee of Creditors (COC) that they had initiated communication with the National Accreditation Board (NAB) to verify the outstanding account of the Corporate Debtor. This action was taken because the last Audited Balance Sheet of the Corporate Debtor for the period ending on 31-03-2021 had indicated an amount of Rs. 5,94,839/- as receivable from the National Accreditation Board. Subsequently, the Resolution Professional successfully recovered Rs. 4,02,630/- from the National Accreditation Board.

5. Despite extensive efforts made by the Applicant and their team, access to the Corporate Debtor's office remained elusive. Consequently, on 08.08.2022, the Applicant filed an application under Section 19(2) with the filing number 0710102/06467/2022. However, despite consistent follow-ups, the application has not yet been scheduled for hearing before the Hon'ble Tribunal. Copy of

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the receipt dated 08.08.2022 has been annexed as **Annexure 2** with the Application.

6. It is stated in the application that the CIRP period has expired on 18.02.2023 after the first extension was allowed by this Hon'ble Tribunal on 14.11.2022. Copy of the order dated 14.11.2022 has been annexed as **Annexure 3** with the Application.

7. It is stated that the first Form G was issued on 06.8.2022 in accordance with Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This Form G was published in the Morning Standard (English) and Uttam Hindu (Hindi) newspapers in the Delhi NCR region, where the Registered Office and Principal place of business of the Corporate Debtor are located. Additionally, it was published in the Nav Bharat Times (Lucknow edition) at the behest of the Committee of Creditors (CoC). The purpose of this publication was to solicit Expression of Interest (EoIs) from potential resolution applicants. The last date for submission of Expression of Interest (EoI) was 21.08.2022 and the last date for submission of Resolution Plan was 30.09.2022. The RP did not receive any Resolution Plan till the said last date.

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A copy of 1st Form G published on 06.08.2022 has been annexed as **Annexure A-1** with the Application.

8. Following the issuance of Form G, the Resolution Professional received an Expression of Interest (EoI) from a single eligible Potential Resolution Applicant (PRA), Nakshatra Corporate Advisors Ltd. However, no resolution plan was submitted by Nakshatra Corporate Advisors Ltd. Consequently, during the 10th Committee of Creditors (CoC) meeting held on 01.1.2022, it was decided to issue a second Form-G to invite Expressions of Interest from eligible Potential Resolution Applicants (PRAs). In accordance with this decision, the Resolution Professional issued the second Form G on 02.11.2022, in the Morning Standard (English) and Uttam Hindu (Hindi) newspapers in the Delhi NCR region. Copy of minutes of 10th CoC meeting held on 01.11.2022 is annexed hereto and marked as Annexure-A2. Copy of 2nd Form G published annexed as **Annexure-A3** with the Application.

9. It is also stated that in pursuant to issuance of 2nd Form G on 02.10.22 Resolution Professional received Eol from 4 parties namely Mr. Amrit Agarwal, One City Infrastructure Private Limited, Shanti GD Ispat and Power Limited and Sponge Sales India Private Limited. However, no Resolution Plan was received

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from any of the eligible PRAS in the final list of PRAS issued by Resolution Professional in response to the Form G issued on 02.11.2022.

10. It is further stated that in the 18th CoC Meeting, M/s Embee Software Pvt. Ltd. the only CoC Member vide an email dated 02.02.2023 informed to the Resolution Professional to liquidate the Corporate Debtor through authorized representative Mr. Sanjay Kuchroo. Copy of Minutes of Meeting of 18th COC Meeting has been annexed as **Annexure-4** with the Application.

11. It is further stated by the applicant that due to some personal reasons, Applicant is not in a position to act as liquidator therefore, this tribunal may appoint liquidator of the Corporate Debtor for conducting liquidation proceedings. However, during the course of hearing, the RP agreed to act as liquidator and his consent is recorded in order dated 10.10.2023 which is reproduced below:-

> *"…..*
>
> *1. This application has been filed under Section 33(1) of the Code on behalf of the Resolution Professional seeking order for liquidation of the Corporate Debtor, on the ground that there is no Resolution Plan received so far, despite the Expression of Interest having been invited twice and 'Form G' published on two occasions.*
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> *2. It is further stated by the Ld. Counsel representing the RP that the present RP would continue to act as Liquidator, if so directed by this Tribunal. He further refers to Para 8 of*

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the application, whereby, however the RP has shown his inability to continue as Liquidator.

3. Ld. Counsel representing the RP states that this is due to the reason that the CIRP cost, which has been incurred by RP, has not been paid by the COC, which incidentally comprises of the Operational Creditor being the sole member of the COC.

4. He however, further makes a statement that the present RP would continue as a Liquidator, and therefore, the consent of the RP is taken as per the statement made by him on behalf of the RP.

......"

FINDINGS AND ORDER

12. In the present application i.e. IA No.91/2023 for seeking liquidation of the assets of the Corporate Debtor, we have perused the record and also, we have heard the submissions made by the Ld. Counsel representing the RP.

13. Section 33(2) of the Code, under which the present application has been moved, is reproduced below:-

33. (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 1 [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 subsection (1).

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14. In view of the stated position as averred in the application and submitted by the Ld. Counsel for the RP as well as the provisions of Section 33 of the Code, we are inclined to allow the present application.

15. We have found that despite having made of all possible efforts by the RP acting on the advice of the CoC for inviting EOI and for submission of the Resolution Plan by the PRAs, no proposal was submitted.

16. It was thereafter, only as per the commercial wisdom of the CoC in its 18th CoC meeting held on 17.02.2023, the conscious decision has been taken for initiating liquidation process and accordingly, the RP had been directed to move the present application. It has been stipulated U/s 33(2) as reproduced above that where the RP during the CIRP intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less than 66% (sixty-six) per cent of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order. In the present case, the Resolution to initiate the liquidation process has been taken by the CoC in its 18th CoC meeting as referred to above, by a majority of 100% vote,

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thus, meet the bench mark of percentage share of voting prescribed under the aforesaid provisions of the Code.

17. We thus, allow the present I.A. The RP, who has been acting so far as such, has also given his consent to act as a Liquidator of the Corporate Debtor before this tribunal mentioned in the order dated 10.10.2023 passed by this tribunal. As per Section 34(1) of the Code, it has been stipulated that, where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor U/s 33, the RP appointed for CIRP shall act as Liquidator for the purpose of liquidation subject to the submission of written consent by the RP to act as a Liquidator. The provisions of Section 34(1) of the Code are reproduced here below:-

> *34. (1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under 1 [Chapter II 2 [or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under subsection (4).*

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18. The credentials of the RP, who would act as a Liquidator, have been verified by the LRA Ms. Ankita Sharma, from the IBBI website, and are found to be correct and valid. Upon verification, it was found that AFA of the Resolution Professional is valid till 19.11.2024.

19. In view of our foregoing discussions, we pass the following orders:-

(i) The present IA is allowed for initiation of the liquidation proceedings of the Corporate Debtor in terms of Section 33(2) of the Code.

(ii) The RP Mr. Parag Singhal is appointed to act as a Liquidator.

(iii) The Liquidator is directed to forthwith take into his custody all the assets, Properties, and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

(iv) The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

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(v) The Stakeholder Consultation Committee (SCC) would be constituted as per Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 and the list of SCC would be filed before this Tribunal in accordance with the provisions of the Code and Regulations made therein.

(vi) The Liquidator shall first try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and (f) of IBBI (Liquidation Process) Regulations, 2016. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(vii) Fees of the Liquidator are to be paid in accordance with Liquidation Process Regulations, 2016, and to be decided in the meeting of SCC. (viii) All the powers of the Board of Directors, and of Key Managerial Personnel, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

(viii) The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

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(x) On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.

(xi) In accordance with section 33(7) of the Code, 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 continues during the liquidation process by the Liquidator as a going concern.

(xii) In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kanpur, Uttar Pradesh, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Uttar Pradesh, Kanpur.

(xiii) As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within

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75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

20. In view of the aforesaid order, the **IA No.91/2023** is allowed and stands disposed off.

21. Ordered Accordingly.

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(Ashish Verma)
Member (Technical)

(Praveen Gupta)
Member (Judicial)

Date: - 23rd November, 2023

Ankita Sharma
(LRA)