IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH, III

IA-4304/2021 in CP/IB/1443/ND/2019 filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Elite Steels Private Limited — **Financial Creditor**

Vs

Growthways Trading Private Limited — **Corporate Debtor**

And

In the Matter of:

Mr. Sunil Kumar Agrawal — **Applicant**
Resolution Professional

CORAM:

SHRI P.S.N. PRASAD, Hon'ble Member (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, Hon'ble Member (TECHNICAL)

For Resolution Professional: Mr. Manoj Kumar Garg (Advocate)

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ORDER

Date: 02.11.2021

Per: P.S.N. PRASAD, MEMBER (JUDICIAL)

1. This relates to IA-4304/ND/2021 filed in IB/1443/ND/2019 by Mr. Sunil Kumar Agrawal (hereinafter referred to as 'Resolution Professional') under Section 33 of the Insolvency and Bankruptcy Code, 2016. The prayer made in the Application is to pass an order of liquidation pertaining the Corporate Debtor viz., M/s. Growthways Trading Private Limited.

2. Originally IB/1443/ND/2019 filed under Section 10 of the I&B Code, 2016 by the Corporate Debtor was admitted by this Authority vide Order dated 17.12.2019, the CIR Process was initiated against the Corporate Debtor and the Applicant viz., Mr. Sunil Kumar Agrawal was appointed as Interim Resolution Professional (IRP).

3. It is averred that pursuant to the Order of this Authority dated 17.12.2019 the IRP had taken over the management of the

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Corporate Debtor and had issued the Newspaper Publication dated 26.12.2019 in two editions one in English and another in vernacular as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors. Claims were received from the financial creditors, and operational creditors and accordingly COC was formed with their respective voting shares.

4. On 07.01.2020 the first COC meeting was held. The registered valuers appointed on 08.02.2020 as per Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5. The Information Memorandum was prepared under Regulation 36 (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on the basis of Audited Financial Statements available for the year ended 31.03.2018 and the Audited Financial Statements for the year ended 31.03.2019 and Provisional Financial Statements for 24.12.2019.

6. The form G for Expression of Interest (EOI) was issued on

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08.03.2020 and published in two newspapers in Hindi and English on 08.03.2020 under regulation 36 A (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

7. On 12.06.2020 transaction auditors were appointed as transaction auditors under Section 43, 45, 50 & 66 of IBC, 2016.

8. The RP has not received resolution plan from RA up to 22.11.2020. The Form-G Expression of Interest (EoI) was issued on dated 06.03.2020. The date for the submission of the resolution plan was 07.05.2020. However, due to outbreak of the COVID-19 and announcement of lockdown, no resolution plan could be submitted by the prospective resolution applicant.

9. The COC has decided in the 6th COC meeting held on 22.01.2021 seeking exclusion and extension of CIRP period from 25.03.2020 to 31.12.2020 by excluding 282 days from the CIRP process due to COVID-19 and the application was allowed by this tribunal.

10. The IRP was appointed as Resolution Professional (RP) in the sixth COC meeting held on 22.01.2021.

11. The COC has appointed M/s Amit Ishwar Singh and Company

for physical verification of Inventory at Godown Village Kabulpur, Ballabgarh, Faridabad. The inventory at Godwon village Kabulpur, Ballabgarh, Faridabad. The inventory includes item i.e., apparels, jeans, T-shirts, shirts, suits, sarees, body warmer, jacket, blazer etc.

12. The COC has appointed Legal advisor/Consultant for debt collection from debtors of the Corporate Debtor. The COC has appointed the two agencies i.e., Share Saamadhan Pvt. Ltd., & A. Mittal Business Consulting (OPC) Pvt. Ltd. but no positive response has been received from both the legal advisor/consultant.

13. On date 05.03.2021, 7th COC meeting was held and a resolution for liquidation of the Corporate Debtor under Section 33 of IBC,2016 was approved by the COC. The resolution was passed with 92.99% vote.

14. The 8th COC meeting was held on 22.03.2021 in which estimated cost of liquidation- cost defined under section 5 (16) of IBC, 2016 read with regulation 2 (ea) of IBBI (Liquidation Process) Regulation, 2016 which includes liquidator fees and expenses i.e., publication in newspapers, e-auction, legal advisor, record keeping

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charges etc was considered and were approved.

15. Further COC has approved the extension of 60 days as per section 12 of IBC because of COVID-2019 lockdown. The CIRP completion date will be on 10.10.2021. The resolution passed in the 10th COC meeting held on 06.08.2021. The tribunal also allowed the application of extension of CIRP period and extended up to 10.10.2021.

16. 11th COC meeting held on 10.09.2021 and a resolution for liquidation of the Corporate Debtor under Section 33 of IBC, 2016 was approved by the COC. The resolution was passed with 100% vote.

17. It is noted that RP Sunil Kumar Agrawal- IBBI/IPA-002/IP-N00081/2017-18/10222 has been appointed as liquidator under Section 34 of IBC, 2016 in 11th COC meeting of COC. The consent form AA is annexed herewith as Annexure A-10.

ORDER

18. In view of the facts and circumstances recorded by Resolution Professional in IA/4304/2021 filed in CP/IB/1443/ND/2019 and in

Sd-exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows: -

I. This Authority hereby orders for liquidation of the Corporate Debtor viz., M/s. Growthways Trading Private Limited which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

II. This Authority hereby appoints Mr. Sunil Kumar Agrawal- IBBI Registration- IBBI/IPA-002/IP-N00081/2017-18/10222 as Company Liquidator who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;

III. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;

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IV. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

V. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

VI. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

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VII. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator viz., Mr. Sunil Kumar Agrawal. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX. The Company Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate assets as specified under

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Regulation 4 (2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

X. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz. Mr. Sunil Kumar Agrawal, for information and compliance.

19. In terms of the above, IA-4304/2021 filed in CP/IB/1443/ND/2019 by the Resolution Professional under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Growthways Trading Private Limited is **allowed**.

Sd/- Sd/-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

(P.S.N. PRASAD)
MEMBER(JUDICIAL)