



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

I.A.(IBC)/3484/2023
IN
C.P.(IB)No.796/ND/2022

[Under Section 33 of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions]

IN THE MATTER OF:

Mr. Mohan Lal Jain
Resolution Professional
M/s. Lagrowth Associates Private Limited

... Applicant

IN THE MATTER OF:

M/s. Montage Enterprises Private Limited

...Operational Creditor

Versus

M/s. Lagrowth Associates Private Limited

...Corporate Debtor

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

For the RP : Ms. Prachi Darji, Ms. Saloni Singh, Ms.
Kanishka Lunia, Advs

Order Delivered on: 12.03.2024



ORDER

PER: DR.SANJEEV RANJAN, MEMBER (TECHNICAL)

The instant application i.e., I.A./3848/ND/2023 is filed by Mr. Mohan Lal Jain ('Applicant') Resolution Professional of M/s. Lagrowth Associates Private Limited ('Corporate Debtor') seeking liquidation of M/s. Lagrowth Associates Private Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') praying for the following relief(s):-

- a) To allow the present Application and initiate the Liquidation Proceedings of the Corporate Debtor in exercise of its power under Section 33 of the Code, 2016 and;
- b) Take on record the 'Form-AA', i.e., Written consent to act as Liquidator for Corporate Debtor and allow Ms. Soniya Gupta, the Insolvency Professional, having IP Registration number IBBI/IPA-002/IP-N01155/2021-2022/13863 to act as Liquidator upon initiation of Liquidation Proceedings;
- c) Pass such other and further order(s) as deem fit in the facts and circumstances of the case and in the interest of justice."

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:

- i) The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Lagrowth Associates Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 10.02.2023 in an application C.P.(IB)/796/ND/2022 under Section 9 of the Code, 2016 filed by M/s. Montage Enterprise Private Limited ('Operational Creditor') and Mr. Mohan Lal Jain ('applicant') was appointed as the Interim Resolution Professional of the Corporate Debtor and was later confirmed as the Resolution Professional.



- ii) The applicant submits that the public announcement in terms of Regulation 6(1) of the CIRP Regulations, 2016 was made in Form – A inviting the claims from public, consequent to which, total amount of claim(s) filed by the Creditors of the Corporate Debtor was Rs. 5,548,894,974/- (Rupees Five Hundred Fifty- Four Crore Eighty-Eight Lakhs Ninety-Four Thousand Nine Hundred Seventy-Four only) out of which claim of Rs.4,655,917,277/- (Rupees Four Hundred Sixty-Five Crore Fifty-Nine Lakhs Seventeen Thousand and Two Hundred and Seventy-Seven only) was provisionally admitted by the Resolution Professional.
- iii) The invitation for expression of Interest in Form-G was published on 06.04.2023 as approved by CoC in the 2nd CoC Meeting held on 28.03.2023. Pursuant to publication in Form-G, no expression of interest had been received till the last date of submission of Expression of Interest.
- iv) Further, the CoC was of the opinion that as there is no operational activity going on at present in the Corporate Debtor and the asset base is very low, therefore, the chances of receiving a Resolution plan of the Corporate Debtor are very low. Accordingly, the CoC opined that the re-issuance of EOI will only incur unnecessary cost together with futile effort to expect any Resolution Plan in the matter.
- v) The CoC in its CoC Meeting had observed the following factors while considering the initiation of liquidation of the Corporate Debtor:-
- a) The Corporate Debtor is not in operation.
 - b) There is no immovable asset or tangible Current Asset available with the Corporate Debtor. However, there are certain Fixed Assets like some furniture items and Laptops which are not usable. Further, in Current Asset, no



inventory is available except outstanding Book debts recovery of which is difficult.

c) The Corporate Debtor has one intangible asset i.e., Software-MS Office under the head Intangible Assets.

d) The Corporate Debtor has made no investments as per the Audited Balance Sheet as of 31 March 2022.

vi) The CoC in its 3rd CoC Meeting held on 02.05.2023 with 100% voting in favor had resolved to proceed with the Liquidation of the Corporate Debtor under Section 33 of the Code, 2016. The relevant extract of the said resolution is extracted below:-

"RESOLVED THAT pursuant to the provision of Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made thereunder, approval of committee of creditors be and is hereby accorded to initiate liquidation proceedings of Lagrowth Associates Private Limited ("Corporate Debtor") and authorise Mr. Mohan Lal Jain, Resolution Professional to file an application for initiation of the liquidation proceedings with the Adjudicating Authority.

RESOLVED FURTHER THAT the committee be and are hereby authorise, Mr. Mohan Lal Jain, Resolution Professional to continue to manage the affairs of the corporate debtor including defending the legal cases filed or that may be filed against the Corporate Debtor, until an order of liquidation of the corporate debtor is passed by the Adjudicating Authority.

RESOLVED FURTHER THAT the committee be and are hereby approve the expenses to be incurred for managing the affairs of the Corporate Debtor and for defending such legal cases filed or that may be filed in any court against the Corporate Debtor by any party in relation to the CIRP process of the corporate debtor. The said expenses to be incurred shall be treated, constituted and form part as Corporate Insolvency Resolution Process (CIRP) Cost of Lagrowth Associates Private Limited.

RESOLVED FURTHER THAT the Committee hereby authorizes Mohan Lal Jain, Resolution Professional to undertake debit transactions of the said expenses and to do all acts, deeds and matters as may be necessary to give effect to this resolution."

Since 100% vote in favour of the Resolution was obtained, the proposed Resolution was declared as PASSED.

(Extract of the Resolution No.1 passed in the 3rd CoC Meeting)



vii) The Committee of Creditor in 4th CoC meeting had resolved to appoint Ms. Soniya Gupta, Insolvency Professional having IP registration number IBBI/IPA-002/IP-N01155/2021-2022/13863 to act as the Liquidator for the purpose of Liquidation proceedings of the Corporate Debtor. In pursuance to the same, Ms. Soniya Gupta, had given her consent to act as the Liquidator of the Corporate Debtor.

3. We have considered the submissions made by the Learned Counsel on behalf of the applicant/Resolution Professional and upon perusing the material available on record, it is observed that the CoC in its commercial wisdom has decided to liquidate the Corporate Debtor. Further, it was noted that in the event of cessation of the Corporate Debtor's operation and in absence of the assets of the Corporate Debtor, the process of inviting the resolution plan and publishing for Form G will not be fruitful and CoC felt the best option is to initiate the liquidation of the Corporate Debtor.
4. From the minutes of the 3rd CoC meeting held on 02.05.2023, it is observed that the CoC has unanimously decided to liquidate the Corporate Debtor and further in the 4th CoC Meeting decided to appoint Ms. Soniya Gupta, as the liquidator of the Corporate Debtor.
5. At this juncture, it is relevant to refer the judgment of the Hon'ble NCLAT in the matter of **Sreedhar Tripathy vs. Gujarat State Financial Corporation and ors. [MANU/NL/0788/2022]** wherein at para 7, the Hon'ble NCLAT observed as follows:-

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to***

Page 5 of 8



*liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. **CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant.** However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.*

6. It also seen from the record that the Ms. Soniya Gupta, proposed liquidator of the Corporate Debtor has accorded her written consent in Form AA to act as the Liquidator of the Corporate Debtor along with the IBBI registration certificate and Form -FA as Annexure A-8 to the present application. Further, in light of the above submissions, this Adjudicating Authority has not received any application for approval of Resolution Plan within the timeline prescribed under Section 12 of the Code, 2016 and the Resolution Professional under Section 33(2) of the Code, 2016 had intimated this Adjudicating Authority of the decision of the committee of creditors to liquidate the Corporate Debtor being approved with 100% votes in favor in the 3rd CoC Meeting held on 02.05.2023.



7. Accordingly, the instant application **I.A./3484/ND/2023** is **allowed** and M/s. Lagrowth Associates Private Limited ('Corporate Debtor') is ordered to be liquidated with the following directions:

- a. Ms. Soniya Gupta, having IBBI Registration No. IBBI/IPA-002/IP-N01155/2021-2022/13863, and having E-Mail id: ipsoniyag@gmail.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code, 2016.
- b. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c. 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;
- d. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.
- e. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- f. 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 continued during the liquidation process by the Liquidator.
- g. On having liquidation process initiated, 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
- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit 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;

- j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator and RoC, NCT of Delhi & Haryana for taking necessary steps.

With the above directions, this application i.e., **I.A./3484/ND/2023 in Company Petition No. (IB)-796/ND/2022** is hereby allowed and disposed of.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**