

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -II)
KOLKATA**

**IA(IBC)/1121(KB)2022
in
CP(IB)/56(KB)2020**

Under section 33 of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Gates India Private Limited

.... Operational Creditor

Versus

Lindsay International Private Limited
(U17232WB1996PTC080887)

.... Corporate Debtor

And

In the matter of:

Mr. Milan Sachindra Nath Chatterjee,
Resolution Professional of Lindsay International Private Limited

... Applicant

Order reserved on: 15/05/2023

Order pronounced on: 27/06/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For RP : Mr. Rishav Banerjee Adv.
Ms. Madhusmita Senapati, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/1121(KB)2022** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Lindsay International Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Milan Sachindra Nath Chatterjee, the RP.
3. This Adjudicating authority, on a petition filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Gates India Private Limited, the Operational Creditor, *vide* order² dated 29/06/2022 in CP(IB)/56(KB)2020, had ordered initiation of CIRP against Lindsay International Private Limited, the Corporate Debtor. Mr. Milan Sachindra Nath Chatterjee was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the IBC, Public Announcements³ in **Form A** was published in “*Financial Express*” (English) and “*Aajkal*” (Bengali) on 01/07/2022 inviting claims from the creditors and duly formed Committee of Creditors (in short “**CoC**”) with sole member, M/s. Aurangabad Metal Products Private Limited on 21/07/2022. A report⁴ on constitution of CoC was submitted with this Adjudicating Authority on 01/08/2022. At the 1st meeting of the CoC held on 29/07/2022, IRP was appointed as RP. A copy of Minutes⁵ of the 1st meeting of CoC was annexed with the application. The applicant duly filed the 1st Progress Report *vide* IA(IBC)849(KB)2022 and the same was taken on record *vide* order⁶ dated 12/08/2022.
5. Since the Corporate Debtor has no other assets except Securities and Financial

¹ At pages 46 and 49 of the application

² Annexure A-1 at pages 22 to 31 of the application

³ Annexure A-2 at page 32 and averments in paragraph 3 at page 16 of the application

⁴ Annexure A-3 at page 33 of the application

⁵ Annexure A-4 at pages 34 to 40 of the application

⁶ Annexure A-5 at page 41 of the application

Assets, two valuers were duly appointed for the same and they have submitted their reports to the Resolution Professional⁷.

6. At the 3rd CoC meeting held on 25/08/2022, Ms. Nisha Nahata, representative of the Sole CoC member opined that since the Corporate Debtor, barring liquid Assets, does not have any Assets in the form of Land and Building & Plant and Machinery, etc., it would be appropriate to put the Corporate Debtor under liquidation directly without wasting resources in seeking resolution plan first and then going for liquidation and agreed to meet once again on 30/08/2022. A copy of minutes⁸ of the 3rd CoC meeting held on 25/08/2022 has been annexed with the application.
7. At the 4th CoC meeting held on 30/05/2022, the representative of the sole CoC members after due deliberation stated that *“her company has taken due note of the Resolution Professional’s suggestions (as suggested by him in the last meeting), but is convinced that the appropriate solution would be to put the Corporate Debtor under Liquidation directly, without wasting resources in seeking a Resolution Plan.”* It is recorded in the minutes that *the Members of CoC the noted the same and a Resolution to that effect has been passed with 100% voting majority vote*. It is also recorded in the minutes that *“Mr. Milan Sachindra Nath Chatterjee, the Resolution Professional being eligible, offered his candidature of becoming the Liquidator, subject to the Members of CoC voting in his favour.* It is also recorded in the minutes that *the CoC noted the same and Resolution has been passed with 100% majority Vote.* A copy of minutes⁹ of the 4th CoC meeting held on 30/08/2022 has been annexed with the application.
8. *Vide* order dated 12/04/2023 in Company Appeal (AT) (Insolvency) No. 741 of 2022 with Company Appeal (AT) (Insolvency) No. 747 of 2022, Hon’ble

⁷ Averments in paragraph 7 at page 17 of the application

⁸ Annexure A-6 at page 42 and 43 of the application

⁹ Annexure A-7 at page 44 and 45 of the application

NCLAT has passed the following order:

*“**12.04.2022**: Learned Counsel for the Appellant submits that an Application has already been moved praying for withdrawal of the Appeal.”*

“2. Application is allowed. Appeal is dismissed as withdrawn. In view of the dismissal of the Appeal as withdrawn, Interim Order shall stand discharged.”

9. It is to be noted here that the 180 days CIRP period has already ended on 25/12/2022 and no application for extension of the CIRP period has been filed.
10. It is stated in the application that the applicant has given his consent to act as a Liquidator of the Corporate Debtor.¹⁰ However, he has not annexed his Consent Letter to act as the Liquidator of the Corporate Debtor.
11. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.
12. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor. However, he has not annexed his consent with this application.
13. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/1121(KB)2022 filed by **Mr. Milan Sachindra Nath Chatterjee, RP of Lindsay International Private Limited**, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

¹⁰ Averments in paragraph 13 at page 19 of the application

- b. **Mr. Milan Sachindra Nath Chatterjee [Reg. No. *IBBI/IPA-001/IP-P01027/2017-2018/11720*],** having e-mail **i.d. milanchatterjee1965@gmail.com** , **Mobile No. 9836770693** is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. Since the applicant has not annexed his consent with this application, he is directed to submit his consent along with valid AFA within seven days of receipt of this order to this Adjudicating Authority.
- d. 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.
- e. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in “*Financial Express*” (English) and “*Aajkal*” (Bengali) stating that the Corporate Debtor is in liquidation.
- f. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- g. 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.
- h. 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.

i. 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 continued during the liquidation process by the Liquidator.

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

14. The application bearing **IA(IBC)/1121(KB)2022** shall stand disposed of in accordance with the above directions.
15. **CP(IB)/56(KB)2020** is to come up for filing of Periodical Progress Report on **20/07/2023**.
16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 27th day of June, 2023.

hb.