



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 4079/ND/2022

IN

Company Petition No. (IB) 1899/ND/2019

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions.

In the matter of:

M/s. Cargo Planners Ltd.

Registered Office at:

A-191, Gali No 8, Road

No 4, Mahipalpur Extension.

New Delhi, 110037

...Applicant/Operational Creditor

Versus

M/s. Aakriti Info-Media Pvt. Ltd.

Registered Office at:

FFS No 24 Udyog Sheel Mahila

Sehkari Samiti Ltd., 120 Mathura Road

Near Apollo Hospital New Delhi- 110076



...Respondent/Corporate Debtor

And in the matter of

Mr. Rakesh Bhatia

Interim Resolution Professional of CD

Having Office at: -

123 New Lajpat Rai Market,

New Delhi 110006

....Applicant



CORAM:

SHRI BACHU VENKAT BALRAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant: Adv Puja Chaurasia, along with Mr. Sunder Khatri for IRP

ORDER

PER- BACHU VENKAT BALRAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 09.03.2023

1. This is an application filed by the Interim Resolution Professional, Mr. Rakesh Bhatia, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC, 2016/Code") for issuance of directions for liquidation of Corporate Debtor i.e. Aakriti Info Media Pvt. Ltd.
2. The facts in brief stated in the application is as under: -
 - I. That this Tribunal vide its order dated 10.06.2022 initiated CIRP against the Corporate Debtor i.e. Aakriti Info Media Pvt. Ltd. and appointed Mr. Rakesh Bhatia as the Interim Resolution Professional and
 - II. That in terms of Regulation 6(1) of the Insolvency and



Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the IRP duly made a Public Announcement in Form-A dated 15.06.2022 and published the same Financial Express (English) and Jansatta Newspaper (Hindi) New Delhi edition.

- III. That in terms of Section 18(1)(a) of the Code, the Interim Resolution Professional (IRP) collated the claim received from operational creditors, who has filed the claim pursuant to the Public Announcement and accordingly constituted a Committee of Creditors comprising of Operational creditors namely Cargo Planners Limited through its Liquidator Ms. Deepika Bhugra for a claim of Rs. 14,30,028/- having 24.17% voting share and Department of Trade & Taxes NCT of Delhi for a claim of Rs. 44,84,973/- having 75.83% voting share.
- IV. That the IRP filed a Combined Report of the List of Creditors and Report Certifying Constitution of Committee of Creditors pursuant to regulation 13(2) (d) and 17(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016



submitted with this Tribunal on 07.07.2022.

- V. The IRP thereafter scheduled the First Meeting of the Committee of Creditors (hereinafter referred to as the "CoC") on 15.07.2022 and accordingly issued notice of the first meeting to all members of the COC on 07.07.2022.
- VI. That the Notice of the First CoC meeting was communicated to the CoC Members i.e. Cargo Planners Limited and Department of Trade & Tax but none appeared on behalf of Department of Trade & Tax on scheduled date and time i.e 14.07.2022 at 04.00 PM. The representative of Cargo Planners Limited were present but having only 24.17 % of voting share which is less than the required 33% voting rights quorum. Since the meeting of the committee could not be held for want of quorum on 14.07.2022, as per Regulation 22 (2) the meeting automatically stood adjourned at the same time and place for the next day.
- VII. That on 15.07.2022 the IRP ascertained the presence of only one operational creditor Cargo planners Limited through its representative. As per Regulation 22(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution



Process for Corporate Person) Regulations 2016 reproduced herein below for ready reference:

22 (3) "In the event a meeting of the committee is adjourned in accordance with sub-regulation (2), the adjourned meeting shall be quorate with the members of the committee attending the meeting"

- VIII. That accordingly the first COC meeting was held on 15.07.2022 with the attendee member. In the first meeting of the Committee of creditors, the IRP placed the Agenda for Appointment of IRP as the Resolution Professional (hereinafter referred to as "RP") of the Corporate Debtor. After discussions and deliberations, the member of the Committee of Creditors did not vote for the same, instead proposed for liquidation of the corporate debtor stating that there is no chance of getting resolution plan as the corporate debtor is not operating business since 2018 and realization of value of fixed assets as shown in Trial Balance of the Financial year 2018 will be very less.
- IX. That as per the records available with the IRP, Corporate Debtor has no business operations since 2018.



- X. That after the discussion, following resolution was passed by the COC: -

"RESOLVED THAT pursuant to Section 33 (2) of IBC 2016 and the relevant provisions of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, approval of the Committee of creditors be and is hereby accorded for liquidation of Corporate Debtor.

The matter was discussed and deliberated at length. Post deliberations on the matter, the item was left open for voting by email within period of 7 days from circulation of the minutes of the meeting for voting by COC."

- XI. That the Applicant/IRP apprised the COC in the 1st meeting that the IRP is not inclined to provide his consent as the Liquidator of the CD.
- XII. The applicant does not want to continue as Liquidator in the matter and requested this Adjudicating Authority to appoint a Liquidator from the list of Insolvency Professionals as registered with IBBI.
- XIII. That, in view of the facts as stated hereinabove, the applicant prayed for the following relief(s).
- a. Allow the present Application;



- b. Pass an order for liquidation of Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016;
 - c. Allow the present IRP to withdraw its name/consent so as not to act as the Liquidator of the Corporate Debtor.
 - d. Pass an order for appointment of any other professional as the Liquidator of the Corporate Debtor;
 - e. Pass any other or further order(s) as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the matter.
3. This Tribunal has gone through the application filed by the applicant / Interim Resolution Professional, the present application is filed under section 33(2) of the Insolvency and Bankruptcy Code, the relevant extract of the section is reproduced as under: -

Section 33: Initiation of liquidation.

*33. (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—

(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.]

4. It is well settled that the CoC is empowered to take decision to liquidate the Corporate Debtor even in the 1st meeting of CoC. Support can be taken from the the matter of Sreedhar Tripathy



vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT) :MANU/NL/0788/2022 wherein the Hon'ble NCLAT in para 7 stated as under: -

*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 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 have 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.

However, there must be approval of 66% of members of CoC as per section 33(2) of the Code. It is not on the basis of members present and voting as such. The approving votes must fulfill the threshold percent of voting share of the CoC members. In the present case, it is observed from the minutes of the 1st CoC meeting held on 15.07.2022 that the CoC has with minority of 24.17% has approved the resolution of liquidation of corporate debtor under section 33(2) of the Code and to authorize resolution professional to file application under section 33(2) of the Insolvency and Bankruptcy Code, 2016. However, the majority of the CoC member i.e Department of Trade & Taxes NCT of Delhi with 75.83% has abstained from voting on the abovementioned resolution.

Therefore, this Tribunal vide order dated 07.10.2022 issued notice to the Department of Trade & Taxes NCT having 75.83% voting share to be present in the next CoC meeting and give full co-operation to the IRP to take necessary decision. Accordingly, the Department of Trade & Taxes NCT appeared in the 2nd CoC



meeting held on 31.10.2022 and the resolution for liquidation of the Corporate Debtor was approved with 100% voting shares by the members of CoC. The Copy of 2nd Meeting of CoC was filed vide IA 371/2023. The relevant extract of 2nd Meeting of CoC is reproduced as under: -

“RESOLVED THAT pursuant to section 33(2) of Insolvency and Bankruptcy Code, 2016 and the relevant provisions of Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made there under, approval of the committee of creditors is hereby accorded for initiation of liquidation process of Corporate Debtor.

5. It is well settled that decision taken by CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority. In the present situation extension of time will only result in unnecessary expenses. Further the resolution for liquidation of CD was approved by COC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC.
6. In light of the above, the application is **allowed** by ordering liquidation of the corporate debtor, namely M/s Aakriti Info Media Private Limited with following directions:



- a. That Mr. Rakesh Bhatia, the Interim Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
- b. The name of Liquidator has not been proposed in the application file by the Interim Resolution Professional and the applicant/ Resolution Professional has expressed its inability to be appointed as Liquidator in the matter. Accordingly, from the panel of Insolvency Professional(s) (IPs) valid for the period – January, 1, 2023 – June, 30, 2023 issued by IBBI in terms of Section 34(6), this Adjudicating Authority, hereby appoints Mr. Ashok Kumar Juneja (Email – ashokjuneja@gmail.com), Reg. No: IBBI/IPA-002/IP-N00117/2017-2018/10286, to act as Liquidator. He shall take such other and further steps as are required under the statute.
- c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. 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;

- e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- 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 financial creditors, corporate



debtor, CoC members and the Liquidator for taking necessary steps;

- k. The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.

I.A 4079/2022 filed in CP(IB) 1899/ND/2019 is disposed of in terms of the aforesaid terms

RAHUL
PRASAD
BHATNAGAR

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BHATNAGAR
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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

BACHU VENKAT
BALARAM DAS

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(BACHU VENKAT BALRAM DAS)
MEMBER (JUDICIAL)