

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

I.A.(IBC)/1934/2023
IN
C.P.(IB)No.139/ND/2021

[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. Gautam Singhal
Resolution Professional
M/s. Lark Logistic Private Limited

... Applicant

IN THE MATTER OF:

M/s. Tarannom Shargh International Transportation
Company

... Operational Creditor

Versus

M/s. Lark Logistics Private Limited

...Corporate Debtor

CORAM:

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

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

For the RP

: Mr. Vishal Ganda, Ms. Akanksha Mathur,
Mr. S. Jain, Advs. Mr. Gautam Singhal, RP in
person

Order Delivered on:14.05.2024

ORDER

PER: MR. MANNI SANKARIAH SHANMUGA SUNDARAM MEMBER (J)

The instant application i.e., I.A./1934/ND/2023 is filed by Mr. Gautam Singhal ('Applicant') Resolution Professional of M/s. Lark Logistic Private Limited ('Corporate Debtor') seeking liquidation of M/s. Lark Logistic Private ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') and praying for the following relief(s):-

- a) Pass appropriate directions / orders for liquidation of the Corporate Debtor in accordance with Section 33 (1) (a) read with Section 33(2) and;
- b) Pass appropriate orders, appointing the Resolution Professional namely, Mr. Gautam Singhal as the liquidator of the Corporate Debtor in accordance with Section 34 (1); and
- c) Pass appropriate orders, that fee of the liquidator shall be in accordance with Regulation 4(2) of Liquidation Process Regulations, 2016.
- d) Pass such further and other directions as this Hon'ble Tribunal may deem fit and expedient

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. Lark Logistic Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 20.06.2022 in an application C.P.(IB)/139/ND/2021 under Section 9 of the Code, 2016 and Mr. Pramod Kumar Gupta was appointed as the Interim Resolution Professional of the Corporate Debtor, who was later replaced by Mr. Gautam Singhal ('applicant') as the Resolution

Professional of the Corporate Debtor in the 3rd CoC Meeting of the Corporate Debtor.

- 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, Committee of Creditors was constituted consisting of operational creditors M/s Everfast Freight Forwarders Private Limited and M/s Tarannom Shargh International Transportation Company. However, subsequently, claim from two (2) Financial Creditors were also received, which were duly verified and CoC was reconstituted and the same was taken on record of this Hon'ble Adjudicating Authority vide order dated 07.02.2023. The re-constituted CoC of the Corporate Debtor comprises as follows:-

S. No	Name of the Creditors	Types of the Creditors	Voting Share (%)
1.	ICICI Bank Limited	Financial Creditor	73.67
2.	Piramal Capital & Housing Finance Limited (formerly known as Dewan Housing Finance Corporation Limited)	Financial Creditor	26.33
Total (%)			100

(Corporate Debtor's CoC Composition)

- iii) The invitation for expression of Interest in Form-G was published on two occasions, however, the expression of Interest received from the Prospective Resolution Applicants were found ineligible. Accordingly, the Applicant in the 6th CoC Meeting had placed the agenda for, “Re-Issuance of Invitation for Expression of Interest for Identifying Prospective Resolution Applicants” and the said resolution was unanimously rejected by the Committee of Creditors.
- iv) The applicant further submitted that since the Applicant did not receive any eligible PRAs for the Corporate Debtor and since the resolution for a 3rd EoI was also rejected by the CoC, the Applicant had no other option but to place another resolution before the CoC for initiation of liquidation of the Corporate Debtor.
- v) The members of CoC in 6th CoC Meeting dated 14.03.2023 had unanimously 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:-

Resolution:

"RESOLVED THAT consent of the CoC be and is hereby accorded for filing necessary application u/s 33(2) of Insolvency & Bankruptcy Code, 2016 to liquidate M/s. Lark Logistics Private Limited."

"Further resolved that Hon'ble National Company Law Tribunal be and is hereby requested to appoint Mr. Gautam Singhal, resolution professional as liquidator of Lark Logistics Private Limited."

<i>Voting Results</i>						
<i>Post E-voting, concluded on 17.03.2023, the following were the results of the voting.</i>						
<i>Results of Voting: -</i>						
<i>S No.</i>	<i>Name of CoC Member</i>	<i>Voting Share %</i>	<i>Yes %</i>	<i>No %</i>	<i>Abstained %</i>	<i>Total%</i>
<i>1</i>	<i>M/s. Piramal Capital &</i>	<i>26.33%</i>	<i>26.33%</i>	<i>-</i>	<i>-</i>	<i>26.33%</i>

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	<i>Housing Finance Limited</i>					
2	<i>M/s. ICICI Bank Limited</i>	73.67%	73.67%	-	-	73.67%
	<i>Total</i>	<i>100%</i>	<i>100%</i>	-	-	<i>100%</i>

In terms of section 33(2), the above resolution was required to be passed by a vote of not less than 66% of voting share of the financial creditors. Since, CoC members holding voting share of 100% voted in favour of the resolution. Hence, this resolution stood passed.

(Extract of the Item No.5 passed in the 6th CoC Meeting)

- vi) The Committee of Creditor in 6th CoC meeting had resolved to appoint the Resolution Professional of the Corporate Debtor namely Mr. Gautam Singhal, to act as the Liquidator for the purpose of Liquidation proceedings 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.
4. From the minutes of the 6th CoC meeting held on 14.03.2023, it is observed that the CoC has unanimously decided to liquidate 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 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 Mr. Gautam Singhal, Resolution Professional of the Corporate Debtor had given his consent to act as the proposed liquidator of the Corporate Debtor. However, the Insolvency and Bankruptcy Board of India ("IBBI") vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in exercise of its powers conferred under Section 34(4)(b) of the Code has recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be

appointed from the panel list of the IBBI. Therefore, from the panel of Insolvency Professional(s) (IPs) valid for the period – January 1, 2024 – June, 30, 2024 issued by IBBI, this Adjudicating Authority, hereby appoints Mr. Vikas Garg (Email – vikas@vamindia.in), Reg. No: IBBI/IPA-001/IP-P01050/2017-2018/11733, as the Liquidator in the matter. The Liquidator is directed to file the Declaration Disclosure Statement and Authorization for Assignment details within 7 (Seven) days from the date of pronouncement of this order with the Registry.

7. In view of the aforesaid direction, the instant application **I.A./1934/ND/2023** is **allowed** and M/s. Lark Logistics Private Limited ('Corporate Debtor') is ordered to be liquidated with the following directions:

- a. Mr. Gautam Singhal having IBBI Registration No. IBBI/IPA-001/IP-P01437/2018-2019/12240 the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
- b. Mr. Vikas Garg (Email – vikas@vamindia.in), Reg. No: IBBI/IPA-001/IP-P01050/2017-2018/11733, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code, 2016.
- c. 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.
- 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. 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.
- f. 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.
- g. 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.
 - h. 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
 - i. 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.
 - j. 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./1934/ND/2023 in Company Petition No. (IB)-139/ND/2021** is hereby allowed and disposed of.

Sd/-

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

Sd/-

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