
(2023) 05 NCLT CK 0089

In the National Company Law Appellate Tribunal

Case No : IA 2400 Of 2023 In IB 720(ND) Of 2022

M/s. Montage Enterprises Pvt Ltd Vs Vidharva Trading Pvt. Ltd ?

Date of Decision : 31-05-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 33, 33(1), 33(2), 33(5), 33(7), 34(1), 34(2), 35(1), 52

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 6

Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019 — Regulation 7A

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 6, 36A, 39B, 39B(1), 39B(2), 40(D)

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 — Regulation 2A, 13, 31A, 32(e), 32(f), 33

Citation : (2023) 05 NCLT CK 0089

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J); Atul Chaturvedi, Member (T)

Bench : Division Bench

Advocate : P. Nagesh, Prachi Johri, Akshay Sharma, Anirudh Sharma, Riya Thomas

Final Decision : Disposed Of

Judgement

Atul Chaturvedi, Member (Technical)

1. IA-2400/2023 is an Application filed by Mr. MOHAN LAL JAIN, the Resolution Professional of M/s. Vidharva Trading Private Limited, the Corporate Debtor on 21.04.2023, before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code"), seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the third CoC meeting held on 28.03.2023, for seeking the following relief:

a. "Allow the present Application and initiate the Liquidation proceedings of the Corporate Debtor and,

b. Take on record the 'Form-AA', i.e., Written consent to act as Liquidator for Corporate Debtor and allow the Applicant herein, Mr. Mohan Lal Jain, the Resolution Professional 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. An Application was filed to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Vidharva Trading Private Limited ("Corporate Debtor") under Section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("Adjudicating Authority Rules") by M/s. Montage Enterprise Private Limited ("Operational Creditor") before this Adjudicating Authority in (IB)-720/ND/2022. This Adjudicating Authority vide order dated 23.12.2022 ("Admission Order") was pleased to admit the application, initiate CIRP against the Corporate Debtor and appointed Mr. Mohan Lal Jain as the Interim Resolution Professional ("IRP"). Further, the IRP was appointed as Resolution Professional ("RP") by this Adjudicating Authority vide order dated 17.02.2023.

A true copy of the order dated 23.12.2022 and the order dated 17.02.2023 are filed along with the application.

3. Further, during the CIRP, the RP made public announcements for the invitation of claims under Form-A in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") from the Creditors of the Corporate Debtor. The total amount of claim filed by the Creditors of the Corporate Debtor was Rs. 41,14,77,820.40/- (Rupees Forty One Crore Fourteen Lakh Seventy Seven Thousand Eight Hundred Twenty and Forty Paise Only). The amount of claim partially admitted by the Resolution Professional was Rs.39,53,50,888/- (Rupees Thirty Nine Crore Fifty Three Lakh Fifty Thousand Eight Hundred and Eighty Eight Only). The same was placed before this Adjudicating Authority and this Adjudicating Authority was pleased to take on record the list of creditors vide Order dated 30.01.2023.

The True Copy of the Order dated 30.01.2023 is filed along with the application.

4. In compliance of the Regulation 36A of the CIRP Regulations, Form-G was published on 21.02.2023, as approved by the members of the CoC in the 2nd CoC meeting held on 17.02.2023 for the invitation of fresh Expression of Interest ("EoI").

A copy of Form-G dated 21.02.2023 is filed along with the application.

5. The RP informed the members of the CoC regarding the non-receipt of any EoI till the last date of submission of EoI, i.e., 13.03.2023, in spite of queries from some interested buyers. The CoC was of the opinion that in view of no present operational activity and low asset base, there were meager chances of receiving

a Resolution plan of the Corporate Debtor. Further, the CoC opined that the re-issuance of EoI would only incur unnecessary costs together with futile efforts to expect any Resolution Plan. So, the CoC resolved that in order to minimise the unnecessary CIRP cost, the RP should proceed to file the application before this Adjudicating Authority to initiate the liquidation process of the Corporate Debtor.

6. In compliance of the resolution passed in the 3rd CoC meeting dated 28.03.2023, the present application is being filed under Section 33 of the Code to initiate liquidation proceedings of the Corporate Debtor based on the decision of the CoC.

7. In pursuance of the sale of the Corporate Debtor, the RP informed the members of the CoC that while approving the liquidation of the Corporate Debtor under Section 33, the committee may recommend that the liquidator may first explore the sale of the Corporate Debtor as a going concern under Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") or sale of the business of the corporate debtor as a going concern under Regulation 32(f) thereof, if an order for liquidation is passed under Section 33.

8. Post discussion, the CoC recommended that the liquidator appointed shall first explore the sale of the business of the Corporate Debtor as a going concern under Regulation 32(f) of the Liquidation Regulations, if an Order for liquidation is passed under Section 33 of the Code. Accordingly, the following resolutions were passed by the CoC Members with 100% voting share:

"RESOLVED FURTHER THAT pursuant to Regulation 39C(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (including all the amendments and modifications for the time being in force) and other applicable rules and regulations made thereunder, the committee hereby recommends that the liquidator appointed shall first explore the sale of the business of the corporate debtor as a going concern under clause (f) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, if an order for liquidation is passed under section 33 of the Code.

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."

9. The RP informed the CoC that while approving the liquidation of the Corporate Debtor, the members of the CoC may, as per Regulation 39B of the CIRP Regulations, make the best estimate of the amount required to meet liquidation costs, in consultation with the RP, in the event that an order for liquidation under Section 33 is approved by the Adjudicating Authority. The CoC members deliberated and the following resolution was passed by the CoC members:

"RESOLVED THAT, pursuant to Regulation 39B(1) & 39B(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with other applicable provisions, the Committee, in consultation with the Resolution Professional, hereby makes the estimate of liquidation cost required to meet liquidation costs of the Corporate Debtor and approves the following amount as under:

Estimated Liquidation Cost: Rs. 43,98,000/-

Estimated value of Liquid Assets: Rs. 5,54,721/-

Excess of Liquidation Cost: Rs. 38,43,279

RESOLVED THAT pursuant to Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and in accordance with rules and regulations made there under, committee of creditors be and is hereby agrees to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated.

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."

The True Copy of the estimated liquidation cost for twelve months as approved by the CoC is filed along with the application.

10. The RP further informed the members of the CoC that under Regulation 39BA of the CIRP Regulations, the CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as referred to under Regulation 2B(1) of the Liquidation Regulations and the RP should submit the CoC's recommendation to the Adjudicating Authority while filing an application under section 33. In this regard, the Authorised Representative of M/s Montage Enterprises Private Limited, sole member of CoC and the Operational Creditor of the Corporate Debtor, opined that in view of the non-operational status of the business of the Corporate Debtor and such other factors, there was no scope of Compromise & Arrangement in the said matter.

11. Based on the requirements of Regulation 40(D) of the CIRP Regulations, the RP presented the following factors before the members of the CoC for consideration:

a. The Company 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. Company has one intangible asset i.e., Software-MS Office under the head Intangible Assets.

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

12. The CoC also resolved to approve the Resolution Professional/Applicant herein to act as the Liquidator for the purpose of Liquidation proceedings of the Corporate Debtor. In pursuance to the same, the Applicant herein consented to act as the Liquidator of the Corporate Debtor and begs to submit the Form-AA in accordance with the Regulation 31A of the Liquidation Regulations.

The True Copy of the "Form-AA", i.e., Written Consent to act as Liquidator on behalf of the Resolution Professional/Applicant is filed along with the application.

13. In view of the aforementioned facts and the decision of the CoC in its third meeting dated 28.03.2023, the Applicant has filed the present application seeking initiation of Liquidation proceedings before the conclusion of 180 days as prescribed under the Code under the provision of Section 33(2) of the Code. The CoC observed that no EoI was received from any Prospective Resolution Applicant in response to the Form-G published by the Resolution Professional and none are likely to be received as there is no operational activity going on in the Corporate Debtor. Further, the members of the CoC were also of the view that since there is no operational activity going on at present and the asset base is very low, the chances of receiving a Resolution plan of the Corporate Debtor is very meager and the best course of action is to initiate the liquidation proceedings of the Corporate Debtor while keeping it as a going concern. Accordingly, the CoC has resolved that the RP shall file the application before this Adjudicating Authority to initiate the liquidation process of the Corporate Debtor under Section 33(2) of the Code.

Hence, the present Application is being filed by the RP in the interest of justice and the same is bona fide in nature.

14. In light of the above facts and circumstances, it is hereby ordered as follows:-

i. Prayers as sought for in IA-2400/2023 filed by Mr. Mohan Lal Jain, the Resolution Professional of M/s. Vidharva Trading Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code read with sub-clause (i) of clause (b) thereof;

ii. Mr. Mohan Lal Jain having Reg. No. IBBI/IPA-002/IP-N00006/2016-2017/10006, having e-mail id: ml_jain@sumedhamanagement.com; Address: F-2/28, Sector-15, Rohini, New Delhi, Delhi-110089; whose name has been proposed by CoC is hereby appointed as liquidator as provided under section 34(1) of the Code, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

iii. The Liquidator shall initiate the liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

iv. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in liquidation.

v. All the powers of the Board of Directors, and of key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

vi. The personnel of the Corporate Debtor is directed to extend all assistance and cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

vii. 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 the 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.

viii. 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.

ix. 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.

x. The liquidator shall also follow up the pending applications for disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

xi. 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;

xii. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

xiii. The application bearing IA-2400/2023 shall stand disposed of in accordance with the above directions.

xiv. 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.

xv. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

xvi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.