

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

**I.A. 2892/2023
IN
COMPANY PETITION NO. (IB) – 468/ND/2020**

*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 TRI-WALL PAK PRIVATE LIMITED

.... Operational Creditor

VERSUS

M/S 5 CORE ACOUSTICS PRIVATE LIMITED

.... Corporate Debtor

AND IN THE MATTER OF

**Mr. Radhey Shyam Yadav,
Resolution Professional**

Having Office at:
1203-1205, Vijaya Building,
17, Barakhamba Road,
Connaught Place, New Delhi-110001

...Applicant/Resolution Professional

Order Delivered On: 07.06.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant: Mr. R.S. Yadav RP with Mr. Ashok Juneja, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is an application filed by the Resolution Professional, Mr. Radhey Shyam Yadav, under Section 33(2) read with Section 34 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"), for issuance of directions for liquidation of Corporate Debtor, M/s 5 Core Acoustics Private Limited.
2. The facts in brief stated in the application is as under: -
 - a) The Applicant submits that this Adjudicating Authority vide its order dated 16.11.2022 had initiated the Corporate Insolvency Resolution Process against M/s 5 Core Acoustics Private Limited ('Corporate Debtor') in C.P.(IB) 468/ND/2020, being an application filed under Section 9 of the Code by M/s Tri-wall Pak Private Limited ('Operational Creditor') and appointed Mr. Radhey Shyam Yadav as the Interim Resolution Professional of the Corporate Debtor who was later confirmed as the Resolution Professional of the Corporate Debtor in the 1st CoC meeting held on 15.12.2022.
 - b) The Applicant submits that the Applicant in compliance of the Section 15 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 made public announcement in Financial Express (English Edition) and Jansatta (Hindi Edition) on 23.11.2022.
 - c) The Applicant submits that the claims of Rs. 448,456,619 have been admitted till date out of the total claims of Rs. 448,779,578. The CoC comprises of the sole Financial Creditor, M/s Karnataka Bank Limited with 100% of voting power.
 - d) The Applicant submits that the Applicant along with its team visited the registered office and factory premises of the Corporate Debtor, however, failed to trace the Corporate Debtor. Furthermore, the Applicant made multiple attempts to contact the members of the Suspended Board of Directors through

speed post, phone numbers and email addresses, however, all such attempts failed.

- e) Subsequently, the Applicant filed an application bearing IA No. 1159/ND/2023 under Section 19(2) of the Code against all the directors of the Corporate Debtor and also against the statutory auditor of the Corporate Debtor seeking to extend cooperation to the Resolution Professional, immediately, along with performance of their obligations. However, no one appeared on behalf of the directors of the Corporate Debtor. Therefore, this Adjudicating Authority vide its order dated 24.02.2023 issued bailable warrants against the Directors of the Corporate Debtor.
- f) Pursuant to the issuance of the bailable warrants, the Delhi Police had submitted its report to the Applicant stating that the building where, the respondents used to reside has been demolished and new construction work by the new owners is in progress. Hence, whereabouts of the suspended management of the Corporate Debtor could not be known.
- g) The Applicant further submits that since no operations of the Corporate Debtor are going on and no assets of the Corporate Debtor have been found till date, therefore, no Information Memorandum has been prepared and hence, Expression of Interest inviting Resolution Plans from Prospective Resolution Applicants could not be published.
- h) Hence, the CoC in its 2nd CoC meeting held on 04.05.2023 resolved to initiate liquidation of the Corporate Debtor.

3. It is observed that the CoC in its 2nd meeting held on 04.05.2023 observed as under:

“The Committee deliberated the issue and noted that due to non-availability of resolution plans and CIRP period of 06 months approaching completion on 15.05.2023 and there being no operations of the CD going on, initiation of Liquidation of the Corporate Debtor is the only option left.”

4. It is observed that the CoC in its 2nd meeting held on 04.05.2023 with 100% voting share decided to liquidate the Corporate Debtor and authorized the Applicant i.e.

Resolution Professional to move an appropriate application before the Tribunal for initiation of liquidation process of the Corporate Debtor. The relevant extract of the Resolution of 2nd CoC meeting passed is as below:

“RESOLVED THAT, pursuant to section 33(2) of the IBC, 2016, the Committee of Creditor be and hereby authorizes the RP to file an application before the Hon'ble NCLT for initiation of Liquidation of the Corporate Debtor and take all necessary actions for the purpose.”

5. It is further observed that the CoC in its 2nd meeting held on 04.05.2023 also proposed the existing Resolution Professional, Mr. Radhey Shyam Yadav to act as the Liquidator in the matter in terms of the provision of the Code. However, the Applicant received a letter dated 18.07.2023 from the IBBI regarding Recommendation for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the IBC, 2016. Therefore, pursuant to the letter dated 18.07.2023, the 3rd meeting of CoC was conducted on 31.01.2024, whereby, the CoC consisting of sole member with 100% voting share approved and resolved to appoint Mr. Rajeev Lochan as the new Liquidator. The relevant extract of the Resolution passed in the 3rd CoC meeting is reproduced hereunder as:

“RESOLVED THAT Mr. Rajeev Lochan having IP Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885 who has expressed his willingness to act as Liquidator be and is hereby approved to be appointed as Liquidator.

FURTHER RESOLVED THAT the fees payable to the Liquidator, Mr. Rajeev Lochan from the date of the liquidation order of the Hon'ble NCLT till the date of the dissolution of the Company shall be Rs. 50,000- (Rupees Fifty Thousand Only) per month plus applicable taxes and out of pocket expenses.”

6. It is observed that pursuant to the above stated facts and circumstances, the Applicant has preferred the present application for passing the order of Liquidation of the Corporate Debtor in terms of the provisions enumerated under Section 33(2) of the IB Code, 2016 and to appoint Mr. Rajeev Lochan as the Liquidator in the matter.

7. Section 33(2) of the Code provides that the Adjudicating Authority shall pass an order for liquidation of the Corporate Debtor, if the CoC by more than 66% (Sixty-Six Per Cent) of votes passes the resolution for liquidation. In the present case, the CoC with 100% (One Hundred Per Cent) has approved the liquidation of Corporate Debtor.
8. This Tribunal has gone through the application filed by the Applicant / 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.

9. Further, in the matter of **Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT): MANU/NL/0788/2022**, the Hon'ble NCLAT in para 7 has 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 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.*

10. In light of the above judgment, the CoC in the legislative scheme is empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The aforesaid resolution was approved by the members of COC unanimously with 100% voting shares, in its 2nd meeting held on 04.05.2023. It is well settled that decision taken by the CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the

Adjudicating Authority. Further, the resolution for liquidation of the Corporate debtor was approved by COC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC. Moreover, it is observed that no asset of the Corporate Debtor has been found. Furthermore, the whereabouts of the Directors of the Corporate Debtor are unknown till date. Therefore, we are of the view that no fruitful purpose would be served in continuing the CIRP of the Corporate Debtor.

11. In light of the above, the application is **allowed** by ordering liquidation of the corporate debtor, namely M/s 5 Core Acoustics Private Limited with following directions:

- a) That Mr. Radhey Shyam Yadav, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
- b) That Mr. Rajeev Lochan, holding Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885 is appointed as the Liquidator in terms of Section 32(1) of the Code;
- 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 2892/2023 in CP(IB) 468/ND/2020 stands **allowed** and is disposed of in terms of the aforesaid terms.

Let a copy of the order be served to the parties.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)