# IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI BENCH COURT-IV

I.A. No. 913/2023 IN C.P.(IB)No.632/ND/2020

[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. Rakesh Kumar Jindal Resolution Professional M/s. Sea Air Consolidators India Private Limited

... Applicant

## **IN THE MATTER OF:**

M/s. Hellmann Worldwide Logistics India Pvt Ltd

... Operational Creditor

Versus

M/s. Sea Air Consolidators India Private Limited

...Corporate Debtor

#### CORAM:

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

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

Order Delivered on: 04.09.2024

## PRESENT:

For the RP : Adv. Roshan Kumar for the RP

### ORDER

#### PER: MANNI SANKARIAH SHANMUGA SUNDARAM MEMBER (J)

1. The instant application i.e., I.A./913/ND/2023 is filed by Mr. Rakesh Kumar Jindal ('Applicant') Resolution Professional of M/s. Sea Air Consolidators India

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Private Limited ('Corporate Debtor') seeking liquidation of M/s. Sea Air Consolidators India Private Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') and praying for the following relief(s):-

- a) Pass the orders for liquidation of the Corporate Debtor in accordance with Section 33 of Insolvency and Bankruptcy Code, 2016;
- b) To direct the COC member to pay the approved fees & expenses of the Resolution Professional.
- 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 necessary orders as may be deemed fit in the matter of M/s Sea Air Consolidators India Private Limited by Hon'ble Tribunal.
- 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. Sea Air Consolidators India Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 17.08.2022 in an application C.P.(IB)/632/ND/2020 under Section 9 of the Code, 2016 and Mr. Rakesh Kumar Jindal was appointed as the Interim Resolution Professional of the Corporate Debtor and confirmed as the Resolution Professional of the Corporate Debtor in the 2<sup>nd</sup> CoC Meeting of the Corporate Debtor.
  - ii. The applicant submits that the public announcement was made in Form-A inviting the claims from public, consequent to which, Committee of Creditors was constituted consisting of operational creditor M/s Sea Air Consolidators India Private Limited. However, subsequently, claim from one financial creditor was also received and CoC was constituted and the same was taken on record of this Adjudicating Authority vide order dated 13.09.2022.
  - iii. The invitation for expression of interest in Form-G was published in two newspapers namely "Financial Express" (English Delhi and NCR Editions)

- and "Jansatta" (Hindi, Delhi and NCR Edition) on 16.10.2022. However, no EOI was received.
- iv. The sole member of CoC in 4<sup>th</sup> CoC Meeting dated 12.01.2023 had approved the Liquidation of the Corporate Debtor (Item No. 7) under Section 33 of the Code, 2016. The relevant extract of the said resolution is extracted below: -

"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 the Corporate Debtor M/s Sea-Air Consolidators India Private Limited.

"FURTHER RESOLVED THAT Hon'ble National Company Law Tribunal be and is hereby requested to appoint Mr. Rakesh Kumar Jindal, having registration number IBBI/IPA- 002/IP-N01148/2021-2022/13963, Resolution Professional as Liquidator of Sea-Air Consolidators India Private Limited."

# Following was the Result of Voting:

Sr. No.	Name of the COC Member	Voting	% of Votes in favour of Resolution	% of votes against the Resolution	% of votes in abstain of Resolution
1.	State Bank of India	100%	100%		-

In terms of Section 33(2) of the Code, the above resolution is required to be passed by a vote of not less than 66% of voting share of members of CoC. The CoC member holding voting share of 100% voted in favour the resolution. Hence, this resolution stood passed.

# (Extract of the Item No. 7 passed in the 4th CoC Meeting)

- v. Further, the applicant submits that the Committee of Creditors in 4th CoC meeting neither approved the fee of Liquidator as per Regulation 39D of CIRP Regulations nor approved the estimating liquidation cost and approval of a plan for providing contribution by secured creditors for difference between estimated liquidation cost and liquid assets available as per the Regulations 39B of CIRP Regulations (Item No. 9). In view of the same RP has not given his consent to act as the Liquidator of the Corporate Debtor.
- vi. Further, the applicant submits that the expenses of Rs. 1,23,260/-, Rs. 86,260/- were ratified in the 4<sup>th</sup> CoC meeting & the balance of Rs. 37,000/- incurred and the same is approved as part of the estimated

CIRP Cost (Item No. 6) and form part of the Insolvency Resolution

Process Cost.

3. Heard the learned counsel for the applicant in IA No. 913 of 2023. The

provisions of Section 33(2) of the Code are reproduced below:

"..(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. Considering the documents and submission made, since the COC in its

commercial wisdom has decided to take the Corporate Debtor in liquidation,

we are of the opinion that the decision of the COC should not be interfered

with. The present application seeking liquidation of the Corporate Debtor

M/s Sea Air Consolidators India Private Limited, in the manner laid down

in Chapter III of Part II of the Code, is deserved to be allowed.

5. In terms of the above, we hereby order for liquidation of the M/s Sea Air

Consolidators India Private Limited ('Corporate Debtor') with the following

directions:

i. Mr. Rakesh Mishra, having registration no. IBBI/IPA-001/IP-

P01676/2019-2020/12719, is hereby appointed as per the panel

suggested by IBBI for this Bench for the period of 1st July, 2024 to

31st December, 2024. Mr. Rakesh Mishra shall file a valid AFA,

consent form and disclosure about non-initiation of any disciplinary

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proceedings against him, within five (5) days of pronouncement of this

order.

ii. 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.

iii. 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.

iv. All the powers of the Board of Directors, key managerial persons, the

partners of the Corporate Debtor hereafter cease to exist. All these

powers henceforth vest with the Liquidator appointed under Section

34(1) of the Code, 2016.

v. 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.

vi. 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.

vii. 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

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liquidator to institute suit or other legal proceeding on behalf of the

Corporate Debtor with prior approval of this Adjudicating Authority.

viii. 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.

ix. 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.

6. The Applicant has contended that the CIRP cost till 10.06.2024 claimed by

him were incurred and ratified in every meeting of the CoC latest being 4th

CoC meeting held on 12.01.2023. Therefore, this Adjudicating Authority

hereby directs the CoC to pay the RP fees and reimbursable expenses as per

terms and ratified in the 4th CoC meeting within a week of uploading of this

order and the same shall be considered as CIRP cost.

7. Copy of this order be sent to the Corporate Debtor, CoC members,

Liquidator and RoC, NCT of Delhi & Haryana for taking necessary steps.

8. With the above directions, this application i.e., I.A./913/ND/2023 in Company

Petition No. (IB)-632/ND/2020 is hereby allowed and disposed of.

Sd/-

Sd/-

(DR. SANJEEV RANJAN) MEMBER (T) (MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)

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