## IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI BENCH (COURT - II)

Item No. 215 IB-684/ND/2020 IA-3818/2021

**IN THE MATTER OF:** 

Dharm Vir Gupta ... Applicant/Petitioner

Versus

M/s. SARE Realty Projects Private Limited. ... Respondent

Under Section: 9 of IBC, 2016 (Liq.)

Order delivered on 09.09.2024

**CORAM:** 

SH. ASHOK KUMAR BHARDWAJ SH. SUBRATA KUMAR DASH HON'BLE MEMBER (J) HON'BLE MEMBER (T)

PRESENT:

For the Respondent : Sr. Adv. Sanjv Sen along with Adv. Ujjal

Banerjee, Adv. Anmol Sehgal, Adv. Anjali Singh

for R-2 to R-5.

For the RP : Adv. Rishi Singhal, Adv. Saurabh Kalia,

RP Pawan Kumar Goyal

## Hearing Through: VC and Physical (Hybrid) Mode ORDER

**IA-3818/2021:** Mr. Sen, Ld. Sr. Counsel appearing for the CoC could draw our attention to the order dated 17.01.2024 passed in Company Appeal (AT) (Ins.) No. 447 of 2023 and IA-1475 of 2023 & IA-1476 of 2023. Para 10 of the order reads thus:

"10. There is no dispute that the CoC took a decision for liquidation of the CD after holding five meetings and by voting share of 88.48 per cent which meets the criteria laid down in Section 33(2) of the Code. There is an error in the approach of the Adjudicating Authority that for the purpose of taking a decision regarding the liquidation of the CD, the CoC has to complete all the steps regarding resolution of the CD because it would be against the spirit of Section 33(2) and explanation appended to it wherein the legislature has used the word any time twice i.e., firstly, in Section 33(2) and secondly, in the explanation of Section 33(2) of the Code that the CoC has the jurisdiction to pass the order of liquidation of the CD, approving it by not less than sixty six per cent of the voting share, but it should be before the confirmation of the resolution plan. In the case of Sunil S. Kakkad (Supra), this Court has categorically framed a question as to whether the RP, with the approval of the CoC with sixty six per cent vote share, directly

proceed for the liquidation of CD without taking any steps for resolution of the CD. In the said case, there were three meetings of CoC in which without making endeavour for inviting EOI, the CoC unanimously resolved to liquidate the CD and that issue came for adjudication before this Court in which while referring to Section 33(2) and the explanation appended thereto it has been ordered that the CoC has the power to liquidate the CD before confirmation of the resolution plan. The said decision in the case of Sunil S. Kakkad (Supra) has further been affirmed by the Hon'ble Supreme Court when the appeal was filed by Sunil S. Kakkad was dismissed on 07.01.2021 and in so far as the issuance of notice under Section 65 is concerned, firstly, the issuance of notice was stayed by this Court vide its order dated 13.04.2023 and secondly, the Adjudicating Authority has not given any reason for forming an opinion much less prima facie that it was a case of malicious intent on the part of the Applicant/RP with the connivance of assenting members of CoC to whom the show cause notice was given and finally the provision of Section 65 has no application because it would apply if the application is filed for the purpose other than liquidation."

## In the wake of the order passed by Hon'ble NCLAT, the IA is allowed and the Corporate Debtor is ordered to be liquidated.

Accordingly, Mr. Santanu Kumar Samanta with Reg. No: [IBBI/IPA-001/IP-P02324/2020-2021/13511] (e-mail ID: santanukumar@yahoo.com) is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the terms of following the directions inter alia:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

- c) In terms of the provisions of Section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- 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) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.
- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- g) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.
- h) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

The IA stands allowed.

Sd/-

MEMBER (T)

(SUBRATA KUMAR DASH)

Sd/-

(ASHOK KUMAR BHARDWAJ) MEMBER (J)