

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

Item No. 215
(IB)-689(ND)2020

IA-2071/2023, IA-361/2023, IA-1787/2022,
IA-4330/2022, IA-2951/2022, IA-2985/2022, IA-5647/2022

IN THE MATTER OF:

M/s. T & D Hospitality India LLP ... **Applicant/Petitioner**

Versus

M/s. Explo Media Private Limited. ... **Respondent**

Under Section: 9 of IBC, 2016

Order delivered on 05.07.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. L. N. GUPTA
HON'BLE MEMBER (T)

PRESENT:

- For the Applicant** : Adv. Nandadevi Deka, Adv. Savyasachi Rawat, Adv. Rohan Chandra in IA. No. 4330/2022, Adv. Bhanu Chopra a/w. Adv. Dipika Panchmatia, Adv. Sagar Parab and Adv. Avni Vasani I/b. Vigil Juris in IA No. 2071 of 2023
- For the Respondent** : Adv. Vinod Kr. Chaurasia in IA. No. 361/2023, Adv. Ashu Satiya Respondent No.4 in IA-1787/2022
- For the RP** : Adv. Rakesh Patiyal, Mr. Rakesh Takyar

ORDER

IA-2071/2023: The prayer made in the application is for expediting the hearing in Interlocutory Application No. 361/2023 in Company Petition No. 689/ND/2020. As the IA-361/2023 is listed for hearing today, **the captioned IA has become infructuous and is disposed of accordingly.**

IA-361/2023: The captioned application has been preferred under Section 33(2) of the IBC, 2016. The prayer made in the application reads thus:

- “(i) Allow the present application for liquidation of the Corporate Debtor and pass a liquidation order, under Section 33(2) of Insolvency and Bankruptcy Code, 2016, as referred to in sub-clause (i),(ii) and (iii) of clause b sub-section 1 of section 33, against the CD

- (ii) Appoint the applicant i.e. Rakesh Takyar, an Insolvency Professional, IBBI Registration No. IBBI/IPA-001/IP-P00160/2017-2018/10329 as the Liquidator of the corporate debtor.
- (iii) To exclude the period of 166 (as calculated in para 31) in view of Hon'ble NCLAT order dated 20.05.2022 which was vacated on 02.11.2022
- (iv) To condone the delay of 32 days in filing this liquidation application u/s 32(2) IBC 2016 for the reasons explained in the application.”

Ld. Counsel for the Applicant could draw our attention to the resolution passed by CoC on 22.11.2022, in its 9th meeting, taking a decision to liquidate the CD. As has been provided under Section 33(2) IBC, 2016 on being informed about the decision of CoC through RP regarding the liquidation of the CD, this Adjudicating Authority would order the liquidation of the same in terms of the provisions of Section 33(1) of IBC, 2016. For a convenient reference, Section 33(1) of IBC, 2016 is reproduced below:

“33. Initiation of liquidation. –

- (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 percent 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.]”

In view of the aforementioned, particularly in the wake of the provisions of Section 33(2) of the IBC, 2016, the CD is ordered to be liquidated.

Accordingly, **Mr. Rakesh Takyar** with **Reg.No: [IBBI/IPA-001/IP-P00160/2017-2018/10329]** (e-mail ID: rtak.yar.rt@gmail.com) (Mobile No. **9868503531**) is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process inter alia in terms of the following directions:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 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) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.
- d) In terms 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.

e) 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.

f) 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.

g) 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.

h) 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.

i) 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 present IA stands allowed.

IA-1787/2022: The prayer made in the application reads thus:

- a. "Direct Mr. Sunjoy Daadhicch, Mrs. Shalini Sharma, and Mr. Sanjay Choudhary members of the suspended Board of Directors of Corporate Debtor & Mr. Ashu Satiya (Statutory Auditor/Chartered Accountant of CD) to provide the necessary data & information as specified in para no. 19, within 10 days from the date, when this Hon'ble Court pass the necessary directions to the suspended Board of Directors of Corporate Debtor & Mr.

Ashu Satiya (Statutory Auditor/Chartered Accountant of CD).

- b. Issue necessary directions to the members of the suspended Board of Directors of the Corporate Debtor, and Chartered Accountant/Statutory Auditor of CD to extend assistance and co-operation to the Applicant which is imperative for the Applicant to manage the affairs of the Corporate Debtor and to carry out his duties and responsibilities as Interim Professional as mandated under the law.”

In view of the averments made in the application and the submissions put forth by the Ld. Counsel for the RP, **the IA is allowed.**

IA-4330/2022: Ld. Counsel appearing for the Applicant seeks to withdraw the present application.

In view of the prayer made by him, **the application is dismissed as withdrawn.** It goes without saying that the Applicant has liberty to stake his claim before the Liquidator in accordance with law.

IA-2951/2022, IA-2985/2022: There is no appearance on behalf of Respondent Nos. 3 to 7 despite service of notice. Thus, they are proceeded ex-parte. Let the application be listed on the basis of the pleadings/documents available on the DMS/e-portal of this Tribunal on 31.07.2023.

IA-5647/2022: In view of the order passed in IA-361/2023, **the application has become infructuous and is disposed of accordingly.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)