

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**“CHANDIGARH BENCH, CHANDIGARH”**  
**(Exercising the powers of Adjudicating Authority**  
**under the Insolvency and Bankruptcy Code, 2016)**

**CA No. 361/2018**  
**IN**  
**CP (IB) NO. 03/Chd/Hry/2018**

**Under Section 33(2) of the**  
**Insolvency and Bankruptcy**  
**Code, 2016**

**In the matter of :**

Resfeber Labs Private Limited  
Versus  
Bookawheel Technologies Private Limited

**And in the matter of:**

Brij Nandan Kalra,  
Resolution Professional of  
Bookawheel Technologies  
Private Limited

...Applicant-Resolution Professional

Vs.

1. Arvinder Singh, Promotor/Director of  
Bookawheel Technologies Private Limited  
Presently available at D-2, Southern Park,  
5<sup>th</sup> Floor, Saket Place, Saket, New Delhi
2. Mr. Mahender Singh, Promotor/Director of  
M/s.Bookawheel Technologies Private Limited,  
E-mail Id: [anil.raai@bookawheel.com](mailto:anil.raai@bookawheel.com).

...Respondents

**Order delivered on : 18.09.2018**

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)**  
**Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the applicant : Mr. Kamal Satija, Advocate.  
Mr. Brij Nandan Kalra, Resolution Professional  
in person.

**Per: R.P. Nagrath, Member (Judicial)**

**ORDER (Oral)**

CP (IB) 03/Chd/Hry/2018 titled Resfeber Labs Private Limited Vs. Bookawheel Technologies Private Limited filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) was admitted on 05.03.2018 declaring moratorium under Section 14(1) of the Code. The operational creditor had not proposed the name of any Resolution Professional to be appointed as the Interim Resolution Professional. The name of Mr. Brij Nandan Kalra registered professional was proposed from the panel prepared by the Insolvency and Bankruptcy Board of India which was forwarded to this Tribunal in respect of the matters pertaining to the NCLT, Chandigarh Bench. The Registrar of this Tribunal was directed to obtain consent from Mr. Brij Nandan Kalra who furnished his written consent by e-mail dated 07.03.2018. Mr. Kalra was appointed as the Interim Resolution Professional vide order dated 08.03.2018 with certain directions.

2. The Interim Resolution Professional issued public announcement and after collating the claims Committee of Creditors was constituted on 06.04.2018. In the first meeting of Committee of Creditors held on 12.04.2018, the applicant was confirmed as the Resolution Professional. He also appointed the Valuers on 24.04.2018. During scrutiny of the transactions, the applicant observed certain discrepancies as detailed in para 11 of this application. The learned counsel for the Resolution Professional submits on

instructions that the Committee of Creditors consists of 11 employees and nine trade creditors. The Resolution Professional held three meetings of Committee of Creditors. The learned counsel for the applicant represents that advertisement for calling resolution plans was published on the website of the IBBI according to the prevalent rules. However, after 01.07.2018, it became mandatory to call for the resolution plans by publishing the notice in the newspapers also. It is further submitted that no resolution plan was received. In the 3<sup>rd</sup> meeting of Committee of Creditors held on 10.08.2018, it was resolved to recommend the corporate debtor for liquidation by filing application before this Tribunal besides approving insolvency resolution process costs, fee of Advocate etc. On the strength of the aforesaid decision, the instant application has been filed in terms of Section 33(2) of the Code.

3. We have heard the learned counsel for the applicant-Resolution Professional and perused the record.

4. The insolvency resolution process commenced on 05.03.2018 when the petition filed under Section 9 of the Code was admitted by this Tribunal and 180 days' period prescribed under Section 12(1) of the Code for completion of the insolvency resolution process expired on 31.08.2018. Even before the expiry of the said period, no interest has been expressed by any prospective resolution applicant. The Committee of Creditors, therefore, took a decision to recommend the corporate debtor for liquidation. The copy of the minutes of the meeting of Committee of Creditors held on 10.08.2018 is at page 42 of the instant application.

5. Sub-sections (1) & (2) of Section 33 of the Code reads as under:-

*“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 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).”*

6. The learned counsel for the applicant submits that corporate debtor is not a going concern. It does not have any immovable assets. There are only a few computers, some office furniture apart from some amount in the bank. Before the expiry of the prescribed period of 180 days for completion of the insolvency resolution process, the Committee of Creditors with a voting share of more than 75%, has taken a decision for recommending the liquidation of the corporate debtor.

7. From the above, we are of the considered view that the requirements prescribed under sub-section (1) and (2) of Section 33 of the Code are satisfied.

8. Before passing the order of liquidation, we have also considered the submission of the learned counsel for the applicant that the applicant-Resolution Professional has not furnished his consent for being appointed as Liquidator and thus prayer is made that the Resolution Professional may not be appointed as the Liquidator due to his prior future commitments.

9. To support this contention, the learned counsel also referred to Section 34(1) of the Code which provides that the resolution professional appointed shall act as the Liquidator unless replaced by the Adjudicating Authority under sub-section (4). Sub-section (4) of Section 34 of the Code reads as under:-

*“The Adjudicating Authority shall by order replace the resolution professional if –*

- a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
- b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or*
- c) the resolution professional fails to submit written consent under sub-section (1).”*

10. The learned counsel for the Resolution Professional submits that this amendment requiring written consent from the Resolution Professional to

act as Liquidator has come into force w.e.f. 06.06.2018 by way of amendment in the Code and is a mandatory requirement for appointing the Resolution Professional as Liquidator. We are, however, unable to accept the aforesaid submission. The IBBI has already circulated the panel of names of the registered Resolution Professionals who have given their consent to act as Interim Resolution Professionals/Liquidator, vide letters dated 10.01.2018 and 28.06.2018. The name of applicant Mr. Brij Nandan Kalra appears in the panel for the period 01.01.2018 to 30.06.2018 and also the panel valid from 01.07.2018 to 31.12.2018. In the latest panel, the name of Mr. Kalra appears at Sr. No. 95 in respect of the matters before the NCLT, Chandigarh Bench. The IBBI has already issued guidelines dated 31.05.2018 which have been referred to by the learned counsel for the Resolution Professional and in clause 10 of these guidelines, the Resolution Professional who are included in the panel based on their consent, cannot refuse to act as IRP/RP if appointed by the Adjudicating Authority; withdraw his interest to act as IRP/RP and surrender his registration during the validity of the panel. So the consent is to be taken as already submitted by the Resolution Professional. So the above contention cannot be accepted.

11. In view of the above, we order liquidation of the corporate debtor - Bookawheel Technologies Private Limited and appoint Mr. Brij Nandan Kalra bearing Registration No. IBBI/IPA-003/IP-N00014/2016-17/10103 to act as Liquidator for the purpose of liquidation of the corporate debtor in terms of Section 33(2) of the Code. His appointment will take effect from the date of receipt of copy of this order.

12. All the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

(i) Subject to Section 52 of the Code, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted against the corporate debtor [Section 33 (5) of the Code];

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

(ii) However, in terms of sub-section (6) of Section 33 of the Code the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(iii) The order for liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator;

(iv) All the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator; and

(v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

13. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

14. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

*“(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*

*(b) on the website, if any, of the corporate debtor; and*

*(c) on the website, if any, designated by the Board for this purpose.”*

15. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the ‘Liquidator’ shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 and every fortnight thereafter.

16. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

17. The learned counsel for the applicant-Resolution Professional vehemently contended that it will be extremely difficult for Mr. Brij Nandan Kalra to continue as Liquidator because he has to go to Japan to stay with his daughter who has already gone there in August, 2018. We clarify that the

applicant may prefer to apply to the IBBI expressing his difficulties/grievances and the IBBI would be at liberty to consider the request and recommend the Resolution Professional to replace him as Liquidator and to communicate the same to this Tribunal so that further action to replace him in terms of Section 34(4) of the Code is taken.

CA 361/2018 stands disposed of.

Copy of this order be supplied to the Liquidator who shall deliver a copy of this order to the IBBI and to the Registrar of Companies, NCT of Delhi and Haryana

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)

September 18, 2018  
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