

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 1599/2018

In

C.P. 1417/I&BP/NCLT/MAH/2018

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of

Brainer Trade and Fin-Tech Private Limited.

... Corporate Applicant

M.A. No.1599/2018

Anagha Anasingaraju,

Resolution Professional

... Applicant

Order delivered on 22.02.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mrs. Anagha Anasingaraju, Company Secretary.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an order dated 25.07.2018 of this Adjudicating Authority on a section 10 Petition filed by the Corporate Applicant, Brainer Trade and Fin-Tech Private Limited, wherein Mrs. Anagha Anasingaraju, was appointed as Insolvency Resolution Professional and thereafter confirmed by the Committee of Creditors (CoC) as Resolution Professional (RP).

2. The RP submits that the public announcement for inviting claims from Creditors was issued on 17.08.2018. Pursuant to the said announcement, the Applicant received claims from 2 Secured Financial Creditors, 2 Unsecured Financial Creditors and 4 Operational Creditors. The applicant duly verified the claims and subsequently admitted said claims.

3. In 2nd CoC meeting held on 26.09.2018, the Expression of Interest (EOI) and eligibility criteria for Potential Resolution Applicants (PRA) were finalised and the last date for submission was fixed by CoC. In response to the said advertisement, the applicant received initial response from 6 interested parties. Even after twice extending the date for submission EOI, the RP and the CoC members are not able to find eligible PRA. Since, there was no eligible PRA, who had submitted the EOI, the CoC members decided that the RP should not issue the provisional list and do further compliances in relation to this process. As no Resolution Plan was received by RP, the RP states that the only option left is to liquidate the Corporate Applicant.

4. The Resolution Professional submits that in the sixth CoC meeting held on 06.12.2018, the Pune People's Co-op Bank and Janaseva Sahakari Bank, members of CoC having 100% voting rights passed a resolution for liquidating the company in view of the fact that no Resolution Plan was received. Accordingly the Resolution Professional filed this application for liquidation of the Company as provided u/s 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

5. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), for the valuation report filed by the valuer showing nil value has not been disputed by the CoC, on verification, we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;

- a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- b. that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

- d. 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.
 - e. that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
 - f. that 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 liquidator to institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.
 - g. This liquidation order shall be deemed to be 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.
6. Consequently, the Applicant Resolution Professional is appointed as the Liquidator as provided under section 34(1) of the Code. All 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.
7. Accordingly, this Misc. Application is hereby allowed directing 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.

Sd/-

V. Nallasenapathy
Member (Technical)

sd/-

Bhaskara Pantula Mohan
Member (Judicial)