

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-II**

**IA. 1744/ND/2021 and IA. 3505/ND/2021**  
**IN**  
**Company Petition No. (IB)-1887 (ND)/2019**

**IN THE MATTER OF:**

**Corporation Bank**

**...Financial Creditor**

**VERSUS**

**M/s Sharma Kalypso Pvt. Ltd.**  
**(Formerly RausInfras Ltd.)**

**...Corporate Debtor**

**AND**

**IN THE MATTER OF IA 1744/ND/2021:**

**Mr. Navjit Singh,**  
**Deemed Resolution Professional of Corporate Debtor**  
**M/s Sharma Kalypso Pvt. Ltd.**

**...Applicant**

**IN THE MATTER OF IA 3505/ND/2021:**

**Union Bank of India**

**...Applicant/ Petitioner**

**Versus**

**M/s Sharma Kalypso Pvt. Ltd.**  
**Through Navjit Singh**  
**Deemed Resolution Professional**

**...Respondent**

**Order Delivered on: 02.06.2022**

**Under Section: 33(2) and 60(5) of the IBC, 2016.**

**CORAM:**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)**

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

**PRESENT:**

For DRP : Adv. RK Bharani, Mr. Navjit Singh, DRP in person  
For Applicant IA-3505/2021 : Presence not given



## ORDER

PER SHRI L.N. GUPTA, MEMBER (T)

The present IA No. 1744 of 2021 is filed by Mr. Navjit Singh, IRP (**hereinafter, referred to as IRP**) of the Corporate Debtor under Section 33(1)(b) of IBC, 2016. That the IA No. 3505 of 2021 is filed under Section 60(5)(c) of IBC, 2016 by the Union Bank of India (**hereinafter, referred to as UBI**).

2. That the IRP has made the following prayers in the **IA No. 1744/2021**:

- a) *To appoint DRP/RP as liquidator as per Sec 34 of IBC-16 as his consent vide AA is enclosed considering regulation 2ea for pending CIRP Fee with regulation 2A & 2B for passing appropriate order as per sec 33 of IBC-2016.*
- b) *Any appropriate order as think fit by honourable AA for Section 33/34 of IBC-2016....”*

3. That the Union Bank of India (UBI) has made the following prayers in the **IA No. 3505/2021** :

- a) *Allow the IA No. 1744/2021 filed by the Deemed Resolution Professional to the extent of passing an order for liquidation of the Corporate Debtor and/or;*
- b) *Allow the present application for appointment of Ms. Reema Mittal having IBBI reg. no. IBBI/IPA-001/IP00297/2017-18/10541 as the liquidator to the Corporate Debtor in accordance with Section 34 of IBC 2016 and;*
- c) *Pass any such further order(s) that this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case...”*



4. Since both the applications, inter alia, have similar prayer for passing an order of Liquidation and appointment of Liquidator in respect of the Corporate Debtor, therefore, both the Applications are adjudicated through this common order.

5. To put succinctly, the facts of the case are that the Financial Creditor UBI had filed an Application bearing No. IB-1887 (ND) 2019 under Section 7 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Sharma Kalypso Private Limited. The said application was admitted vide order dated 02.01.2022 passed by this Adjudicating Authority and Mr. Navjit Singh IP was appointed as the IRP of the Corporate Debtor.

6. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in the Form-A, which was published in the newspapers namely, the "Financial Express" (English) in Delhi/NCR edition and "Jansatta" (Hindi) in Delhi/NCR edition on 04.01.2020. It is submitted that the said public announcement was uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

7. It is submitted by the Applicant that the CoC was constituted comprising of the Financial Creditors namely, Union Bank of India and Bank of Maharashtra.





8. In the application, it is averred by the IRP that :

*“9. That the IRP continued as Deemed Resolution Professional (hereinafter referred as “DRP”) in accordance to the provisions of Insolvency & Bankruptcy Code (hereinafter referred as “Code”). The IRP again apprised all the members that in accordance to regulation 17(3) of CIRP Regulations, “If the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22 of the Code.....””*

9. It is further submitted by the DRP that the Form ‘G’ was published in two newspapers, namely Financial Express (English) and Jansatta (Hindi) in Delhi-NCR on 17.03.2020. It has been added that the last date for receipt of the Expression of Interest (EOI) was 01.04.2020.

10. It is stated by the Applicant that in response to the said Form ‘G’ dated 17.03. 2020, the applicant had received two Expression of Interests (EOI). The Applicant has further averred the following :





19. That in the 5<sup>th</sup> meeting of CoC, the Deemed Resolution Professional also informed the CoC members that after requested by two Prospective Resolution Applicants and considering the current pandemic situation and the lock



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down, the Deemed RP has extended the last date for submission of EOI to 10th June 2020 and accordingly intimated CoC via email. Revised dates for submission of EOI are produced hereunder:

S. No	Event	Dates as per published Form G	Revised Date	New Dates
1.	Submission of EOI	01.04.2020	01.06.2020	10.06.2020
2.	Provisional List of Eligible Prospective RA/RAC	07.04.2020	11.06.2020	20.06.2020
3.	Objections for inclusion, exclusion in the list of eligible prospective RAC	12.04.2020	16.06.2020	25.06.2020
4.	Issue of final list of prospective RAC to the Committee	22.04.2020	26.06.2020	05.07.2020
5.	Issue of Request for Resolution Plans (RFRP), IM, Evaluation Matrix	12.04.2020	16.06.2020	25.06.2020
6.	Date of receipt of Resolution Plans	22.05.2020	15.07.2020	24.07.2020
7.	Estimated date for submission of resolution plan to the Adjudicating Authority for approval	01.06.2020	28.07.2020	07.08.2020

20. That in the 5<sup>th</sup> CoC meeting dated 16/06/2020, DRP informed the members that only 2 expression of interests





have been received from the Prospective Resolution Applicants in response to the Form G dated 17.03.2020, out of which one was found to be ineligible due to his failure to furnish complete records. The details of the prospective Resolution Applicants from whom the said expression of interest has been received are as under: -

S. NO.	Prospective Resolution Applicants
1.	Mr. HVR Reddy
2.	Mr. Ramech Sharma & Mrs. Usha Sharma (Suspended Board of Director of Corporate Debtor)

The complete minutes of 5<sup>th</sup> COC meeting along with voting results has been annexed herewith as "Annexure-7 (Colly).

21. That the Deemed Resolution Professional issued the Provisional List of Prospective Resolution Applicant on 20<sup>th</sup> June, 2020 and accordingly shared the same with both Prospective Resolution Applicants and COC members through email dated 20<sup>th</sup> June, 2020, wherein the FRA namely Mr. HVR Reddy was excluded from the said list by the DRP because of the ineligibility due to his failure to furnish complete records. However, the DRP had provided sufficient time and opportunity to the said FRA for removal of deficiency/objection. The last date for removal of objection/deficiency was 25.06.2020 but the FRA namely Mr. HVR Reddy didn't take any further action with this regard and consequently was excluded from the final list of





Resolution Applicant. The copy of Provisional list of Prospective Resolution Applicant and the copy of email dated 20<sup>th</sup> June, 2020 in respect of sharing of provisional list of PRA has been annexed herewith as "Annexure-8 (Colly)".

22. That on 25<sup>th</sup> June 2020, the DRP shared the Request for Resolution Plan, Information Memorandum and Evaluation Matrix with Resolution Applicant through email dated 25<sup>th</sup> June, 2020, as per revised timelines. The copy of email dated 25<sup>th</sup> June, 2020, with respect of sharing of provisional Request for Resolution Plan, Information Memorandum and Evaluation Matrix with Resolution Applicant has been annexed herewith as "Annexure-9".

23. It is noteworthy that last date for removal of objection/deficiency was 25.06.2020". However, the PRA namely Mr. HVR Reddy didn't take any further action with regards to removal of objection/deficiency and consequently was excluded from the final list of Resolution Applicant. Accordingly, the Final List of Resolution Applicant was issued on 29<sup>th</sup> June, 2020 with the Resolution Applicant through email and subsequently, with the COC members. The copy of the Final list of Resolution Applicant along with the copy of email dated 29<sup>th</sup> June, 2020, has been annexed herewith as "Annexure-10" (Colly).







24. That in the 6<sup>th</sup> meeting of Committee of Creditors the DRP informed the members that only one resolution plan was received from Resolution Application i.e., Mr. Ramesh Sharma and Mrs. Usha Sharma Suspended Board of Directors of the Corporate Debtor vide email dated 24th July 2020 in electronic form and in hard copy on 01st August 2020. The Financial contents of Resolution Plan were discussed during the meeting. The DRP informed the members of CoC that the exclusion application along with the Condonation of delay due to Covid-19 pandemic and subsequent lockdown by Government of India has been filed before the Hon'ble NCLT, wherein the exclusion of 95 days has been prayed as the original 180 days was scheduled to be completed by 29th June 2020 but due to prevailing conditions same could not be completed and revised date for completion of CIRP is 02nd October 2020 with further extension of 90 days subject to approval of CoC members.





11. That in the 6<sup>th</sup> meeting of Committee of Creditors, the DRP informed the members that only one resolution plan was received from Resolution Applicant i.e., Mr. Ramesh Sharma and Mrs. Usha Sharma, the Suspended Board of Directors vide email 24<sup>th</sup> July, 2020 and in physical form on 01.07.2020.

12. It is submitted by the DRP that one of the Financial Creditors, namely, Union Bank of India vide their email dated 29.08.2020 informed the DRP as well as Resolution Applicant that the amount offered in Plan is low and need to be improved substantially. The Applicant has averred the following :

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27. That the 8<sup>th</sup> meeting of COC was accordingly held on 25/09/2020. In the said meeting resolution plan was again discussed and it was felt by the members of COC that the amount offered by the resolution applicant is very low as compared to the outstanding exposure of the banks. In order to maximization of the value of the business of the Corporate Debtor the RA presented an upgraded resolution plan in the meeting. The DRP also informed the CoC following amount has been received by Financial Creditors the same was intimated earlier also vide various emails which are as follows: -

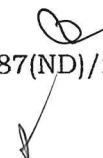
S.No	Particulars	Amount
1.	The amount realized by Corporation Bank under multiple banking system upon encashment of LIC policies submitted as collateral security of Rs.30 lakhs under pari pasu charge.	0.94 Crore
2.	The amount deposited with Corporation Bank under multiple banking system, a value of award received from CPWD under pari pasu charge on 17.10.2018.	2.63 Crore
3.	The amount realized by Corporation Bank upon auction sale of mortgaged property situated at 159 SFS flats, Munirka Vihar, New Delhi, under pari pasu charge.	1.73 Crore
4.	The amount realized by Corporation Bank upon auction sale of mortgaged property situated at plot no.48-49 Sector 6, IMI Manesar Gurgaon, Harvana.	5.15 Crore
5.	The amount deposited by Engineers India Limited on 07.06.2019 against interim award and kept in no lien Account.	0.32 Crore
6.	The amount deposited by Engineers India Limited on 26.08.2019 against award published by arbitrator in respect of Interior Works of Convention Centre, Gurgaon and amount be kept in no lien account.	1.82 Crore





7.	Amount realized by Bank of Maharashtra upon sale of mortgaged property situated at 31/7 Meera Enclave Nangloi, Delhi-110041.	3.00 Crore
	Total	15.59 Crore

The Union Bank of India inform in the meeting the amount of LIC of Rs. 63 Lacs (adjusted in the account), Rs. 2.63 Cr (Adjusted in the account), whereas the amount Rs. 1.73 Cr to be noted as Rs. 1.70 Cr and Rs. 5.15 Cr was kept in the authorized officer account (Rs. 1.70+Rs 5.15) amount not adjusted in the claim and balance Rs. 32 Lacs and Rs. 1.82 Cr already adjusted and Rs. 3 Cr was realized by Bank of Maharashtra. Further it was informed by Union Bank of India out of the share of Rs. 6.85 Cr received from sale of two (2) properties, they have remitted Rs. 1.56 Cr to Bank of Maharashtra and the same was confirmed. The minutes in respect of the 8<sup>th</sup> meeting of Committee of Creditors were circulated by the applicant via Email on 29/09/2020. A copy of the same has been annexed herewith as "Annexure-12".





13. It is further submitted by the DRP that the Resolution Applicant submitted their revised resolution plan of the corporate debtor on 24.09.2020.

The Applicant has averred the following :

35. That in the 12<sup>th</sup> meeting of CoC, for the maximization of the business of the Corporate Debtor, one final opportunity was given to the Resolution Applicant to upgrade the Resolution Plan and present the same before the CoC. The Resolution Applicant presented his Resolution Plan with some little amendments and discussed the same before the CoC. A copy of final minutes of 12<sup>th</sup> meeting of Committee of Creditors along with its voting results is annexed herewith as "Annexure-18 (Colly)"

36. That the CoC in 12<sup>th</sup> CoC meeting not approved the agenda of Compromise and Arrangement as per Section 230 of the Companies Act, 2013 proposed by the Director (Powers Suspended) of the Corporate Debtor.

37. That the Deemed Resolution Professional respectfully submits that there is no option left except that the Corporate Debtor be liquidated because the timeline for the completion of the Corporate Insolvency Resolution Process is to be expired on 05<sup>th</sup> March, 2021 and no directions have been received from the Committee of Creditors for the extension



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in respect of the same, whereas the CoC approved the agenda of liquidation of the Corporate Debtor in the 12<sup>th</sup> CoC meeting under section 33 (2) of the Code.

38. Further DRP/RP had received one AA form from One CoC member on 01/03/2021 of one Insolvency professional proposed to act as liquidator and DRP further intimate to honorable AA that as compromise cum upgraded plan as per Reg 39Da as under sec 230 of CA 2013 was received by DRP/RP vide email today dated 04/03/2021 from MSME Prompter but comprise opportunity was not approved by CoC Member as put for vote with 12th CoC minutes. "Annexure-19 (Colly)"



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14. It is submitted by the DRP that the agenda relating to the Resolution Plan was accordingly placed and put to vote in the 12<sup>th</sup> Meeting of the CoC held on 11.02.2021. It is added by the applicant that in the same meeting, the agenda of Liquidation of the corporate debtor was also proposed and placed for voting. The Resolutions, which were placed before the CoC for voting are reproduced below :

*Minutes of 12<sup>th</sup> CoC Meeting  
Sharma Kalypso Private Limited*

**ENCLOSURE 5**

**LIST OF THE AGENDAS TO BE VOTED UPON AT THE MEETING**

**PROPOSED RESOLUTIONS AS PER THE LIST OF AGENDA ITEMS TO BE VOTED UPON BY THE COMMITTEE OF CREDITORS**

**PROPOSED RESOLUTION-1**

**To vote upon the upgraded proposal in the updated Resolution Plan submitted by the Resolution Applicant cum suspended promoter.**

As discussed in item no. 5, CoC members are requested to vote on the upgraded proposal presented by the Resolution Applicant cum suspended promoter of the Corporate Debtor.

"RESOLVED THAT the resolution plan submitted by the Resolution Applicant and as agreed by way of the affidavit dated 12-02-2021, which shall form part of this Resolution, be and is hereby approved"

**PROPOSED RESOLUTION-2**

**To take note on filing of liquidation application under section 33 of I & B Code, 2016 Qua the rejection of Resolution plan**

As discussed in item No. 6, CoC members needs to approve the agenda for filing the liquidation application of Corporate Debtor and vote upon the same.

"RESOLVED THAT with the consent of members of CoC, to file the application for Liquidation of Corporate Debtor be and is hereby approved and that the Deemed Resolution Professional will file the application for Liquidation through his Legal counsel.

**PROPOSED RESOLUTION-3**

**To vote upon the offer proposed by the Director (Powers Suspended) or any creditor or any class of creditors of Corporate Debtor for Compromise and arrangement under section 230 of the Companies act, 2013 during the liquidation Process.**

"RESOLVED THAT with the consent of members of CoC, to consider the compromise and arrangement under Section 230 of the Companies Act 2013 during the liquidation process by Director (Powers Suspended) or any creditor, member be and is hereby approved"

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Page



15. It is further submitted by the DRP that the Resolution Plan submitted by the Suspended Board of Directors was rejected by the CoC by 100% Vote and the Resolution for recommending Liquidation of the Corporate Debtor was passed by 100% Votes. That the scanned copy of the voting sheet as enclosed with the application is reproduced below :

Voting Results						
12th Meeting of Committee of Creditors Sharma Kalpyso Private Limited (In CIRP)						
Nature of resolution	Agenda Item no.	Resolution	Yes (in %)	No (in %)	Abstain (in %)	Total (in %) Result
Resolution to be passed by a majority vote of not less than 66 percent of the voting share	1	"RESOLVED THAT the resolution plan submitted by the Resolution Applicant and as agreed by way of the affidavit dated 12-02-2021, which shall form part of this Resolution, be and is hereby approved"	0.00	100.00	0.00	100.00 Not Approved
Resolution to be passed by a majority vote of not less than 66 percent of the voting share	2	"RESOLVED THAT with the consent of members of CoC, to file the application for Liquidation of Corporate Debtor be and is hereby approved and that the Deemed Resolution Professional will file the application for Liquidation through his Legal counsel"	100.00	0.00	0.00	100.00 Approved
Resolution to be passed by a majority vote of not less than 51 percent of the voting share	3	"RESOLVED THAT with the consent of members of CoC, the compromise and arrangement under Section 230 of the Companies Act 2013 during the liquidation process by Director (Powers Suspended) or any creditor, member be and is hereby approved".	0.00	32.41	67.59	100.00 Not Approved

16. That the DRP has also filed the valuation Reports and stated that the Liquidation value of the Corporate Debtor is Rs.15,07,96,538/- and the Fair Market Value of the Corporate Debtor is Rs.18,63,74,978/-.

17. That the DRP Mr. Navjit Singh has given his written consent in terms of Section 34(1) to act as Liquidator of the Corporate Debtor, which is on record (Page 33-34) as part of the Application.

18. That the appointment of DRP to act as Liquidator of the Corporate Debtor has been opposed by the Union Bank of India (UBI) through the other IA. No. 1744/2021 under consideration.



19. It is stated by the Applicant in the IA. No. 1744/2021 that the Union Bank of India holds 67.59% voting share in the CoC of the Corporate Debtor.

20. It is further stated that the Interim Resolution Professional was not confirmed as the Resolution Professional in the first COC meeting held on 03.02.2020. It has been added that in the second COC meeting held on 21/02/2020, the COC had approved the appointment of Mr. Arvind Garg, IP having Registration No. IBBI/IPA-003/IP-N00029/2017-2018/10189 as 'Resolution Professional' and an application was filed before Hon'ble NCLT. It has been stated that due to COVID and restricted functioning of the Hon'ble Court, his appointment could not be approved.

21. It is stated by the UBI that in accordance with Regulation 17(3) of CIRP regulations, the Interim Resolution Professional continued as Deemed Resolution Professional. It is further added that the CIRP Regulation 17(3) reads as below :

*"If the appointment of resolution professional is delayed, interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22 of the Code."*

Thus, the interim Resolution Professional continued as Deemed Resolution Professional (DRP).

22. It is added by the UBI that in the 12<sup>th</sup> meeting of Committee of Creditors (COC) held on 11 February, 2021, the COC rejected the resolution plan submitted by the Resolution Applicant-cum-Suspended Directors of



Corporate Debtor by 100% voting. Accordingly, it was resolved that an application under Section 33 IBC Code, 2016 would be filed through the Deemed Resolution Professional for liquidation of the Corporate Debtor. Further, when the Deemed Resolution Professional requested for his appointment as Liquidator, he was informed that his appointment as Resolution professional was not confirmed and the COC had earlier decided to appoint Mr Arvind Garg as the Resolution Professional. Therefore, in the present scenario, the appointment of Ms. Reshma Mittal as the Liquidator would be in line with the intention of the members of the COC. However, no resolution was passed by the COC to that effect, through the COC intended to appoint new IP to act as Liquidator. Relevant extract of the minutes of the said COC meeting are reproduced hereunder:

**“Item No.: 7**

**To take note on the appointment of Liquidator and fee of the appointed Liquidator under section 34 of I & B Code, 2016.**

*.....The Deemed RP requested the CoC for the discussion on the appointment of the liquidator and decide his fee. The Deemed RP explained the provisions in the law to CoC members regarding the appointment of RP as liquidator whereas the CoC was of the view to appoint new Liquidator. The Deemed RP has given his consent to act as liquidator and stated that he is not disqualified to act as Liquidator as per section 34 of the Code and whereas the CoC decided to appoint Liquidator as per their internal policy who is not RP. The DRP also stated that the Lead CoC member appointed him as TRP in bid. Finally, it was decided the decision for appointment of the liquidator will be left for the wisdom of Adjudicating Authority.”*

23. It is further submitted by the Applicant UBI that the COC has decided to appoint Ms. Reshma Mittal having IBBI reg. no. IBBI/IPA-01/1P00297/2017-18/10541 as the Liquidator for Corporate Debtor. They



have placed on record the consent of other COC member i.e., Bank of Maharashtra. The scanned copy of the same is reproduced below :

RE: Appointment of liquidator - M/s Sharma Kalypso Pvt Ltd.

BOM SAMB Delhi <bom1456@mahabank.co.in>

Mon 09-03-2021 11:09

To: Delhi-Overseas Main Branch (CorpBank-0606) <cb0606@unionbankofindia.com>

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कृपया सावधानी बरतें एवं ध्यान दें: यहाँ ई-मेल बॉक्स से प्राप्त हुई है, कृपया प्रेषक के ई-मेल पते को पूर्ण रूप से पढ़िये (केवल प्रेषक का नाम ही नहीं), प्रेषक की पहचान किये बिना लिंक पर क्लिक न करें एवं संलग्न को न खोलें और पहचान की दी गई सामग्री सुरक्षित है अथवा नहीं, संदिग्ध मेल के संबंध में, कृपया [antiphishing.cto@unionbankofindia.com](mailto:antiphishing.cto@unionbankofindia.com) पर रिपोर्ट करें

**CAUTION AND ATTENTION PLEASE:** This is an external email. Please check the sender's full email address (not just the sender name). Do not click links or open attachments unless you recognize the sender and know the content is safe. In case of any suspicious email, please report it to [antiphishing.cto@unionbankofindia.com](mailto:antiphishing.cto@unionbankofindia.com)

Dear Sir

We give our consent for appointment of Ms. Reshma Mittal as Liquidator for captioned CD.

भवदीय / Regards

बैंक ऑफ महाराष्ट्र / Bank of Maharashtra  
 बैंक शाखा, दिल्ली अंचल / SMM Branch, Delhi Zone  
 दूरभाष - 011-23321444 / Tel: 011-23321444

From: Delhi-Overseas Main Branch (CorpBank-0606) [mailto:cb0606@unionbankofindia.com]  
 Sent: 01 March 2021 13:41  
 To: Sharma Kalypso Private Limited; Bom1456@mahabank.co.in  
 Cc: Crlf Fgmo Delhi; Nancy Agrawal; Lekh Raj Sidhu  
 Subject: Appointment of liquidator - M/s Sharma Kalypso Pvt Ltd.

**CAUTION:** This is an External E-Mail. Do not click links or open attachments unless you recognize the sender and know that the content is safe.

Dear Sir

We propose to appoint Reshma Mittal as the liquidator of the captioned Corporate Debtor. The consent form enclosed.

भवदीय/Regards,



24. It is stated by the Applicant UBI that the decision of the CoC to change the Liquidator was communicated to the IRP vide email dated 15.02.2021, the scanned copy of which is reproduced overleaf :



**Appointment of liquidator - M/s Sharma Kalypso Pvt Ltd.**

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Delhi-Overseas Main Branch (CorpBank-0606) <cb0606@unionbankofindia.com>

Mon 01-03-2021 13:40

To: Sharma Kalypso Private Limited <skpl.cirp2019@gmail.com>; Bom1456@mahabank.co.in <Bom1456@mahabank.co.in>  
Cc: Crld Fgmo Delhi <crldfgmodelhi@unionbankofindia.com>; Nancy Agrawal <nancyagrawal@unionbankofindia.com>; Lekh Raj Sidhu <lekhraj@unionbankofindia.com>

1 attachments (377 KB)

Written consent to act as liquidator.pdf

Dear Sir

We propose to appoint Reshma Mittal as the liquidator of the captioned Corporate Debtor. The consent form enclosed.

भवदीय/Regards,

एस ए एम वी दिल्ली शाखा/SAMV Delhi Branch,  
यूनियन बैंक ऑफ इंडिया/Union Bank of India,  
एम-93, कनाट प्लेस/M-93, Connaught Place,  
नई दिल्ली-110001, भारत/New Delhi-110001, India.  
दूरभाष संख्या/Telephone No.: +91-11-23418721/24/28/29  
ई-मेल/Email:- cb0606@unionbankofindia.com  
IFSC- UBIN0906069



25. That after hearing submissions and perusing the documents placed on record by the UBI on the issue of change of Liquidator, this Bench considers it necessary to refer to the provision contained in Section 34(4) of IBC, 2016, which specifies the grounds for change of Liquidator. Section 34(4) of IBC, 2016 is reproduced below :

**“34. Appointment of liquidator and fee to be paid. –**

(1)...

(2)...

(3)...

(4) 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).]”*



26. That from the perusal of the above, it is seen that the plea taken by Applicant UBI for change of RP does not fall under any of conditions prescribed under Section 34(4) of IBC 2016. Further, the Applicant UBI has failed to place on record or produce any CoC resolution in support of its prayer to change the present deemed RP.

27. Here, it is also worthwhile to refer to Regulation 18 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations 2016, which is reproduced below :

**“18. Meetings of the committee.**

- (1) *A resolution professional may convene a meeting of the committee as and when he considers necessary.*
- (2) *A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights.*
- (3) *A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights.]*

(Emphasis Supplied)

28. That it is a matter of fact that the Applicant UBI has been holding 67.59% voting share in the CoC, which is more than the voting rights prescribed under Regulation 18 for requisition of a meeting of CoC or to propose a resolution for consideration of the CoC.



29. That it is observed that instead of adopting the procedure prescribed under Regulation 18 or taking recourse available under Section 34(4)(b) of IBC, 2016, the UBI has adopted a parallel route i.e., moving from outside the CoC for a change of RP to be appointed as Liquidator. Hence, in our considered view, the proposal of the Applicant UBI to appoint Ms. Reshma Mittal, IP as Liquidator is not in accordance with the law.

**30. Accordingly, the IA-3505 of 2021 is Dismissed.**

31. As regards the Resolution of CoC seeking order for Liquidation of the Corporate Debtor, **this Bench accepts the recommendation of the CoC and orders Liquidation of the Corporate Debtor M/s. Sharma Kalypso Private Limited in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016** and in accordance with the relevant rules and regulations along with the following directions:

- a. Mr. Navjit Singh, having IBBI Registration No. IBBI registration Number IBBI/IPA-001/IP-P00314/2017-18/10578, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;
- b. The Liquidator, is directed to issue public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. 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;

- d. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- f. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- g. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and Liquidator Mr. Navjit Singh at the earliest but not later than seven days from today.
- h. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;
- i. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

**32. Accordingly, IA-1744/ND/2021 is allowed in the aforesaid terms.**

  
**(L. N. Gupta)**  
**Member (T)**

  
**(Abni Ranjan Kumar Sinha)**  
**Member (J)**