

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 1293/2022

**In
CP(IB)No. 2891/MB/C-II/2019**

*Application filed under section 33(2) Insolvency and
Bankruptcy Code, 2016 and Rule 11 of the National
Company Law Tribunal Rules, 2016.*

**Mr. Narayan Swami, RP of
FR Tech Innovations Private Limited.**

...Applicant

In the matter of

Karan Lalwani.

...Financial Creditor

V/s

FR Tech Innovations Private Limited.

...Corporate Debtor

Order Pronounced on :- 04.03.2024

Coram:

Anil Raj Chellan : Kuldip Kumar Kareer

Member Technical : Member Judicial

Appearances :-

For the Applicant

:- Mr. Manan U. Shah, PCA

ORDER

Per : Coram

1. It is an application filed u/s 33(2) of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Mr. Narayan Swami, Resolution Professional (RP) of FR Tech Innovations Private Limited (the “Corporate Debtor”) seeking liquidation order based on the resolution passed by the CoC **in its meeting held on 28.04.2023.**
2. On perusal of this application, it emerges that CP No. (IB)-2891 (MB)/2019 was admitted by this Tribunal on 14.11.2019 and Mr. Arun Mohan, the was appointed as Interim Resolution Professional (IRP). The IRP in compliance with section 13, 15 and other applicable sections of the Code, published Form A issuing public announcement dated 02.12.2019 inviting claims from the Creditors of the Corporate Debtor on or before 13.12.2019.
3. Pursuant to the said public announcement, the IRP received claims from the Creditors of the Corporate Debtor and constituted Committee of Creditors (CoC). The 1st meeting of the CoC was held on 28.12.2019.

4. Further, vide Order dated 13.02.2020, the Tribunal appointed the Applicant herein i.e. Mr. Narayan Swami to act as the Resolution Professional (RP) thereby replacing the IRP.
5. Further, on account of outbreak of Covid-19 pandemic and lockdown imposed by the government, the Applicant filed an Application under section 12(2) of the Code for extension of the CIRP period. However, with the insertion of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2016, the period of lockdown as imposed by the Central Government in the wake of Covid-19 outbreak was excluded for the purpose of the time line in relation to the Corporate Insolvency Resolution Process (CIRP) and hence the CIRP period got extended till 01.03.2021. Further, another Application was filed by the Applicant to extend the CIRP period by further 90 days from 01.03.2021 to 31.05.2021.
6. The Applicant had taken several efforts to obtain the books of accounts and other taxation and accounting documentation from the erstwhile Directors of the Corporate Debtor, however, the erstwhile Directors did not cooperate the Applicant. The Applicant also noted that the erstwhile Directors since inception had not got the Accounts of any Financial Year audited from the Statutory Auditor.

7. The members of the CoC instructed the Applicant to conduct a Transaction Audit of the Corporate Debtor. The Applicant appointed M/s J Singh & Associates to conduct the Audit and submit its report. The Auditor submitted its report dated 07.05.2021. The transaction auditor after detailed verification and scrutiny of the available records made several observations in the report. It was observed that there were instances of Fraudulent and wrongful transactions by the erstwhile Director. The report also mentioned as to the non-cooperation of the erstwhile Director. Thereafter, the Applicant filed an Application under section 19(2) of the Code against the erstwhile directors of the Corporate Debtor.
8. Due to non-cooperation of the erstwhile directors and due to lack of necessary information about the Financial Assets of the Corporate Debtor, the valuers were also unable to determine the fair valuation of the Assets of the Corporate Debtor.
9. Further, the Form G inviting the Expression of Interest (EoI) was published on 16.10.2020 in two newspapers. However, despite the extension of the timeline for invitation of EoI, the RP had not received any Resolution Plan.
10. The Applicant informed the members of the CoC that there were no fixed assets of the Corporate Debtor. The Corporate Debtor had only Intangible Assets i.e. Patents, Trademarks, Inventions and Software. The Applicant

had initiated steps for recovery of the same and proceeds if any would be added to the liquidation estate.

11. In the 5th CoC meeting held on 27.01.2021, as there were no prospects of receipt of any EoI or Resolution Plan even after extension of the CIRP period and also there did not exist any assets in the name of the Corporate Debtor, the sole member of the CoC resolved to liquidate the Corporate Debtor. However, the Bench had noted that the Resolution for liquidation as annexed in the Application was passed under Section 59 of the Code instead of Section 33(a) of the Code. The Bench directed to rectify the same by filing Additional Affidavit to place on record the correct Resolution to be passed by the CoC. The Applicant conducted the meeting of the CoC on 28.04.2023 whereby the sole member of the CoC with 100% voting passed Resolution to initiate the liquidation proceedings against the Corporate Debtor.

12. The relevant extracts of the resolution passed in CoC meeting held on 28.04.2023 is as follows:

“RESOLVED FURTHER THAT the approval of the Committee of Creditors (CoC) for filing a liquidation application u/s 33(a) of the IBC, 2016 before Hon’ble NCLT Mumbai Bench passed by 100% Voting shares”.

13. Upon perusal of the transaction audit report it is seen that the transaction auditor has observed that there were fraudulent and wrongful transactions undertaken by the erstwhile Director of the Corporate Debtor and the Resolution Professional i.e. the Applicant herein has not filed any Application to that effect against the suspended Board. Hence, the liquidator as appointed by this Bench is to examine the transaction audit report and accordingly take necessary steps.

14. Taking into consideration the facts and circumstances and averments made in the Application, we are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order the liquidation of the Corporate Debtor in the following terms:

- a. The **Mr. S. Gopalkrishnan**, holding **Registration No. IBBI/IPA-002/IP-N00151/2017-18/10398** having email id as **gopi63.ip@gmail.com**, is appointed as the Liquidator in terms of Section 34 of the Code. The liquidator to file its Written consent to act as a liquidator in Form AA.
- b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

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- 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. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating

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Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

15. The **IA-1293/2022** filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)