

THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. III  
AT NEW DELHI

IA No. 558/ND/2020

IN

Company Petition No. (IB)-1411(ND)/2018

*Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor*

**IN THE MATTER OF:**

**ASHOK KUMAR**

Resolution Professional

Indian Roots Shopping Limited

....Applicant

**AND IN THE MATTER OF**

**AS TECHNO SOFT PRIVATE LIMITED**

...Operational Creditor

Versus

**INDIANROOTS SHOPPING LIMITED**

...Corporate Debtor

Order delivered on:17.11.2021

**Coram:**

**SHRI BACHU VENKAT BALARAM DAS**

**SHRI NARENDER KUMAR BHOLA**

**MEMBER (JUDICIAL)**

**MEMBER (TECHNICAL)**

For the Applicant: Ms Ishita Srivastva, Mr Anurag Bhatt, Advocates

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**ORDER**

**Per- Narender Kumar Bhola, Member (Technical)**

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as the “Code”**) for issuance of directions for liquidation of the corporate debtor, Indian Roots Shopping Limited.
2. The facts in brief are that the operational creditor, AS Technosoft Private Limited had filed an application bearing no. IB 1411(ND)/2018 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 13.03.2019 and Mr. Ashok Kumar appointed as Interim Resolution Professional (IRP). Thereafter, it came to the knowledge of the IRP that vide order dated 11.10.2018, the CIRP of the Corporate Debtor has already been initiated and Mr. Atul Kumar has been appointed as the IRP by this bench in IB No. 202/ND/2018. This bench vide its order dated 24.04.2019 clarified that the order dated 11.10.2018 has become redundant and further directed that order dated 13.03.2019 shall continue to be operative.
3. The RP submits that in compliance of Section 15 of the I & B Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, made Public Announcement in Financial Express (English Edition) and Jansatta (Hindi Edition) on 06.04.2019.
4. The RP submits that IRP collated the claims and no claims were received from financial creditors and therefore the IRP has constituted the Committee of Creditors



only with operational creditors under Regulation 16 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5. The RP submits that IRP was appointed as the RP by the members of CoC and his appointment was confirmed vide order dated 11.06.2019. The RP requested the suspended board of directors to provide the required information, however, no response was received by the RP and the suspended board of directors of the Corporate Debtor did not extend any cooperation as sought by the RP. The RP has sent various reminders to the auditors of the Corporate Debtor enquiring about the status and details of the fixed assets and stock of the Corporate Debtor and the auditors have provided the list of group of debtors and the loans advanced in the name of the Corporate Debtor.
6. The second meeting of CoC was held on 22.05.2019 wherein the RP requested the Director, Mr. Rajeev Verma to handover the assets of the Corporate Debtor, to which the director informed the RP and the CoC, that he does not have any information with respect to the assets of the Corporate Debtor as he never took charge over the management of the Corporate Debtor. That since no cooperation was received from the ex-management of the Corporate Debtor, the RP with the approval of the Committee members moved an application under section 19(2) of the Code for non-cooperation before the bench for appropriate direction to the ex-management. The bench was pleased to issue notice upon all the respondents, and all the respondents in response to the application filed by the RP under section 19(2) of the Code have taken a common ground that either they are the additional directors or they have already resigned, however it is pertinent to note that all the respondents have failed to attach any proof either with respect to their appointment

as additional directors or their resignation.

7. The RP further submits that even otherwise, once appointed, the additional directors enjoys all powers and subject to all obligations and limitations of a director till they hold office as director. It is further submitted by the RP that the Corporate Debtor was originally owned by the NDTV group and in the year 2018, the NDTV group transferred the ownership and control of the Corporate Debtor to Nameh Group through sale of shares. It is unbelievable that the respondents being the director of the Corporate Debtor were not handed over with the custody of all the documents of the Corporate Debtor by the NDTV group. It is further submitted that all respondents are blaming each other for the information, and because of the conduct of the respondents, the entire resolution process has been derailed.
8. The CIRP of the Corporate Debtor is already in excess of 287th day and still the RP do not have the safe custody of all the assets and documents with respect to the affairs of the Corporate Debtor. Further, in catena of judgments Hon'ble Supreme Court in Civil Appeal No. 3395 of 2020, 'Jaypee Kensington Boulevard Apartments Welfare Association & Ors vs NBCC (India) Ltd & Ors' and Hon'ble NCLAT in Civil Appeal (AT) (INS) No 575/2019 'The Directorate Of Enforcement vs Sh Manoj Kumar Agarwa; & Ors' have held that in order to conclude the CIRP of the Corporate Debtor smoothly, the RP is bound to have all the relevant information and the assets in its safe, custody. It is submitted that most of the assets of the Corporate Debtor are either with the employees or in custody of the government departments.
9. The RP submits that multiple applications have already been moved by the RP seeking direction for the release of FDRs (fixed deposit receipts) and for taking the

safe custody of assets of the Corporate Debtor respectively.

10. The RP submits that the members of the CoC in the sixth meeting of the CoC held on 11.10.2019, were of a view that it would be in the interest to liquidate the corporate debtor under section 33(2) of the Code on the following grounds:
- i. Non-cooperation of the Corporate Debtor and its directors even after the filing of application u/s 19(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional.
  - ii. No books of account were handed over to the Resolution Professional by the Corporate Debtor for audit purposes.
  - iii. No control over the assets of the corporate debtor was provided to the Resolution Professional which could have generated possible revenue for the corporate debtor.
  - iv. Non availability of funds and scarcity of resources for the Resolution Professional to smoothly conduct the Corporate Insolvency Resolution Process of the Corporate Debtor.

The liquidation proposal was approved by a majority of 100% members and voting.

*“RESOLVED to propose the liquidation of corporate debtor u/s 33(2) of I&B Code, 2016 and authorize RP to make an application to Adjudicating Authority for liquidation of the CD u/s 33(2). Cost of filing application through an advocate, shall be part of CIRP cost and paid by CoC.”*

11. The RP informed the members of CoC that Liquidator fees is to be determined by the members, which shall form part of the liquidation cost as per Chapter

II, Regulation IV (Appointment and Remuneration of Liquidator) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016. The RP Mr. Ashok Kumar gave his consent for acting as the Liquidator and proposed his fee to be not less than Rs. 1,50,000/- per month excluding GST and out of pocket expenses.

12. The RP apprised the CoC about the provisions of Section 39B and 39C of I & B Code, 2016 in order to finalize the estimated liquidation cost. The RP consulted the members of CoC and estimated the maximum liquidation cost as Rs 6,90,000/-. The expenses for initiating the process of liquidation of the Corporate Debtor were put to voting and the same was approved with 100% members present and voting.
13. RP submits that in the sixth meeting of the CoC, the RP moved an Agenda to invite Expression of Interest (EO I), the relevant extract of the same is reproduced hereto as under:

*"To Invite Expression of Interest under prescribed Form G & to discuss minimum eligibility criteria"*

The said resolution was rejected by the majority of members present and voting, hence the RP did not invite any Expression of Interest (EOI) in view of the decision of the CoC.

14. The RP informed the members of CoC that expenses amounting to Rs. 4,92,160/- and the fees of the RP amounting to Rs. 7,70,000/- is due from 19.9.2019 to 5.12.2019. The RP further informed of the members of CoC that an amount of Rs. 12,14,855/- is also pending towards CIRP cost for earlier period. It is submitted that the agenda for ratification of the expenses incurred by the Resolution Professional was proposed as agenda item no. 9 and the same was put to vote in 7th meeting of

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Committee of Creditors. Relevant extract of the same is reproduced hereto as under:

*"To ratify further CIRP expense of Rs. 4,92,160/- and RP Fee of Rs. 7,70,000/- due from 19.09.2019 to 05.12.2019."*

It is submitted that the said Agenda was put for vote and the same was passed by 100% voting majority of the members present and voting.

15. The CIRP of 180 days in the present matter originally estimated for closure on 07.09.2019 but the exclusion period of 150 days was granted by the bench. Further, the extension of 150 days was granted by this bench on 10.12.2019, completing 330 days of CIRP. Because of non-cooperation of the Corporate Debtor and its directors, it is seen from the provisions of IBC, 2016 is to seek the liquidation as provided under the provisions of section 33 of IBC, 2016 of which the relevant sub-section 1 of section 33 is reproduced hereunder;

*"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.”*

16. In above circumstances, taking into consideration the provisions of law as well as the facts on record, we order for liquidation of the corporate debtor and in the circumstances the corporate debtor stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

- a. Mr. Ashok Kumar, Resolution Professional of the corporate debtor having IBBI registration number IBBI/IPA-001/IP-P00847/2017-18/11430 has consented to act as the liquidator of the corporate debtor and who is be and hereby appointed as liquidator of the corporate debtor. Written Consent of Mr.Ashok Kumar, Resolution Professional of the corporate debtor under section 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, signifying his intention to act as the liquidator of the corporate debtor is annexed.
- b. It is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

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- c. The Registry is directed to communicate this order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly in relation to other fiscal and regulatory authorities which governs 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 that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- f. This order is 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;
- g. 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 regulations.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating 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 operational creditor, corporate debtor and the Liquidator for taking necessary steps.
- j. I.A. 558(ND) /2020 is disposed of in the aforesaid terms.
- k. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor and the Liquidator at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



**(BACHU VENKAT BALARAM DAS)**

**MEMBER (Judicial)**



**(NARENDER KUMAR BHOLA)**

**MEMBER (Technical)**