

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

MA/113/2020 in IBA/641/2019
filed under *Sections 33 (2)* of the
Insolvency and Bankruptcy Code,
2016

In the matter of ***M/s. Food Express Industrial Catering Services Private Limited.***

Vengarai Seshadri Sowrirajan,
Resolution Professional
M/s. Food Express Industrial Catering Services Private Limited.

... Applicant /Resolution Professional

Order delivered on:13.03.2020

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Applicant : *Mr. R. Rajesh, Advocate*

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Order Pronounced on: 13.03.2020

The above Application is filed by the Resolution Professional appointed by this Tribunal, seeking for the liquidation of the Corporate Debtor under Section 33 (2) of the IBC, 2016. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated and the Applicant herein was appointed as IRP on 03.09.2019 and the IRP caused public announcement calling for the claimants from the Creditors of the Corporate Debtor by virtue of publication dated 07.09.2019, and

subsequently, claims were filed by Financial Creditors and Operational Creditors but no claims received from the workers and employees, pursuant to that the CoC was constituted on 25.10.2019 and the 1st meeting of the CoC was held on 01.11.2019. Thereafter, the CoC resolved to appoint the Applicant as the Resolution Professional on 01.11.2019. Pursuant thereto, the applicant appointed 2 IBBI Registered Valuers on 08.11.2019 for valuation assets of the Corporate Debtor and from Form-H filed as per directions of this Tribunal, it is also evident that the fair value and the liquidation value of the Corporate debtor are as follows;

S. No	Particulars	Valuation Amount
1	Fair Value	67,34,809
2	Liquidation Value	50,65,477

2. It is also evident from the averments as averred in the Application that the Applicant has placed the draft Form – G and has sought approval for issue of Expression of Interest for inviting prospective resolution applicants. The applicant states that no-expression of interest was received. The COC members deliberated the issue and decided to pass Resolution for Liquidation of the Corporate Debtor, without going through the process of inviting Resolution Plan, with 100% voting shares at the 2nd COC meeting held on 27.12.2019 in consonance with the provisions of the section 33 (2) of the IBC, 2016 as amended by way of IBC (Amendment) Act, 2019. The CoC has also recommended the present RP to act as a

Liquidator. Accordingly, the Applicant has filed the present Application before this Authority under Section 33(2) of IBC, 2016 for the Liquidation of the Corporate Debtor.

4. Since, in the 2nd CoC meeting held on 27.12.2019, the Committee of Creditors has deliberated about the current affairs of the Corporate Debtor by taking into consideration the fact that the Corporate Debtor company is non-existing, non-operative and existing only on paper, by taking into consideration the provisions of Section 33 of IBC, 2016 and in the absence of any opposition to the Application from the Promoters of the Corporate Debtor and also guided by the decision of the Hon'ble Supreme Court in the matter of **Mr. K. Sasidharan -Vs- Indian Overseas Bank (2019) SCC OnLine SC 257** this Tribunal orders for the liquidation of the Corporate Debtor.

5. Learned Counsel for the Resolution Professional submitted that the resolution passed by the CoC approving the RP to act as a Liquidator is also extracted and that the written consent have also been filed on 04.03.2020, perusal of which shows that the RP has given a written consent by the signed letter dated 02.03.2020 to act as a Liquidator of the Corporate Debtor, if appointed by this Tribunal. In the circumstances, **Vengarai Seshadri Sowrirajan**, IBBI/IPA-002/IP-N00268/2017-2018/10781, is appointed as the Liquidator of

the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.



- f) 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.
- 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.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

6. The application stands **disposed of** with the aforesaid terms.

SD

[S. VIJAYARAGHAVAN]
Member (Technical)

SD

[R. VARADHARAJAN]
Member (Judicial)

TJS