

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

IA 61 of 2020

IN

CP (IB) 2979/MB/C-II/2018

Under Section 33 (2) of the Insolvency
and Bankruptcy Code, 2016

In the Application of

Mr. Saurabh Kumar Tikmani

Address: KPMG Restructuring Services
LLP, 1st Floor, Lodha Excelus, Apollos
Mills Compound, NM Joshi Marg,
Mahalaxmi, Mumbai – 400011.

...Applicant/ Resolution Professional

In the matter of

Bhavi Jewellers

...Operational Creditor

Versus

**Tribhovandas Bhimji Zaveri & Sons
Retail Private Limited**

...Corporate Debtor

Order Delivered on 31.05.2021

Coram:

Hon'ble Member (Judicial) : Mr. Harihar P. Chaturvedi

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

For the Applicant : Ms. Mehak Suri, Advocate.

For the Corporate Debtor : None

ORDER

1. The present application is moved by Resolution Professional **Mr. Saurabh Kumar Tikmani** (hereinafter called as “the Applicant”)

Under Section 33 of Insolvency and Bankruptcy Code, 2016 seeking direction of the Liquidation Process of the Corporate Debtor Tribhovandas Bhimji Zaveri & Sons Retail Private Limited (hereinafter called as the “Corporate Debtor”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

The Applicant Liquidator has prayed for grant of following reliefs:-

- i. Pass an order initiating the Liquidation of the Corporate Debtor.
- ii. Pass on order appointing Mr. Rahul Kavathekar as the Liquidator of the Corporate Debtor for the fee approved by the Corporate Debtor’s CoC; and/or
- iii. Pass any such other order(s) as this Hon’ble Tribunal may deem fit and proper in the interest of justice and equity.

BRIEF FACTS OF THE CASE:

2. The Corporate debtor was incorporated on 26th March 2015 as a Private Limited Company to undertake business of retailing of Jewellery and similar items.
3. On 16th December 2019, this Tribunal vide its order (Admission Order) admitted the Application for initiation of CIRP of the Corporate Debtor. The said application was filed by an Operational Creditor i.e. Bhavi Jewellers under Section 9 of IBC. Mr. Harshul Anilkant Shah was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor.

4. Pursuant to his appointment, the IRP published the public announcement in two leading newspapers inviting claims from the creditors of the Corporate Debtor and went on to constitute the Committee of Creditors of the Corporate Debtor (CoC). At the first meeting of the CoC, it was inter alia resolved that, pursuant to Section 22(2) of the IBC, the Applicant shall replace the IRP as the RP of the Corporate Debtor.
5. On 28th April 2020, this Tribunal vide its order (Appointment Order) allowed Axis Bank's application for appointment of Mr. Saurabh Kumar Tikmani as the RP of the Corporate Debtor. The said order was made available to the Applicant vide email on 7th May 2020 which is when the Applicant assumed the role of the Resolution Professional of the Corporate Debtor.
6. Pursuant to the Appointment Order, the Applicant assumed his responsibilities as the RP of the Corporate Debtor. The RP conducted the CIRP of the Corporate Debtor as per the terms of the IBC and in process inter alia, made several attempts for seeking information and custody of the assets of the Corporate Debtor from the erstwhile promoters/directors and management of the Corporate Debtor. However, RP's requests were met with non-cooperation from the erstwhile promoters/directors and management of the Corporate Debtor. Consequently, the RP filed an Application under Section 19(2) of the IBC with this Tribunal and the same is pending final adjudication.
7. From the limited information available, the RP noted that as per the last available audited financial statements of Financial Year

2017-18, the majority of assets of the Corporate Debtor were lying in the form of inventory. However, despite multiple efforts, the RP was unable to seek custody or information regarding the inventory of the Corporate Debtor. Since critical information on the assets of the Corporate Debtor was not available with the RP, the RP was unable to appoint valuers to ascertain the Liquidation value of the assets of the Corporate Debtor.

8. Whilst conducting the CIRP of the Corporate Debtor and given the lack of critical information on the assets of the Corporate Debtor along with non-cooperation of the management of the Corporate Debtor, the RP apprehended fraudulent diversion of the assets of the Corporate Debtor when it was functioning under the management and control of its erstwhile directors/promoters/management.
9. RP's apprehensions were supported by the findings of the Transaction Audit Report shared by the Transaction Auditor which was appointed by the RP as per the terms of the IBC to evaluate potential fraudulent, wrongful, undervalued, extortionate or preferential transactions undertaken by the Corporate Debtor when it was functioning under the management and control of its erstwhile directors/promoters/management. Consequently, the RP filed an application under Section 43 and 66 of the IBC with this Tribunal and the same is pending final adjudication.
10. Despite facing the aforesaid challenges, the RP in consultation with the CoC made best efforts in achieving Resolution of the Corporate Debtor. In this regard, the RP, inter alia, published an

invitation of Expression of Interest (EoI) in the prescribed Form G and engaged with various players in the industry to generate interest amongst potential Resolution Applicants. Due to efforts, the RP was in receipt of one EoI from “Kundan Care Products Limited”.

11. Pursuant to the receipt of EoI, the RP shared the Request For Resolution Plan (RFRP) and Information Memorandum (based on the limited information available with the RP) with the PRA as per the terms of the IBC and the Insolvency and Bankruptcy Board of India (Insolvency Resolution of Corporate Persons) Regulations, 2016 (CIRP Regulations).
12. However, due to lack of critical information on the assets of the Corporate Debtor and no clarity regarding the right to use of the trademark of the “Tribhovandas Zaveri Group” by the Corporate Debtor, the sole PRA did not submit a Resolution Plan. Consequently, no Resolution Plan was submitted in the CIRP of the Corporate Debtor.
13. In the aforesaid factual background and given that no Resolution Plan was received in the CIRP of the Corporate Debtor despite sincere efforts on part of the RP and Members of the CoC, the CoC in the Eighth Meeting noted that there is no likelihood of Resolution of the Corporate Debtor and decided to Liquidate the Corporate Debtor. The Resolution to Liquidate the Corporate Debtor was approved by way of 100% votes and the same is set out below.

RESOLVED THAT *pursuant to Section 33(2) of the Insolvency and*

Bankruptcy Code, 2016, the Committee of Creditors of Tribhovandas Bhimji Zarveri and Sons Retail Private Limited hereby resolves to liquidate the Corporate Debtor and directs the Resolution Professional to intimate the Adjudicating Authority of the decision of the Committee of Creditors.

RESOLVED FURTHER THAT *the Resolution Professional is further authorized to finalize the execute necessary documents and take all such actions, as may be required, from time to time, to give effect to this resolution.*

14. The Applicant further submits that in accordance with Regulation 39B of the CIRP Regulations, the CoC in consultation with the RP made best estimate of amount required to meet the liquidation costs and the value of liquid assets of the Corporate Debtor. In this regard, the CoC took note of the best estimate plan shared by the RP in the Eighth Meeting of the CoC.
15. The estimated CIRP costs (estimated till the passing of the order for initiation of Liquidation) and Liquidation costs is approximately Rs. 66 Lakhs. Additionally, the value of liquid assets available with the Corporate Debtor is about Rs. 94.7 Lakhs. Since, the value of liquid assets is greater than the estimated CIRP and Liquidation costs, the CoC is not required to approve a plan for providing contribution for meeting the CIRP costs and liquidation costs.
16. The Applicant humbly submits that the members of the CoC while deciding to Liquidate the Corporate Debtor in the Eighth Meeting of the CoC has also instructed the Applicant to urge this Tribunal

to kindly consider the suggestion of Mr. Rahul Kavathekar, having Insolvency Professional number IBBI/IPA-001/IPP---40/2017-18/10101 for the appointment as the Liquidator in the liquidation process of the Corporate Debtor. In that regard, the CoC has passed the following Resolution:-

RESOLVED THAT *the committee of creditors of Tribhovandas Bhimji Zaveri and Sons Retail Private Limited hereby resolves to suggest Mr. Rahul Kavathekar, having Insolvency Professional number IBBI/IPA-001/IPP---40/2017-18/10101, to be considered for the appointed as the Liquidator under Section 34 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 3 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.*

RESOLVED FURTHER THAT *the committee of creditors of Tribhovandas Bhimji Zaveri and Sons Retail Private Limited hereby directs the Resolution Professional to inform the Adjudicating Authority of the suggestion of the Committee of Creditors to consider Mr. Rahul Kavathekar, having Insolvency Professional number IBBI/IPA-001/IPP--40/2017-18/10101, for the appointment as the Liquidator under Section 34 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 3 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.*

RESOLVED FURTHER THAT *the resolution professional is further authorized to finalize, execute and file necessary documents and take all such actions, as may be required, from time to time, to give effect to this resolution.*

17. Additionally, the CoC also fixed the fee for the Liquidator as per Regulation 39D of the CIRP Regulations and passed the following Resolution.

RESOLVED THAT *pursuant to Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Committee of Creditors of Tribhovandas Bhimji Zaveri and Sons Retail Private Limited hereby fixes the fee payable (excluding taxes and out of pocket expenses) to the Liquidator as INR 50,000/- per month for (a) the period, if any used for compromise as arrangement under Section 230 of the Companies Act, 2013; (b) the period, if any, used for sale of the Corporate Debtor or business of the Corporate Debtor as a going concern; and (c) INR 50,000/- for the balance period of Liquidation.*

RESOLVED FURTHER THAT *the Resolution Professional is further authorized to finalize and execute necessary documents and take all such actions, as may be required, from time to time, to give effect to this Resolution.*

18. In addition to the above, Mr. Rahul Kavathekar has also provided his written consent to act as the Liquidator in the Liquidation process of the Corporate Debtor.
19. The Applicant submits that the Corporate Debtor has no on-going commercial operations and has no active employees as per information made available. No workmen or employee claim has been received in the CIRP of the Corporate Debtor. Accordingly, no prejudice is caused in the event an order for commencement of liquidation of the Corporate Debtor is passed by this Tribunal.

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20. The Applicant submits that the objective of the IBC is to ensure maximization of the Corporate Debtor's value for all the stakeholders. The Corporate Debtor's value will be further eroded if due steps are not taken for liquidation of its liquid assets. Therefore, the Applicant submits that it will be beneficial for all the stakeholders if the Corporate Debtor is liquidated. The Applicant further submits that the instant Application is made bona fide and for meeting ends of justice.
21. Considering above facts and circumstances, this Bench hereby Orders that:
- i. The Process of Liquidation of the Corporate Debtor **'Tribhovandas Bhimji Zaveri & Sons Retail Private Limited'** shall commence as per the Chapter III of the I&B Code from date of this Order.
 - ii. **Mr. Rahul Kavathekar, having IBBI Registration No: IBBI/IPA-001/IPP---40/2017-18/10101** is hereby appointed as a "Resolution Professional" as per the provisions of Sec. 33 of the I&B Code.
 - iii. **Other usual conditions to be added.**
 - iv. The Liquidator shall advertise in two Newspapers, one in English language and one in Regional Language about the Liquidation of the Corporate Debtor as per the provisions of the I&B Code.
 - v. Copy of this Order shall be forwarded to the Concerned Authority with which the Corporate Debtor is Registered.

22. This order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.
23. The fees payable to the Liquidator shall be in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.
24. The Liquidator shall submit progress reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016.
25. The Liquidator is at liberty to seek any directions, if need be, from this Adjudicating Authority during the Liquidation Process.
26. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
27. Ordered Accordingly. Application for U/s. 33 (1) (a) is Allowed and with the aforesaid observation the present IA No. 2406 of 2020 is stand disposed of.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

31.05.2021
Ankit/SAM

Sd/-

H. P. CHATURVEDI
MEMBER (JUDICIAL)