

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 4

IA(IBC)(LIQ.)/73 /2024 (NEW IA)in C.P. (IB)/1247(MB)2022

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 19.08.2024

NAME OF THE PARTIES: SONAL ENTERPRISES PRIVATE LIMITED
VS PAI KHOT INFRA PRIVATE LIMITED

Section 33(1) (b) (i) to (iii) r/w Sec 33(3)&9 of the Insolvency and
Bankruptcy Code, 2016

ORDER

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- 1) Mr. Nithish Bangera, Ld. Counsel for the Applicant/Interim Resolution Professional is present. Mr. Chintan Bhuvra, Ld. Counsel for the Suspended Board for Directors is also present.
- 2) **Leave Granted. Delay, if any, is Condoned.**
- 3) This is an Interlocutory Application filed by the Resolution Professional **Rakesh Kumar Tulsyan** under Section 33(1)(b)(i) to (iii) r/w Section 33(3) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against **Pai Khot Infra Private Limited**(Corporate Debtor).

4) The facts leading to the case in hand are as follows:



insolvency and Bankruptcy Board of India
Date... 05/09/2024 ... Time...
... 02/09/24 ... Dy. No. 254
Office No.

- a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated 27.10.2023 upon admission of a Company Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) and the Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the Function as mentioned under Insolvency and Bankruptcy Code, 2016.
- b. In compliance with Regulation 6 of IBBI (CIRP) 2016, a public announcement was issued in 2 newspapers. Copy of newspaper announcements is annexed and marked hereto as Exhibit B.
- c. The Applicant states that the Committee of Creditors was constituted which consists of the sole Operational Creditor viz. **Sonal Enterprises Private Limited**. Counsel for the Applicant submits that No claims have been received from the Financial Creditors and the Committee of Creditors does not consist of any Financial Creditors. The said submissions are noted.
- d. It is submitted that the Applicant herein was not confirmed as the Resolution Professional in the first meeting of Committee of Creditors held on 28.11.2023. It is also submitted that that the Applicant herein is acting as deemed Resolution Professional as per Regulation 17(2) of Corporate Insolvency Resolution Process Regulations since the



Resolution Professional has not been appointed after expiry of 40 days of Corporate Insolvency Resolution Process.

- e. It is submitted that the Applicant herein released an Expression of Interest (Eoi) in Form G inviting Resolution Plans from Prospective Resolution Applicants twice on 25.12.2023 and 01.02.2024. It is further submitted that one Prospective Resolution Applicant filed his Expression of Interest, but, failed to file the Resolution Plan on or before the last date for submission of Resolution Plan. Copy of the Expression of Interest (Eoi) published in the newspaper is annexed and marked hereto as **Exhibit D**.
- f. As no Prospective Resolution Applicants submitted their Resolution Plan for the Corporate Debtor, hence, the Committee of Creditors in its 6th Meeting held on 18.04.2024, unanimously approved to Liquidate the company. Copy of minutes of 6th Meeting which was held on 18.04.2024, is annexed and marked hereto as **Exhibit E**.
- g. In the said meeting, the Committee of Creditors decided to appoint Mr. Sunil Kumar Agrawal as Liquidator of the Corporate Debtor. Consent of Mr. Sunil Kumar Agrawal for being appointed as Liquidator is annexed and marked hereto as **Exhibit F**.

5) This Bench is vested with the powers to pass an order of Liquidation of the Corporate Debtor; since, no Resolution Plan could be brought forth and voted for and in the absence of any Resolution Plan on the table, the order



of liquidation shall be passed by this Adjudicating Authority under section 33 of the Code, which reads as under:

“(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.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)”.

6) It would further appear that the members of Committee of Creditors have resolved not to proceed any further, in these circumstances, in the matter of Corporate Insolvency Resolution Process of **Pai Khot Infra Private Limited.**



- 7) Further, Ld. Counsel for the Suspended Board of Directors intervened and opposed the present Interlocutory Application seeking Liquidation of the Corporate Debtor, contending that the Suspended Board of Directors are aggrieved by the irregularities committed by the Resolution Professional and the conduct of the Resolution Professional or the Committee of Creditors. However, this Bench noticed that if they are aggrieved by the irregularities of the Resolution Professional they could have approached the Insolvency and Bankruptcy Board of India, who can look into the conduct of the Resolution Professional. But, instead of approaching the appropriate forum, the Applicant is opposing the present Application, which this Bench found that at this stage their submissions sans merit. Nonetheless, it is not disputed that no resolution plan has been received and CoC has passed resolution seeking liquidation of Corporate Debtor. The Ld. Counsel for Intervenor has not placed on record any cogent reason to intervene.
- 8) In that view of the matter, this Authority has left with no option except to pass an order for Liquidation of the Company in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration and the Committee of Creditors does not foresee any possibility of getting Plans in another round also. Hence ordered.

ORDER



- a) The Interlocutory Application be and the same is allowed. The Corporate Debtor, **Pai Khot Infra Private Limited**, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) **Mr. Sunil Kumar Agrawal** having Registration No. **IBBI/IPA-002/IP-N00081/2017-18/10222** is appointed as Liquidator of **Pai Khot Infra Private Limited**.
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- g) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions



as may be notified by the Central Government in consultation with any financial sector regulator.

- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order 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.
- l) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to the **Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western**



Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor; and the Liquidator, Mr. Sunil Kumar Agrawal, having address E-205, LGF, Greater Kailash – II, New Delhi - 110048.

- 9) With the aforesaid observations and directions, the Interlocutory Application bearing IA (IBC)(Liq.) No. 73 of 2024, stands disposed of as Allowed.
- 10) There will, however, be no order as to costs.
- 11) Ordered Accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Vedant Kedare

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 29.08.2024

[Handwritten Signature]
29/08/2024

Deputy Registrar

National Company Law Tribunal Mumbai Bench

