

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

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IA No. 244 of 2021

in

C.P. (IB) No. 1661/MB/2018

An Application under Section 33 of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of National Company Law Tribunal, Rules, 2016.

Alkesh Rawka,
Resolution Professional for
Gourmet Renaissance Private Limited,
Reg. No: IBBI/IPA-001/IP-P01212/2018-19/11924,
C 402, Fortius, Space Olympia,
Sutgirni Chowk, Aurangabad - 431 005. ...Applicant

In the matter of

Deepak Advertisement & Marketing ...Financial Creditor

V/s

Gourmet Renaissance Private Limited ...Corporate Debtor

Date of Order: 05.08.2021

Coram:

Shri. Bhaskara Pantula Mohan, Hon'ble Acting President

Shri. Narendra Kumar Bhola, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr. Amit Tungare.

Per: Bhaskara Pantula Mohan, Hon'ble Acting President

ORDER

1. This is an application filed by the Resolution Professional Mr. Alkesh Rawka under Section 33 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule

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11 of the National Company Law Tribunal Rules 2016 for initiating Liquidation Process against the Gourmet Renaissance Private Limited (Corporate Debtor).

2. The facts leading to the Application are as under.
- a.—Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench vide order dated 11.03.2019 upon admission of a Petition under Section 9 of the Code and Mr. Naren Sheth was appointed as the Interim Resolution Professional (erstwhile IRP).
 - b. The erstwhile IRP made a public announcement on 12.03.2019 inviting claims from the creditors of the Corporate Debtor. After receipt of the claims, the erstwhile IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor.
 - c. The erstwhile IRP conducted the 1st meeting of CoC on 10.04.2019 wherein the CoC resolved to appoint the erstwhile IRP as the Resolution Professional (erstwhile RP). Copy of the said minutes is enclosed with the Application.
 - d. The CoC in its 3rd meeting held on 04.07.2019 resolved to appoint Mr. Alkesh Rawka (Applicant) as Resolution Professional (RP). Accordingly, the erstwhile RP filed an Application in MA No. 2434 of 2019 for appointing Applicant as RP of the Corporate Debtor by replacing erstwhile RP. The same was allowed by this Bench vide order dated 18.09.2019.
 - e. The CoC in its 4th meeting held on 07.09.2019 resolved to file an Application for extension of the CIRP Period for 90 days. Accordingly, the erstwhile RP filed an Application in MA No. 3077 of 2019 for extension of CIRP period. The same was allowed by this Bench vide order dated 18.09.2019 by extending the period of CIRP by 90 days.
 - f. The Applicant had issued Form-G on 19.11.2019, inviting expression of interest (EOI) from prospective resolution applicants (PRAs). Thereupon Applicant received only one EOI from Invent ARC Private Limited (PRA) on 02.12.2019.

Sd/-

- g. The Applicant submitted that after reviewing the financial statement it was found that the PRA does not fall under the eligibility criteria for submitting the Resolution Plan. Thereafter the Applicant requested CoC members to revise the eligibility criteria. Therefore, the CoC members approved the same and ratified the changes in the eligibility criteria in the 7th CoC meeting held on 18.12.2019.
- h. The applicant submitted that valuers and transaction auditor were appointed by the Applicant with the approval of CoC and appointment letters are annexed to the Application.
- i. The applicant submitted that he received a letter from the PRA for extension of time for submission of Resolution Plan. Therefore, in 8th CoC meeting held on 04.02.2020 decided to provide the time for submission of Resolution Plan till 11.02.2020 and in case plan not received within extended period then the Application for Liquidation will be processed.
- j. The Applicant filed an application in IA No. 581 of 2020 for exclusion of time period from the CIRP period. The same was allowed by this Bench vide order dated 27.02.2020 granting exclusion of 72 days and thereby the CIRP was ended on 03.04.2020.
- k. The CoC in its 9th extended meeting held on 12.10.2020 resolved to file an Application for exclusion of time from the CIRP Period due to Covid 19 Lockdown. Accordingly, applicant filed an Application in IA No. 2215 of 2020 and the same was allowed by this Bench vide order dated 07.01.2021 by granting the exclusion for 10 days from the date of order which ends on 17.01.2021.
3. The Applicant submitted that the plan was submitted by PRA on several times and last submitted on 15.01.2021 after all alterations/ modifications. Thereafter, the Applicant put the Resolution plan before the CoC in its 10th extended meeting held on 16.01.2021. After discussion, the CoC members rejected the plan submitted by the

Sd/-

PRA and resolved to proceed for liquidation of the Corporate Debtor as per provisions of the section 33 of the Code.

4. The resolution for liquidation was approved by the CoC with 98.77% voting shares in its 10th extended meeting and the said resolutions are as below:

“Resolution 1:

Resolved That Subject to the rejection of the resolution plan by the CoC members, the approval of members of Committee of Creditors be and is hereby accorded to proceed for Liquidation of Corporate Debtor pursuant to Section 33 of the Insolvency and Bankruptcy Code, 2016 on going concern basis pursuant to Regulation 39C of CIRP Regulations, 2016 that the liquidator may first explore the sale of Corporate Debtor as going concern.

Resolution 2:

Resolved That Pursuant to Section 34 of the Insolvency and Bankruptcy Code, 2016 as no consent has been given by existing resolution professional to act as a liquidator, the Committee of Creditors hereby recommends Ms. Vaishali Arun Patrikar having Registration No. IBBI/IPA/-002/IP-N00812/2019-2020/12566 to act as Liquidator of the Corporate Debtor.

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Resolution 5:

RESOLVED FURTHER THAT an Insolvency Professional proposed to be appointed as a Liquidator shall charge such fees for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the board.

Resolution 6:

RESOLVED THAT an amount of Rs. 25 Lakhs is estimated towards the estimated liquidation cost and fees of the liquidator in the event an order for liquidation is passed.”

5. Hence the Applicant came up with present application on 29.01.2021.

Sd/-

6. The Hon'ble Apex Court in **K. Sashidhar v. Indian Overseas Bank and Ors: (2019) 148 LA 497 (SC)** *inter alia* held that,

"The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33 (1) of I & B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors".

7. Section 33 of the Code reads as below:

"33. Initiation of Liquidation

- (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 [approved by not less than sixty-six per cent. of the voting share] 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).*

Sd/-

- (3) *Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) .*
- (4) *On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
- (5) *Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*
Provided that a suit or other legal proceeding may be instituted by the Liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.
- (6) *The provisions of sub-section (5) shall 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.*
- (7) *The order for liquidation under this section 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."*

8. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved with 99.78% voting share in favour of the liquidation of the Company. The Applicant RP has not given his consent to act as Liquidator. The CoC members recommends Ms. Vaishali Arun Patrikar to act as Liquidator of the Corporate Debtor. This Authority has no reason before it to take a contrary view in terms of Section 33(1)(a) of the

Sd/-

Code. Therefore, it has no option than to pass an order for liquidation of the Company in the manner laid down in Chapter III of the Code. Hence ordered.

ORDER

The application be and the same is allowed. Gourmet Renaissance Private limited shall be liquidated in the manner as laid down in Chapter-III of the Code with the following consequential directions:

- a) Ms. Vaishali Arun Patrikar having Registration No. IBBI/IPA/-002/IP-N00812/2019-2020/12566 to act as Liquidator of the Corporate Debtor.
- b) She shall issue public announcement stating that Corporate Debtor is in liquidation.
- c) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- d) Subject to section 52 of the IBC 2016 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.
- e) 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.
- f) 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 Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

Sd/-

- g) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- h) The Liquidator shall be entitled to such fees as may be specified in the Resolution 5 of the 10th extended CoC meeting held on 16.01.2021.
- i) 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.
- j) Copy of the Order shall be furnished to the IBBI, to the Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra, the Registered Office of the Corporate Debtor; and the Liquidator.

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Narendra Kumar Bhola
Member (Technical)

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Bhaskara Pantula Mohan
Acting President