

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

I.A. 2436 OF 2023

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Mr. Ravi Bagri

Resolution Professional/
...Applicant

Vs.

India Infoline Finance Limited & others
...Respondent

In the matter of

C.P.(IB) No. 2948/MB/2019

Bank of India

Operational Creditor

Vs.

Way 2 Health Diagnostics Private Limited

Corporate Debtor

Order delivered on: 28.06.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant/RP

: Mr. Kunal Kanungo a/w
Ms. Tanushree Sogani and
Mr. Atishay Jain, Advocates

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The above application I.A. No. 2436/2023 is filed on 11.05.2023 by Mr. Ravi Bagri, (hereinafter referred to as the “Applicant”) seeking liquidation of Way 2 Health Diagnostic Private Limited (hereinafter referred to as the “Corporate Debtor”) under Section 33 (1) of the Insolvency and Code, 2016 (hereinafter called as “the Code”).
2. The brief facts of the application are as follows:
 - 2.1 The Applicant mentions that this Tribunal vide its order dated 20.12.2019 in Company Petition No. 2948/IBC/MB/2019 admitted the petition under Section 7 of the Code, filed by Bank of India (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against the Corporate Debtor. Mr. Kamal Kishor Gurnani, was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal. The Applicant was later appointed as Resolution Professional (RP) in the Fourth CoC meeting held on 20.04.2020, which was approved by this Tribunal vide order dated 09.06.2020.
 - 2.2 Ld. Counsel for the Applicant submits that FORM-G was published on 03.03.2020, 18.03.2020, 30.03.2020, 14.05.2020, 20.05.2020 and 27.08.2020. However, due to

sudden outbreak of Covid-19 pandemic, CoC members had discussed to keep the last date of submission of EoI as 15 days from the date of cessation of the nationwide lockdown.

- 2.3 Pursuant to publication of Form G, the Applicant shared the final list of Prospective Resolution Applicants (PRAs) vide email dated 13.07.2020.
- a. Ruby Ailcare Services Private Limited;
 - b. Manish Tadreja & Rachna Tandreja (Promoters of Corporate Debtor); and
 - c. Sai Shree Super speciality Hospital.
- 2.4 Subsequently, in the 9th CoC meeting dated 19.08.2020, the Applicant apprised the members to CoC that the last date of filing of Resolution Plan was 16.08.2020. However, no resolution plan was submitted by the PRAs till then. Therefore, the CoC approved to publish publication of new Form-G on 27.08.2020 wherein the last date of filing the Resolution Plan was 26.10.2020. Pursuant to publication of fresh Form-G, the Applicant was received 6 EoIs, the same was informed to the members of CoC in 10th CoC meeting.
- 2.5 Thereafter, in the 11th CoC meeting dated 08.10.2020, it was discussed and agreed between the members that in view of Covid 19 pandemic, the request of Resolution Plan was

modified to the extent that the EMD amounting to Rs.5 lacs could be deposited along with the Resolution Plan.

- 2.6 The Applicant has received two Resolution Plans from M/s Endurix Solutions Private Limited and M/s Care Multispeciality Hospital. The Prospective Resolution Applicants wanted to do physical verification of the machineries and required the title deeds of the machineries even when it was categorically informed to them that the Applicant does not have copies of the invoices other than the invoices which were provided to the secured creditors. Thus, via email dated 19.07.2021 and 20.07.2021, the PRAs, expressed his unwillingness to proceed with submission of revised resolution plan. Since, no resolution could be achieved and the 330th day of the CIRP of the Corporate Debtor was 23.07.2021, the Applicant advised the CoC to consider liquidating the Corporate Debtor as the process had to be completed within the timelines stipulated under the Code.
- 2.7 Thereafter, in 22nd CoC on 26.07.2022, it was informed to the members of CoC that despite providing several opportunities to the PRAs for submitting revised Resolution Plans, no revised resolution plans were submitted. Therefore, resolution for liquidation was put up for voting by the Applicant. Consequently, resolution regarding estimated

liquidation cost etc. It is imperative to point out that apart from Omkara Asset Reconstruction Pvt. Ltd. having 42.79% voting share, no other CoC member voted in favour of the liquidation of the Corporate Debtor. The agendas for commencement of liquidation proceedings and appointment of liquidator were rejected due to lack of requisite majority of 66% and 51% respectively.

- 2.8 Even after providing more than reasonable time to PRAs, no Resolution Plan could be put to vote. Since the CIR period was over on 23.07.2021, the Applicant informed the CoC members through email dated 06.01.2023 that due to non-approval of the Resolution Plan, the Applicant would proceed with filing of the Application under Section 33 of the Code seeking commencement of the liquidation proceedings.
- 2.9 The Applicant has also submitted that there was no further extension in CIR period after expiry of extended and excluded period, which was allowed by this Tribunal vide order dated 10.07.2021. Further, there is deadlock in the CoC accordingly, the decision could not be arrived at as to the future course of action by the requisite majority despite his best efforts.
- 2.10 The Applicant has made all members of the CoC as a respondent to the present application.

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3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, this bench is of the considered opinion that the Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016, in view of expiry of extended CIRP period on 15.09.2021 without any resolution plan having been approved by CoC. At this juncture this Bench notices that neither the Applicant/RP nor the CoC took any step to approach this Tribunal for liquidation of the Corporate Debtor immediately after 15.09.2021. Further, none of these brought this fact to the notice of this Tribunal prior to filing of present application, which came to be filed on 11.05.2023.

ORDER

4. The above I.A. No. 2436/2023 is allowed and the Corporate Debtor Way 2 Health Diagnostics Private Limited is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.
- a. **Mr. Kanhaiya Maheshwari**, having Registration No. IBBI/IPA-001/IP-P01291/2018-19/12005, Kanhaiya_maheshwarica@yahoo.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. 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.

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- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- h. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the

Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

- i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.
- j. With the above directions, the I.A. No.2436/2023 filed u/s33 (1) by the applicant is hereby allowed and disposed of.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)