IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-103
IB-421/ND/2019
(1)New IA/4943/2020
(2) New IA/5610/2020

IN THE MATTER OF:
Sumukhi Sales Pvt Ltd ....**Applicant**
V/s
YM Foodways Pvt Ltd ....**Respondent**

SECTION
U/s SEC.9 IBC

Order delivered on 04.02.2021

CORAM:
SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the Applicant : Mr. Satya Prakash- RP
For the Respondent :

ORDER

As Per Sh. K.K. Vohra, Member (T)

IA/4943/2020

1. The Counsel for the RP was asked some clarifications. The share capital of the Corporate Debtor (CD) had been Rs. 1.0 lakh (Page 100 of the petition) while the reserve and surplus were negative Rs.18.5 crore as on 31.03.2020 as against negative reserve and surplus of Rs. 6.14 crore as of 31.03.19. Ld. Counsel for the RP replied that increase of Rs.12 crore approx was due to demand raised by the Income Tax Department during the year 2019-2020. The CD had revenue from operations of Rs. 2.93 crore during 2019-20 as against Rs. 237 crores during 2018-19. Other

income of Rs 55.86 crore during 2018-19 (Note 14, Pg 106) represented 'Advance forfeited' of Rs 15.53 crore and 'Liability no longer required to pay' of Rs 40.11 crore. During 2019-20, CD made a provision of Rs 13.66 crore named as 'Provision relating to prior period', resulting in loss of Rs 12.36 cr during 2019-20 as against profit of Rs 7.75 cr during 2018-19 (Pg 101).

IA 5610/2020 u/s 66 (fraudulent trading) in this case is pending before this Court.

2. Further, Ld. Counsel was informed that liquidation is generally the last resort and it may affect the employment of many people (farmers suppliers of milk) and whether there is any scope of keeping the Company as a going concern. Ld. Counsel replied that the CD had been supplying milk to company called Kwality which has also gone into liquidation; hence, their entire business is stopped and there is no other buyer for this product. CoC had invited Expression of Interest but did not find any response. Ld Counsel concluded that there is no other alternative but to liquidate. Liquidator can still explore possibility to liquidate CD as a going concern under Regulation 32A of IBBI (Liquidation Process) Regulations, 2016.

-Sd-

(K.K. VOHRA)
MEMBER (T)

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
सत्यमेव जयते
नई दिल्ली बेंच
New Delhi Bench

Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

As Per Sh. Abni Ranjan Kumar Sinha, Member (J)

IA/4943/2020

3. I have had the opportunity to go through the order dictated by the Hon'ble Member (T), in addition to that, I would like to add the following:-
4. By filing this application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with relevant Regulations of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and IBBI (Liquidation Process) Regulations, 2016, the applicant/ Resolution Professional prayed for liquidation of Corporate Debtor i.e. Y M Foodways Private Limited.
5. The facts mentioned in the application in short is that the CIRP against the Corporate Debtor was commenced vide order dated 21.11.2019 passed in CP (IB) No. 421/ND2019 and ***Mr. Amit Kaushal having registration as IBBI/IPA-002-IP-N00041/2016-17/10080*** was appointed as IRP.
6. Further, the IRP has constituted CoC on 12.12.2019 consisting only Operational Creditors and accordingly, filed copy of report on Constitution of CoC attached as Annexure-B before this Bench
7. Further, the IRP was appointed as Resolution Professional in 1st CoC meeting held on 20.12.2019 and confirmed by this Bench vide its order dated 15.01.2020.
8. Further, the RP has invited expression of interest from public at large by publication of Form G in newspapers in newspapers on 18.02.2020 in Financial Express in English and Jansatta in Hindi and by submitting with IBBI.
9. Further, the CoC in its meeting dated 17.02.2020 has resolved to replace Mr. Amit Kaushal and appoint Mr. Satya Prakash IP Registration No. IBBI/IPA-002/IP-N00906/2019-2020/12920 as Resolution Professional

for the Corporate Debtor and accordingly confirmed by this Hon'ble Bench vide its order dated 27.02.2020

10. Further, in response to the publication of Form G, the Resolution Professional has received 3 queries through email on 03.03.2020, and accordingly, required information were supplied to them, however, thereafter there was no responses received from any of them and no resolution plan received by the RP.

11. Further, the RP sent notice alongwith agenda on 21.08.2020 for 4th CoC meeting to be held on 25.08.2020 to decide further course of action.

12. Further, in 4th CoC meeting held on 25.08.2020, it was noted by CoC that Form G had already been published but no resolution plan had been received till date. CoC considered the current status as explained by RP and also discussed about possible options but could not find any way to save Corporate Debtor from liquidation.

13. Further thereafter CoC members with 100% voting approved the resolution for liquidation under Section 33(2) of the IBC, 2016 of the Corporate Debtor in its 4th CoC meeting held on 25.08.2020 and also approved the resolution of Mr. Satya Prakash, Resolution Professional to act as liquidator in the matter. Copy of status report as filed on 01.09.2020 before Hon'ble Bench and order dated 23.10.2020 as passed

14. Further, the Financial Statements of the Corporate Debtor for the financial year ended March 31, 2020 were signed on 28.10.2020 by the Suspended Directors, Statutory Auditors and by Resolution Professional solely for discharging the power of Board of Directors of the company, which has been conferred upon him in term Section 17 of the Code,

15. We have heard the Ld. Counsel for RP and perused the averments made in the application.

16. Ld. Counsel for the RP submitted that the CoC in its 4th meeting dated 25.08.2020, which is running from 64 to 80 of the paper book has resolved to liquidate the Corporate Debtor by 100% voting.

17. He further submitted that the relevant resolution is at page 77 as Item No. 18 of the Resolutions in which the CoC held that ***"Resolved that pursuant to Section 33 of the Insolvency and Bankruptcy Code, 2016 the liquidation process of the CD is hereby approved"*** and further held that ***"Further resolved that Satya Prakash, Resolution Professional of the Corporate Debtor be and is hereby authorized to do all such acts, deeds and things as may be required to give effect to the above mentioned resolution".***

18. He further submitted that at Agenda No. 21 which is at page 79 of the paper book, the CoC further resolved that "***Chairman informed to the CoC, that there is no Resolution Plan received so far and no assets etc. are therein in the CD, accordingly only one resort is left to file application for liquidation and dissolution of the CD.***

Keeping in view facts and circumstances, CoC deliberated the matter in detail and passed the following resolution with 100% voting rights.

Resolved that Mr. Satya Prakash the Resolution Professional be and is hereby appointed as liquidator in the matter".

19. He further submitted that the consent letter of the liquidator was placed before the CoC but it is not enclosed with the application.

20. Before the considering the submissions, we would like to quote Section 33 (1) and (2) of the IBC, 2016 under which the present application has been filed and the same is quoted below:-

33. (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 1[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).

2[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

21. When we shall read Section 33(1) and (2) together then we notice that in view of Section 33(1) Clause (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 of the IBC, 2016, if no resolution plan is received under Section 30(6) or if the plan is received that is rejected under Section 31(1) for the non-compliance of the requirements specified therein, in that case the Adjudicating Authority shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter.

22. We further notice that under Sub Section 2 of Section 33, 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) of Section 33 of the IBC.

23. In the light of that provision, when we consider the prayer of the applicant then we notice that in this matter, the RP has not received any Resolution Plan and the CoC by 100% voting resolved to liquidate the Corporate Debtor and we also notice that the CoC has also resolved to appoint to RP as a liquidator, who has given his consent and in the circumstances, there being no other alternative, so, this Adjudicating Authority is inclined to accept the recommendation/Resolution of the CoC and pass the liquidation order of the Corporate Debtor.

24. For the reasons discussed above, we have no option but to allow the application. Accordingly, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Ablaze Info Solutions Private Limited in the manner as laid down in the Chapter III of Part II of the Insolvency

and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions :

A. Mr. Satya Prakash IP Registration No. IBBI/IPA-002/IP-N00906/2019-2020/12920 is appointed as Liquidator.

B. The Liquidator shall issuing a public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations 2016.

C. The order of moratorium passed under Section 14 of the IBC, 2016 and fresh moratorium under Section 33(5) of the IBC shall commence.

D. The order for liquidation under this Section shall be deemed to be notice of discharge to the officer, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor continued during the liquidation process by the liquidator as per Section 33(7) of the IBC, 2016.

E. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the under valued preferential transactions if any

F. No suit or other legal proceedings shall be instituted by or against the corporate debtor save and except the liberty to the liquidator to institute suit or other legal proceedings on behalf of the corporate debtor with prior approval of the Adjudicating Authority.

G. The Order of liquidation shall not stands as an obstacle before any investigation initiated against the Corporate Debtor by ED under the prevention of Money Laundering Act, 2002.

H. Further if any asset is/are recovered due to the attachment/release of the assets during any of the investigation or otherwise, which belongs to the Corporate Debtor, the same shall form part of the liquidation step to the Corporate Debtor.

National Company Law Tribunal
New Delhi Bench

I. The liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date as per Regulation 13 of the IBBI (Liquidation Process) Regulation 2016.

25. Registry is directed to communicate the copy of this order to the CoC, Corporate Debtor and the Liquidator i.e. Mr. Satya Prakash IP Registration No. IBBI/IPA-002/IP-N00906/2019-2020/12920 at the earliest but not later than seven days from today.
26. Copy of the order be sent by the Registry as well as Liquidator to the Registrar of Companies and NCT of Delhi and Haryana for uploading the master data and after updating the master data, RoC shall send the compliance report to the Registrar, NCLT, New Delhi within the period of 30 days.
27. Copy of the order be sent by the Registry as well as Liquidator to IBBI or any authority which is required under the Law.

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

IA/5610/2020:-

Issue notice upon the respondent by all modes including on the email Id of the respondent as well as through the process of the Bench. Affidavit of service must be filed within one week from today. List on **18.03.2021.**

Sd/-

(K.K. VOHRA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
नई दिल्ली बेंच
New Delhi Bench

10.2.2021
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003