

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA (IB) No.751/KB/2020
In
CP (IB) No.1582/KB/2019**

In the matter of:

An application under section 33 of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

P.M. Cold Storage Private Limited

Having its registered office at: -
1A, Madan Mohan Burman street
Kolkata – 700007, West Bengal

...Financial Creditor

Versus

Goouksheer Farm Fresh Private Limited

Having its registered office at: -
39, Sambhunath Pandit Street
Kolkata – 700025, West Bengal

...Corporate Debtor

And

In the matter of:

Sanjeev Kumar Jhunjhunwala

Resolution Professional of
Goouksheer Farm Fresh Private Limited

Having his registered office at: -
Siddha Weston, 9, Weston Street
Suite No.134, 1st Floor
Kolkata – 700013, West Bengal

...Applicant

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Appearances (through video conference):

For the Applicant	:	1. Mr. Shaunak Mitra, Advocate 2. Ms. Shreya Choudhary, Advocate 3. Mr. Sanjeev Jhunjhunwala, RP in person
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Date of hearing: 01.09.2021
Date of pronouncement of Order: 14.09.2021

ORDER

Per Harish Chander Suri, Member (Technical)

1. This court convened *via* video conference today.
2. **IA (IB) No.751/KB/2020** is an application filed by Mr. Sanjeev Kumar Jhunjhunwala, Resolution Professional (RP) of Goouksheer Farm Fresh Private Limited (the Corporate Debtor) praying for liquidation of the Corporate Debtor on the ground that no Resolution Plan had been received by the Committee of Creditor (CoC).
3. This application was heard and reserved for orders on 01.09.2021. However, upon perusal of records, it was found that an application bearing **IA (IB) No.525/KB/2020** was filed by the Financial Creditor against the RP's decision of admitting the claim of another Financial Creditor namely, New Hind Silk House P. Ltd., and including the new creditor in the CoC as a member.
4. It was submitted in that application that the inclusion of New Hind Silk House P. Ltd. as a Financial Creditor was not legal and proper for it was time-barred. It was prayed that the claim of New Hind Silk House P. Ltd. be rejected on the aforesaid ground. This Adjudicating Authority, *vide* a detailed order dated 17.06.2020, dismissed the said application.
5. It is further seen from the record that an appeal bearing **Company Appeal (AT) (Insolvency) No.615 of 2020** was preferred against the order of this Adjudicating Authority dated 17.06.2020.
6. On careful consideration of the issue involved, the following serious points seek answer: -
 - a. When the entire CoC is under challenge, then how can liquidation take place in furtherance of a resolution mainly approved by New Hind Silk House P. Ltd.?

- b. When the avoidance application against the creditors is pending and the Corporate Debtor has no asset, then what is there to be liquidated?
 - c. When the Resolution Professional has encashed the only asset and has still not refunded the amount, then there is no substantial asset for liquidation.
 - d. When there are orders previously passed by this Bench which have not been challenged before the Hon'ble NCLAT, can the Corporate Debtor be liquidated by the same Bench?
 - e. If the liquidator liquidates and gives money to New Hind Silk House P. Ltd., then would New Hind Silk House P. Ltd. ever refund it if the appeal is allowed by NCLAT?
 - f. Should this Bench ignore the interim orders passed on 15.09.2020, and whether doing the same would not be violative of principles of law?
7. Since the inclusion of a member into the CoC is under challenge, once this application for liquidation, *i.e.* **IA (IB) No. 751/KB/2020**, is allowed and the Corporate Debtor is liquidated, the very purpose of the challenge to the order of this Adjudicating Authority dated 17.06.2020 will fail.
8. Therefore, since the appeal is against an order of this Adjudicating Authority that affects the very constitution of the CoC, this Adjudicating Authority on various occasions *viz.*, 08.10.2020, 17.11.2020, 13.01.2021 and 23.03.2021 had adjourned the present application *i.e.* **IA (IB) No. 751/KB/2020**, awaiting the results of the Appeal.
9. However, on 01.09.2021, when the present application was taken up for hearing and it was reserved for orders, the fact that the said appeal was pending, was not brought to the notice of this Adjudicating Authority.
10. If this application is allowed and the Corporate Debtor is sent into liquidation, the purpose of the said appeal will be defeated. The judicial propriety, therefore,

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demands that the outcome of the appeal be awaited before the Corporate Debtor is sent into liquidation.

11. We are, therefore, not inclined towards considering the present application at this stage.
12. Let the **IA (IB) No. 751/KB/2020** be listed on 26.10.2021 for further consideration.
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Id. Counsel for information and for taking necessary steps.
14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

14.09.2021

SR(LRA)