

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

**IA(IBC)/77/KOB/2021
in
IBA/17/KOB/2020**

(Under Section 33(2) of Insolvency and Bankruptcy Code, 2016

Order delivered on 16th June 2021

Coram:

**Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
Hon'ble Shri Satya Ranjan Prasad, Member (Technical)**

Applicant:

**K.T.Mathew,
Interim Resolution Professional,
In the matter of M/s Moonriver Resorts Private Limited,
Residing at Kuruvanthanath, Kolani PO
Thodupuzha,-685608, Kerala.**

In the matter of

Urvashi Dilip Kamath & Others ... Financial Creditors

Versus

M/s Moonriver Resorts Private LimitedCorporate Debtor

Parties/Counsel present (through video conference)

Counsel for the applicant / RP : Shri K.T.Mathew, IP in person

This IA has been filed under Section 33(2) of Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of M/s Moonriver Resorts Private Limited, seeking the following reliefs:

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- (a) Pass an order to liquidate the company under Section 33(2) of the Insolvency and Bankruptcy Code for liquidation of the company,
- (b) To appoint the Resolution professional as Liquidator of the Corporate Debtor under Section 34; and
- (c) Pass any other order or orders that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts are that the application IBA/17/KOB/2020 filed by Mr. Urvashi Dilip Kamath and others, under Section 7 of the IBC read with Rule 4 of IB (AAA) Rules, 2016 was admitted by this Tribunal on 9th October 2020 and the applicant herein has been appointed as the Interim Resolution Professional. It is stated that under Section 22(1) of IBC the first meeting of the Committee of Creditors (for short CoC) was held on 12.11.2020. Two valuers have also been appointed within the prescribed time period. The 2nd COC was conducted on 11th December, 2020. The audit of the company was pending from 2016, no registered office is working as per MCA, no employees are employed and that the construction work of the resort project was stalled due to stop memo from the Government. Since the audit was pending, information memorandum was made available to CoC with available information,. It is further stated that the IRP was not able to trace out any records on visit of the so called registered office, hence he could not take control of the business records. However, he obtained the bank account details and updated bank transaction records which are available with the auditors, Third CoC was conducted on 29th December, 2020 in which it was resolved to form opinion only on obtaining the audited financial statements.. That CoC also approved to issue EOI and accordingly Form G was published on 31.12.2020 but no expression of interest was received. The 4th and 5th CoCs were held on 3.2.2021 and decided to issue fresh Form G. Even though fresh Form G

was issued, no EOI was received thereafter. The 6th CoC held on 25th March 2021 decided to form an opinion whether to reissue EOI. As per the rules, the closure of CIRP was 13.4.2021. However the IRP has not received any EOI even though repeated attempts were made. The financial creditor Federal Bank was of the opinion that since already three times EOI was invited, there is no point in issuing further Form G, instead they suggested to sell the company as a going concern under liquidation and recommended for liquidation of the company. The Federal Bank also informed that they are ready to meet the liquidation costs which will be about 3 to 5 lakhs. With regard to the fee of the Liquidator, it was decided to fix the fee payable to the liquidator if an order for liquidation is passed under Section 33. It was decided to provide the fee under Section 4(b) Schedule as per the percentage of the fee on the amount realizes and distributes and the Interim Resolution Professional agreed for the same and informed his willingness to continue as Liquidator of the company.

3. Since in the resolution passed by the Committee of Creditors, the proposed name of Liquidator has not been indicated, this Tribunal vide order dated 24.4.2021 directed the Resolution Professional to convene one more CoC Meeting and produce a fresh resolution of CoC indicating clearly the name of the Liquidator to be appointed in the matter. The Resolution Professional filed a Memo enclosing the Resolution of 7th CoC held on 3rd May, 2021.

4. We have heard the learned Resolution Professional, who appeared in person through video conferencing and had gone through the records placed on record. The learned Interim Resolution Professional has clearly stated in his application the reasons for seeking a direction for liquidation of the Corporate Debtor. The Interim Resolution Professional has produced the 6th and 7th CoC

resolutions. In the 6th meeting of the COC it was resolved with 100% voting right to liquidate the Corporate Debtor M/s Moonriver Resorts Private Limited and in the 7th CoC it was resolved to appoint the Interim Resolution Professional Shri K.T. Mathew as the Liquidator.

5. In this respect, it is relevant to reproduce Section 33(2) of the Insolvency and Bankruptcy Code, which is as under:

“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 percent 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).”

6. From a reading of the above provision, it is clear that when a Resolution Professional at any time during the CIRP but before confirmation of Resolution Plan approaches the Adjudicating Authority with the decision of the COC approved by not less than sixty six percent of the voting share, the Adjudicating Authority shall pass a liquidation order. In this case the CoC with 100% voting right approved the resolution for liquidation of the Corporate Debtor. Hence this is a fit case to order liquidation under Section 33(2) of the IBC, 2016.

7, For the aforesaid reasons, IA 77/KOB/2021 is allowed with the following order:

ORDER

- (i) The Corporate Debtor M/s. Moonriver Resorts Private Limited is hereby put under liquidation with immediate effect under Section 33(2) of IBC, 2016.

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- (ii) The Interim Resolution Professional Shri K.T. Mathew, BBI/IPA-001/IP-P-01522/2019-2020/12464 of M/s Moonriver Resorts Private Limited , residing at Kuruvanthanath, Kolani PO, Thodupuzha-685608, Kerala, State, India is hereby appointed as Liquidator of the Corporate Debtor.
- (iii) The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

Dated this the 16th day of June, 2021.

Sd/-

(Satya Ranjan Prasad)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)