

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

IA No. 173 of 2021 in  
CP (IB) 3942/MB/2019

Under Section 60(5) of the I&B Code, 2016  
In the matter of

Wood Preservers Private Limited

...Operational Creditor

v/s

LB Industries Private Limited

....Corporate Debtor

IA No. 173 of 2021 in  
CP (IB) 3942/MB/2019

In the matter of

Fanendra H. Munot Ltd.

... Applicant

Order reserved on: 06.12.2021

Order Pronounced on: 20.01.2022

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Mr. Kunal Chheda, Advocate.

*Per: Suchitra Kanuparthi, Member (J)*

ORDER

1. This is an application filed by the Resolution Professional seeking liquidation of Corporate Debtor.
2. The Corporate Debtor was admitted into CIRP on 19.11.2019 and the Interim Resolution Professional was appointed. The IRP issued Public

notice inviting claims and then constituted the CoC. The members of Coc are as under:

Sr No.	Name of the Financial Creditor	Amount of claim accepted by the RP (Rs. In Crores)	Percentage
1	Union Bank of India	85.85	92.25%
2	Yes Bank	5.56	5.98%
3	IDFC First Bank Ltd	0.42	0.45%
4	RBL Bank	0.40	0.42%
5	Tata Capital finance Services Ltd	0.32	0.34%
6	Indiabulls Consumer Finance Ltd	0.29	0.32%
7	Magma Fincrop Ltd	0.22	0.24%
	Total	93.06	100%

3. The Applicant pointed out that the advertisement for invitation of Expression of Interest was made and time for EOI was extended twice. The Erstwhile IRP was replaced and Applicant was appointed vide order dated 18.05.2020.
4. The CIRP period of 180 days was concluding on 26.05.2020. However due to lockdown imposed by Central Government, the lock down period was required to be excluded. After exclusion of the lock down period, the period of 180 days, the CIRP period was due to conclude on 09.11.2020.
5. The Applicant further submitted that no resolution plans were received except one from the promoter Mr Jaidev Panchmatia. The plan was put forward to COC for consideration on 03.10.2020 and the same was rejected by COC. The same was discussed in the 8th COC

meeting on 09.11.2020. The COC members resolved in favour of liquidation.

6. The Applicant further pointed out that that he has diligently performed all the duties as Sec65 of the Code and that the present application of liquidation is filed after completion of CIRP period. The COC has approved the Applicant to continue as liquidator.
7. In the seventh CoC meeting dated 30.09.2020, it was discussed that Corporate Debtor was termed as fraud and willful defaulter by UNION BANK OF INDIA and hence should not be permitted to submit the Resolution Plan.

*“3. To consider resolution plan submitted by Mr. Jaidev Panchamatia and to take appropriate action in this regard:*

*The resolution plan, submitted by Mr. Jaidev Panchamatia, was laid before the Committee for its consideration. The Committee considered the same.*

*Authorized Representative of the Union Bank raised a query about eligibility of the Resolution Applicant. He stated that Mr. Jaidev Panchamatia is a connected person in terms of Section 29A of Insolvency and Bankruptcy Code, 2016. He further stated that the CD is classified as Fraud and Wilful defaulter.*

*The chairman suggested to take a due diligence report to check the eligibility of the Resolution applicant. On this, the Authorized Representative of the Union Bank said that there no need of due diligence report in this case.*

*After discussion, it was decided that the RP will check the eligibility of the Resolution applicant and inform the same to Committee.*

Note: There was no obligation to communicate separately to the Applicant.

8. In the Eight CoC meeting the Resolution Plan by Jaidev Panchamatia was not approved and it was resolved that the Corporate Debtor should be liquidated and since period of lock down was excluded there was no need for an extension. The minutes captured the discussions of COC as follows:

“B.

1. *To take approval of the committee to file an application with the NCLT Mumbai Bench for liquidation of the Corporate Debtor:*

*Chairman apprised the Committee that he has not received any resolution plan for the Corporate Debtor, except the Resolution Plan submitted by its Promoter. He informed that the Union Bank of India has classified the Corporate Debtor’s account as Fraud and Wilful Defaulter and suggested the Liquidation of the Corporate Debtor. Considering the same it was recommended that the Corporate Debtor should be liquidated to pay off its liabilities.”*

“C.

1. *Disapproval of Resolution Plan submitted by Mr. Jaidev Panchamatia Promoter of the CD:*

*Mr. Jaidev Panchamatia, suspended Director of the CD, stated that he has not received any communication from the Committee members regarding disapproval of Resolution Plan submitted by him. Chairman said that the minutes of previous meeting, which contain the discussion and decision of disapproval of resolution plan, are already shared with him. Authorised representative of the Union Bank of India added that there is no need to send a separate communication for disapproval of the Resolution Plan, as the minutes of previous meeting are already shared.”*

9. The Applicant pointed out that the Resolution for liquidation in Eight CoC meeting was approved with 100% votes. Further Mr. Fanendra Harakchand Munot the Resolution Professional IBBI/IPA-001/IP-0515/2017-18/10916 was proposed to be liquidator and consent has been attached. The resolution passed by COC is reproduced below:

*“RESOLVED THAT approval of the Committee is accorded for recommending liquidation of the Corporate Debtor”.*

*FURTHER RESOLVED THAT Mr. Fanendra Munot, the Resolution Professional of Corporate Debtor, be and is hereby authorized to take the necessary steps to file the said Application with the NCLT, Mumbai Bench to obtain its approval for the same.”*

*“RESOLVED THAT name of Mr. Fanendra Munot, the Resolution Professional, be and is hereby recommended as a Liquidator of the Corporate Debtor at a remuneration of Rs. 2 Lakhs (excluding GST) per month plus Out of pocket expenses. FURTHER RESOLVED THAT necessary steps to be taken to obtain approval of the NCLT for the same.”*

10. There are no major assets left in the company. The only assets being scrap items of inventory having no significant market value.
11. This Bench is satisfied with the reasons that the only Resolution Plan received from the promoter of Corporate Debtor was rejected as the Corporate Debtor was declared as willful defaulter, the ground that no major assets are left in the company and lastly that COC with 100% voting has approved to liquidate the Corporate Debtor, this bench allows the IA No. 173 of 2021 and orders liquidation of Corporate Debtor.
12. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted

before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;

- a) 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.
- b) that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c) all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- d) 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.
- e) that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- f) 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.
- g) This liquidation order shall be a deemed to be 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.

13. IA No. 173 of 2021 is **allowed** and disposed of with above directions.

Sd/-

Anuradha Sanjay Bhatia  
Member (Technical)

sd/-

Suchitra Kanuparthi  
Member (Judicial)