

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 207
(IB)-3383(ND)2019
IA-2358/2021

IN THE MATTER OF:

Corporation Bank

... **Applicant/Petitioner**

Versus

M/s. Sainov Spirits Pvt. Ltd.

... **Respondent**

Under Section: 7 of IBC, 2016 (Liq.)

Order delivered on 18.05.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. L. N. GUPTA
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Aditi Sharma for PRA/Zest Green Pvt. Ltd.
For the RP : Adv. Abhishek Anand, Adv. Mohak Sharma, Adv. Sajal Jain, Adv. Supriyo Banerjee

ORDER

IA-2358/2021: The prayers made in the captioned application reads thus:

- “a) Allow the present application, and*
(b) Pass an order under Section 33 (1)(a) of the Insolvency and Bankruptcy Code, 2016 to liquidate the Corporate Debtor,
(c) Consequentially, pass an order for appointment of Applicant i.e. Mr. Ashok Kumar Gupta, Insolvency Professional (having registration no. IBBI/IPA-003/IP-N00010/2016-17/10072) as the Liquidator of the Corporate Debtor for conducting the Liquidation of the Corporate Debtor and permit the Liquidator to invite Scheme of Compromise and arrangement under Section 230 of the Companies Act, 2013 in terms of Regulation 2B of the Liquidation Process Regulations, 2016 as decided by the Committee of Creditors for 90 days; and
(d) Allow the Liquidator to sell the Corporate Debtor as a going concern in terms of Regulation 32 of the Liquidation Process Regulations, 2016 as resolved by the Committee of Creditors in the 11th meeting.”

As has been provided in Section 33(2) of IBC 2016, where the Resolution Professional at any time during the Corporate Insolvency Resolution Process but before confirmation of the resolution plan intimates the Adjudicating Authority of the decision of the Committee of Creditors for liquidation of the

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CD, the Adjudicating Authority shall pass the liquidation order as referred to in sub-clause (i), (ii) & (iii) of Clause (b) of Section 33 (1) and Section 33 (2) of IBC, 2016 (ibid), which reads thus:

“33. Initiation of liquidation:-

(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 fasttrack 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 [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.”

In the present case, the RP has filed the captioned application enclosing therewith the resolution dated 24.04.2021 passed by the CoC with a 100%

voting share resolving to liquidate the CD. The relevant excerpts of the resolution on page No. 179 read thus:

RESOLUTION No. 1

Sr. No.	Resolution	Union Bank	SBI	Result
1	Resolved that Sainov Spirits Private Limited (Corporate Debtor) be liquidated under provision of Insolvency & Bankruptcy Code 2016. Resolved further that Resolution Professional (existing or proposed as the case may be) is authorized to file application for Liquidation of Corporate Debtor under section 33 of Insolvency & Bankruptcy code, 2016.	Yes	Yes	Resolution passed by 100% voting

The Resolution No. 1 approved by 100% voting Share by CoC against required 66% as under :

“Resolved that Sainov Spirits Private Limited (Corporate Debtor) be liquidated under provision of Insolvency & Bankruptcy Code 2016.

Resolved further that Resolution Professional (existing or proposed as the case may be) is authorized to file application for Liquidation of Corporate Debtor under section 33 of Insolvency & Bankruptcy code, 2016. ”.

Accordingly, as per the resolution of COC, the CD namely, Sainov Spirits Private Limited is ordered to be liquidated and Mr. Ashok Kumar Gupta, Insolvency Professional (having Registration No. IBBI/IPA-003/IP-N00010/2016-17/10072) (E-mail ID: cmaashokgupta@gmail.com) is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following directions, inter alia:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other extant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him;
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. Regarding the officers/ employees and workmen of the Corporate Debtor, in view of the provisions of Section 33(7) of IBC, 2016, the present order shall be deemed to be a notice of discharge of their service. Nevertheless, if they find the CD as on-going concern, it would be open to them to make appropriate application before this adjudicating authority;
- c) The Liquidator shall continue to / investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like

transactions including fraudulent transactions and file suitable application before this Adjudicating Authority;

d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;

e) In terms of the provisions of Section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation;

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Such other or further reports as are required to be filed under the relevant Regulations, shall also be duly filed by him before this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that the fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

With this, the present IA stands allowed.

-Sd -

(L. N. GUPTA)
MEMBER (T)

-Sd -

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)