

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

IA No. 1126 of 2020

in

C.P. (IB) No. 464/MB/2017

Interlocutory Application under Section 33 (As Amended) of the
Insolvency and Bankruptcy Code, 2016

Kshitiz Gupta,

Resolution Professional of

M/s Planet M Retail Limited,

Registration No.: **IBBI/IPA-002/IP-N00721/2018-19/12140**

Flat No C/104, Lotus CHSL, Gundecha Valley of flowers,

Thakur Village, Kandivali East, Mumbai- 400101

E-mail: **kshitiz.ca@gmail.com, cirp.planetm@gmail.com**

...Applicant

In the matter of

M/s Black Pearl Hotels Private Limited

...Operational Creditor

V/s

M/s Planet M Retail Limited

...Corporate Debtor

Order delivered on 04.10.2023

CORAM:

Hon'ble Member (Judicial): SH. Justice Virendrasingh Bisht (Retd.)

Hon'ble Member (Technical): SH. Prabhat Kumar

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Appearance:

For the Applicant : Mr. Ajinkya Kurdukar, Advocate

Per : **Justice V.G. Bisht, Member, (Judicial)**

ORDER

- 1) This is an Interlocutory Application filed by the Resolution Professional (Deemed) **Kshitiz Gupta** under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against **M/s Planet M Retail Limited** (Corporate Debtor).
- 2) The facts leading to the case in hand are as follows:
 - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated **25.06.2019** upon admission of a Company Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) and the Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor qua the Corporate Insolvency Resolution Process of the Corporate Debtor.
 - b. It is submitted that following the same order of the Bench appointing **Mr. Kshitiz Gupta**, the Applicant herein as the Interim resolution Professional of the Corporate Debtor to carry out the Function as mentioned under Insolvency and Bankruptcy Code, 2016.
 - c. The Applicant further states that the Committee of Creditors was constituted on July 18, 2019. The 5th Meeting of the Committee

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of Creditors was held on **04.03.2020**, on which date, the members of the Committee of Creditors passed a resolution to Liquidate the Assets of the Company i.e. the Corporate Debtor

- d. The Applicant further states that, during the said meeting, the CoC did not approve the appointment of the Applicant as the 'Liquidator' nor did the members of the CoC propose the name of any Liquidator to give effect to the resolution and conduct the process of liquidation. However, the Applicant being eligible to be appointed as the Liquidator, offers himself for the appointment and to act as the Liquidator of the Corporate Debtor.
 - e. The Applicant states that the Applicant has so far performed his duties as the Deemed Resolution Professional and discharged his functions as under the provisions of the Code.
 - f. Applicant herein has also prepared a detailed closure report with respect to the Corporate Insolvency Resolution Process of the Corporate Debtor detailing out the entire functions and activities performed by the RP since the commencement of CIRP till the filing of this Application. The said Report is annexed to the present Interlocutory Application as "**Annexure - A2**".
- 3) Applicant submits that the Applicant has made all his efforts to sought cooperation from the Directors, the key managerial persons of the Corporate Debtor; however, he was never provided with co-operation by the Directors, Promoters and the Key managerial persons of the Corporate Debtor. The Applicant further states that this non-cooperation is persisting as on the date of filing of the present Interlocutory

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Application even after pronouncement of directions of this Bench upon an Interlocutory Application under section 19(2) of the Code.

- 4) To buttress his argument, the Applicant submits that this Bench is vested with the powers to pass an order of Liquidation of the Corporate Debtor; since, no Resolution Plan could be brought forth and voted for and in the absence of any Resolution Plan on the table, the order of liquidation shall be passed by this Adjudicating Authority under section 33 of the Code, which reads as under:

“(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.

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(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 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)”.

- 5) The Applicant, after due consent of the Committee of Creditors, had published 3 Form G i.e. invitation for Expression of Interest; however, despite several enquiries no resolution applicant successfully submitted a Resolution Plan for the Corporate Debtor. Pursuant to the same the matter was discussed at length by the members of the Committee of Creditors during its 4th and 5th meeting.
- 6) The Applicant states that the Applicant has till date discharged his duties as the Deemed Resolution professional. The Applicant states that there are certain CIRP costs incurred by the Applicant during the period of the CIRP which are still unpaid. The Applicant further states that the Applicant cannot even recover the said costs entirely from the resources available with the Corporate Debtor. The Applicant additionally states that members of the CoC have not contributed towards the infusion of funds being the cost involved for continuing the CIRP.
- 7) Further, the COC members did not approve a liquidation plan pursuant to regulation 39B of Insolvency and Bankruptcy Board of India (CIRP regulations), 2016 wherein the COC was required to decide on the manner in which the liquidation costs should be funded. The COC, which

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is being formed of the **Operational Creditors**, did not decide to contribute to the liquidation costs.

- 8) It would further appear that the members of CoC does not want to proceed in the matter of Corporate Insolvency Resolution Process of **M/s Planet M Retail Limited** in accordance with provisions of the IBC, 2016.
- 9) Further, the matter was listed on Board on 12.09.2023, on which date Ld. Counsel for the Applicant submits that the Bench may consider to appoint any Insolvency Professional as the Liquidator of the Corporate Debtor because as per the new circular of Insolvency and Bankruptcy Board of India, incumbent Resolution Professional cannot be continued as the Liquidator of the Corporate Debtor.
- 10) This Authority has left with no option except to pass an order for liquidation of the Company in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration and CoC does not foresee any possibility of getting Plans in another round also. Hence ordered.

ORDER

- a) The Application be and the same is allowed. The Corporate Debtor, **M/s Planet M Retail Limited**, shall be liquidated in the manner as laid down in Chapter-III of the Code.

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- b) **Mr. Amit Chandrasekhar Poddar** having Registration No. **IBBI/IPA-001/IP-P00449/2017-18/10792** is appointed as Liquidator of **M/s Planet M Retail Limited**.
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- g) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- l) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to the **Insolvency and Bankruptcy Board of India, New Delhi; Regional Director**

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(Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor; and the Liquidator, Mr. Amit Chandrasekhar Poddar, having E-mail ID amitpoddar.ca@gmail.com.

- 11) With the aforesaid observations and directions, the Interlocutory Application bearing **IA No. 1126 of 2020**, stands disposed of as Allowed.
- 12) There would however be no order as to costs. Ordered Accordingly.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Vedant Kedare