

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

**I.A. No. 3637 of 2023
In
C.P. No. 712 of 2022**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

**I. A. No. 3637 of 2023
Primus Insolvency Resolution
& Valuation Private Ltd.**

....Applicant/
Resolution Professional

In the matter of
DMI Finance Private Limited

.... *Financial Creditor*

vs.

**Kandivali Balaji Investment
Private Limited**

.... *Corporate Debtor*

Order Dated: 19.12.2023

Coram:

Hon'ble Reeta Kohli, Member (Judicial)
Hon'ble Madhu Sinha, Member (Technical)

Appearance in Physical Mode/VC Mode/Hybrid Mode:

For the Applicant/Resolution Professional: Adv Nandita Bajpai (PH)

ORDER

Per: Ms. Madhu Sinha, Member (Technical)

1. This is an Application filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as the Code) by the Applicant who is also the Resolution Professional (RP) of the Corporate Debtor seeking the following reliefs:-
 - a. *Admit and allow this present Application;*
 - b. *Pass an order directing the initiation of liquidation process against the Corporate Debtor in accordance with Chapter III of part II of the Code;*
 - c. *Appoint Primus Insolvency Resolution and Valuation Pvt. Ltd. having IP Registration Number IBBI/IPE-0072/IPA-2/2022-23/50002 as the liquidator of the Corporate debtor in accordance with Section 34 of the Code; and*
 - d. *Pass such other order(s) and/or direction(s) in the interest of justice which this Hon'ble Tribunal deems fit.*
2. **The Brief facts of the Applicant are as follows:**
 - i. The Applicant submitted that the Corporate Debtor is presently undergoing Corporate Insolvency Resolution Process (CIRP) with effect from 10.11.2022 as per the order of this Hon'ble Tribunal. The aforementioned order appointed Mr. Sanjay Gupta, having Registration No. IBBI/IPA-002/IPN00982C01/2017-2018/10354 as Interim Resolution Professional (IRP) of the Corporate Debtor.
 - ii. The IRP issued Public Announcement in accordance with Section 15 of the Code and Regulation 6 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate

Persons) Regulations 2016 dated 12.11.2022 in two newspapers namely Business Standard (English) and Nav Shakti (Marathi) at Delhi and Mumbai Edition.

- iii. In pursuance of the aforementioned Public Announcement, the IRP admitted total claims of Rs. 1,11,88,61,621/- which was filed by DMI Finance Private Limited. After collation of the aforementioned claims received against the Corporate Debtor and determination of the financial position of the Corporate Debtor, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 03.12.2022. An Interlocutory Application (IA) bearing no. 52 of 2023 under Regulation 17 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 was allowed by this Hon'ble Tribunal vide an order dated 05.01.2023 took the Constitution of CoC on record of this Hon'ble Tribunal.
- iv. The first CoC Meeting was conducted by the IRP on 09.12.2022 in which the CoC resolved to replace the IRP with appointment of the Applicant as the RP and the same was allowed by this Hon'ble Tribunal through an order dated 30.01.2023 in IA No. 345 of 2023.
- v. The IRP filed an Interlocutory Application No. 27 of 2023 under Section 19(2) of the Code which is pending before this Hon'ble Tribunal. This Application was filed against the erstwhile management/promoters of Corporate Debtor to seek their co-operation for obtaining documents and information pertaining to the Corporate Debtor.
- vi. The Applicant further submitted that on 07.01.2023, the IRP admitted another claim of Rs. 14,32,36,909/- filed by the City Cooperative Bank Limited, another financial creditor of the Corporate Debtor. Accordingly, the CoC was reconstituted and IA 800 of 2023 intimating this Hon'ble Tribunal about the reconstitution of CoC was allowed vide an order dated 18.05.2023.
- vii. The Applicant further submitted that the IRP conducted the second CoC Meeting on 07.01.2023 in which a search report

conducted on 54 shops at “Golden Trade Centre Co-operative Housing Society limited” which were assets of the Corporate Debtor were purportedly sold to various parties and an agreement to sell has been entered in the name of some third party by the Corporate Debtor between 2019-2022. The CoC was further informed that the Corporate Debtor had been selling the shops since 2019 and the last transaction as per the search report is for May 2022.

- viii. In the third CoC Meeting conducted by the IRP on 27.01.2023, the CoC approved the appointment for conducting Forensic Audit (Transactional Audit) for 5 years to determine avoidance and fraudulent transactions, if any, under the provisions of the Code.
- ix. In the fourth CoC Meeting conducted by the Applicant/RP on 12.02.2023, it came to the knowledge of the Applicant that some of the shops owned by the Corporate debtor had been given on rent. However, on further investigation and inquiry it came to light that the rent agreement of these shops expired in August 2022 yet the erstwhile promoters of the Corporate Debtor had been collecting rent through an employee of the Corporate Debtor. In this regard, the Applicant registered a complaint with the police and subsequently filed an IA bearing No. 890 of 2023 under Section 66 of the Code. However, vide order dated 09.11.2023 this IA was disposed as withdrawn with permission to file a better one.
- x. Form G as per the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 was published on 15.02.2023 by the Applicant and then subsequently extended on 03.03.2023 and 27.03.2023 for 15 days for inviting Expression of Interests (EOIs) from various Prospective Resolution Applicants (PRA's). however, there were no queries or EOIs received from any party or investor until the last date for the receipt of the EOI, which was, 10.04.2023 or till date.
- xi. The fifth CoC Meeting was conducted by the Applicant on 14.04.2023.

- xii. In pursuance of the abovementioned non-receipt of any EOI or inquiry pertaining to the resolution plans for the Corporate Debtor, the CoC in its sixth meeting conducted by the Applicant on 01.05.2023 resolved to initiate liquidation proceedings against the Corporate Debtor. The CoC in this meeting also resolved to appoint the Applicant as the Liquidator of the Corporate Debtor.
 - xiii. The Applicant further submitted that in accordance with the provisions of this Code and the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the CoC in their second Meeting dated 07.01.2023 had resolved to appoint registered valuers for valuing Securities and Financial Assets, Plant & Machinery and Land and Building.
 - xiv. It is also submitted by the Applicant that the members of the CoC had been time and again updated on the CIRP of the Corporate Debtor through the six meetings.
3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, the Counsel for the Applicant submits that no EOI and Resolution Plan has been received and since the Corporate debtor is not operational and does not have assets that can be realised as observed from the Minutes of the sixth CoC Meeting, there is no option except to put the Corporate Debtor Company into Liquidation as per the Code. It is observed from the minutes of the 6th CoC meeting that the CoC with required mandate has approved to liquidate the Corporate Debtor in view of their not getting any Expression of Interest and Resolution Plan. This Tribunal has very limited judicial review in such matters of commercial wisdom Therefore there is no option except to allow the above Liquidation Application. This Bench, therefore feels this is a fit case for ordering Liquidation of Corporate Debtor. The CoC in its sixth meeting dated 01.05.2023 resolved to appoint the Applicant as the Liquidator of the Corporate Debtor. However, in compliance with the IBBI Circular dated 18.07.2023

which provides that the Resolution Professional of the Corporate Debtor cannot act as its Liquidator this bench hereby appoints Rajneesh Jaiswal having IP Registration Number IBBI/IPA-001/IP-P-02739/2022-2023/14252 as Liquidator to carry on the process of Liquidation of the Corporate Debtor. Accordingly, the above Interlocutory Application Number 3637 of 2023 is **allowed** directing the Liquidation of the Corporate Debtor. Accordingly, we pass the following:

ORDER

- a. The above I.A. No. 3637 of 2023 is allowed and the Corporate Debtor **Kandivali Balaji Investment Private Limited** is ordered to be liquidated.
- b. Rajneesh Jaiswal having IP Registration Number IBBI/IPA-001/IP-P-02739/2022- 2023/14252, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees as per table mentioned in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator is appointed under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

- f. 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.
- g. 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.
- h. 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.
- i. This liquidation order shall be deemed to be a 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.
- j. Interlocutory Application No. 27 of 2023 under section 19(2) of the Code is pending and will be heard as per the listing dates. It will be perused by the Resolution Professional.

With the above directions, this application i.e. I.A. No. 3637 of 2023 is hereby allowed and disposed of.

**MADHU SINHA
MEMBER (TECHNICAL)**

**REETA KOHLI
MEMBER (JUDICIAL)**

//VLM//