



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 5762/2022

IN

Company Petition No. (IB) – 2661/ND/2019

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions.

In the matter of:

M/s HBN Dairies and Allied Limited

.... Financial Creditors

VERSUS

M/s Vikram Buildcon and Developers Pvt. Ltd.

.... Corporate Debtor

And in the matter of

Mr. Pawan Garg

Resolution Professional of CD

Having Office at

C-154, Sector 51,

Noida, UP- 201301

...Applicant



CORAM:

SHRI BACHU VENKAT BALRAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant: Adv. Gautam Kumar

ORDER

PER- BACHU VENKAT BALRAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 28.02.2023

1. This is an application filed by the Resolution Professional, Mr. Pawan Garg, under Section 33(2) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC, 2016/Code") for issuance of directions for liquidation of Corporate Debtor, M/s. Vikram Buildcon and Developers Pvt. Ltd.
2. The facts in brief stated in the application is as under: -
 - I. That, an application under section 7 of IBC, 2016 was filed by the HBN Dairies and Allied Limited (Hereinafter referred to as "Financial Creditor/ FC") for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor i.e. M/s Vikram Buildcon and Developers Pvt. Ltd.



which was admitted by this Hon'ble Tribunal vide order dated 12.01.2022 and the applicant i.e. Mr. Pawan Garg was appointed as Interim Resolution Professional in the matter.

- II. That, in the First CoC meeting, the Interim Resolution Professional was confirmed as Resolution Professional with 100% voting share by Committee of Creditors (hereinafter referred to as "CoC") in the 1st CoC meeting held on 25.03.2022. The appointment was confirmed by Tribunal vide order dated 05.04.2022.
- III. That, the RP has not received any records/ details of the assets of the Corporate Debtor. The RP has also filed an application before this Tribunal under section 19(2) & 19(3) of the Code against the suspended management in IA- 1640/2022.
- IV. That, some of the assets which have been identified by the RP from other sources are still under the process of being verified and further some assets are under attachment order by SEBI and the matter relating to de-attachment of properties is pending before the Hon'ble Supreme Court for its adjudication.
- V. That as per Regulation 36A(1) of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, an advertisement providing brief particulars of the invitation for expression of Interest in Form G is required to be published by RP for inviting Prospective Resolution



Applicant to submit their Expression of Interest for revival of business of CD. However, after considering the matter relating to release of assts by SEBI pending adjudication before the Hon'ble SC, the CoC decided to defer the proposed resolution relating to publication of Form G.

VI. The CoC in the 5th meeting held on 01.11.2022 with 100% voting share decided to liquidate the Corporate Debtor and propose the Resolution Professional to act as Liquidator in the matter in terms of provision of IBC and authorized the Applicant i.e. Resolution Professional to move an appropriate application before the Tribunal for initiation of liquidation process of the Corporate Debtor. The extract of the resolution of 5th COC meeting passed is as below

- a) *“RESOLVED THAT, that consent of the CoC be and is hereby accorded for initiation of liquidation process of Viraman Buildcon and Developers Private Limited (“Corporate Debtor”). RESOLVED FURTHER THAT in accordance with section 33(2) of the IBC, Resolution Professional be and is hereby authorised to file an application before the Adjudicating Authority for initiation of liquidation process of the Corporate Debtor.*
- b) *RESOLVED FURTHER THAT as required under Regulation 39B of CIRP Regulations, the CoC took note of the estimated liquidation cost amounting to Rs. 3.27 Crore and noted that most of the cost is dependent on de-attachment of assets by SEBI.*

RESOLVED FURTHER THAT considering that the Corporate Debtor do not have any liquid assets, the liquidation cost, as may be required shall be contributed by the Financial Creditors in accordance with Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process)



- Regulations, 2016.*
- c) *RESOLVED FURTHER THAT as required under Regulation 39BA of CIRP Regulations, considering the fact that the assets of the Corporate Debtor are under attachment by SEBI and the matter (SLP no. 13678/2019, tiled as SEBI vs Rohit Sehgal and Civil Appeal no.5709/2019 titled as SEBI vs Rohit Sehgal) is pending before the Hon'ble Supreme Court for adjudication, the CoC resolves not to explore compromise or arrangement as referred to under sub - regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.*
- d) *RESOLVED FURTHER THAT as required under Regulation 39C of CIRP Regulations, considering the fact that the assets of the Corporate Debtor are under attachment by SEBI and the matter (SLP no. 13678/2019, tiled as SEBI vs Rohit Sehgal and Civil Appeal no.5709/2019 titled as SEBI vs Rohit Sehgal) is pending before the Hon'ble Supreme Court for adjudication, the CoC resolves not to recommend to the liquidator to first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof.*
- e) *RESOLVED FURTHER THAT in accordance with provisions of the Code and applicable Regulations issued under the Code, Mr. Pawan Garg, an Insolvency Professional (Registration No. IBBI/IPA-002/IP-N01011/2020-21/13267) and resolution professional in the matter of CIRP of the Corporate Debtor, being eligible and having given his consent to act as Liquidator, be and is hereby proposed as Liquidator in the matter of Liquidation of Viraman Buildcon Developers Private Limited ("Corporate Debtor").*
- f) *RESOLVED FURTHER THAT as required under Regulation 39D of CIRP Regulations, the Liquidator's fee as a percentage of the amount realised net of other liquidation costs (excluding Liquidator's Fee), and of the amount distributed, as provided in Regulation 4(2)(b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 be and is hereby approved.*
- RESOLVED FURTHER THAT considering the assets are*



currently under attachment and not available for sale / realization, for the purpose of determining applicable percentage for calculating the Liquidator fee, the period of six months, twelve months etc. shall be calculated separately for each asset and the period shall start from the date such asset is available for sale / realization.

RESOLVED FURTHER THAT the fee is exclusive of applicable GST and / or similar taxes, travel expenses, fee payable to professionals like valuers / advocates etc. expenses like publication of public announcement / notices, expenses for conducting SCC meetings, and other incidentals expenses incurred during the Liquidation process.

VII. That pursuant to the above stated facts and circumstances, the Applicant has preferred the present application for passing the order of Liquidation of the Corporate Debtor in terms of provisions enumerated under Section 33(2) of the IB Code, 2016 and appoints the Resolution Professional i.e. Mr. Pawan Garg as Liquidator in the matter.

3. This Tribunal has gone through the application filed by the applicant / Resolution Professional, the present application is filed under section 33(2) of the Insolvency and Bankruptcy Code, the relevant extract of the section is reproduced as under: -

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Section 33: Initiation of liquidation.

33. (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.

(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).

[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.]



4. In the matter of Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT) :MANU/NL/0788/2022 the Hon'ble NCLAT in para 7 stated as under: -

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken***



for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.

5. The CoC has expressed its opinion in the 5th CoC meeting held on 01.11.2022 that some of the assets which have been identified by the RP from other sources like from HBN Dairy, Statutory Auditors etc. are still being verified and further some assets are under attachment by SEBI and the matter relating to de-attachment of properties is pending before the Hon'ble Supreme Court for adjudication. The land in Raipur has been auctioned by the Local Administration of Raipur, Chhattisgarh in gross violation of law and order of the Hon'ble Supreme Court. It was further noted that due to these reasons, the process of inviting the resolution plan and publishing for Form G could not be started and CoC felt the best option is to file an application u/s 33(2) of the IBC for liquidation.
6. It is well settled that decision taken by CoC for liquidation in



commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority. In the present situation extension of time will only result in unnecessary expenses. Further the resolution for liquidation of CD was approved by COC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC.

7. In light of the above, the application is **allowed** by ordering liquidation of the corporate debtor, namely M/s Vikram Buildcon and Developers Private Limited with following directions:
 - a. That Mr. Pawan Garg, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
 - b. That Mr. Pawan Garg, holding Registration No. IBBI/IPA-002/IP-N01011/2020-2021/13267 is appointed as the Liquidator in terms of Section 32(1) of the Code;
 - c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
 - d. 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;

e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.

h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

i. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the



liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

j. Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary steps;

k. The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.

I.A 5762/2022 filed in CP(IB) 2661/ND/2019 is disposed of in terms of the aforesaid terms

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(BACHU VENKAT BALRAM DAS)
MEMBER (JUDICIAL)