

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 7

IA (I.B.C)/5757/2023 In C.P. (IB)/4071(MB)2018

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 22.12.2023

NAME OF THE PARTIES: **Cushman & Wakefield India Pvt Ltd VS**
Sharan Hospitality Pvt Ltd

Section 9 of the Insolvency & Bankruptcy Code, 2016

ORDER

IA No. 5757/2023 –

First Call : -

1. Mr. Shyam Kapadia, Advocate appeared through virtual hearing for the Applicant.
2. At the Request of Counsel appearing for the Applicant, matter is kept back.

Second Call : -

1. Mr. Shyam Kapadia, Advocate appeared through virtual hearing for the Applicant.
2. The present application is filed by Axis Bank Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking change/replacement of the Mr. Amit Chandrasekhar Poddar as the liquidator.
3. It is submitted that vide order dated 22.11.2023 in IA No. 1290/2023 directing liquidation of the Corporate Debtor, Mr. Amit Chandasekhar

Poddar was appointed as liquidator. The Applicant in its application seeking liquidation of the Corporate Debtor did not propose any name of an Insolvency Professional to act as liquidator of the Corporate Debtor as it was desirous that the erstwhile Resolution Professional/monitoring agent would continue the assignment of liquidator.

4. We find that the Applicant is one of the Secured Financial Creditor, who is sole CoC Member as well and has insisted upon appointment of Erstwhile Resolution professional as the Liquidator. We find that the continuation of the Resolution Professional as Liquidator is against the advisory issued by the IBBI in the interest of Creditors only. The relevant extract from the communication no. Liq-12011/214/2023-IBBI/840 dated 18.07.2023 is reproduced as is below:

2. Section 34(4)(b) inter-alia provides that the AA shall replace the RP if the Board recommends the replacement for reasons to be recorded. During the review of performance of processes under the Code, it has been found that there is a meagre 4% average realisation against the admitted claims during the liquidation process whereas in Corporate Insolvency) Resolution Process (CIRP) the average realisation is 32% against the admitted claims during CIRP. This necessitated for fresh perspective in the liquidation process and replacement of RP to act as liquidator. This subject has been considered by the Board and it is considered that AA may appoint a new IP as liquidator due to the following reasons:

(i) The IBC has been introduced with larger economic goals to revive the distressed viable CDs to convert non-performing assets as performing promote employment, entrepreneurship. and credit by valuing capital invested in the project rather than selling in bits and pieces or recovery mechanism. The prime objective of the Code is resolution. Accordingly. in cases where the CD has not been successfully resolved or resolution plan has been failed, IP who has been assigned to conduct the resolution process of the CD. may not be recommended to continue to act as liquidator.

(ii) The Code creates an ecosystem for maximisation of the value of assets of a Non-revival of the CD through CIRP adversely impacts

on its value. Value is usually dependent on the time taken to resolve the insolvency since it erodes over time and rapidly once the insolvency proceedings commence. Therefore, any delay in the insolvency resolution process may make reorganisation of the CD difficult and would induce liquidation, thereby destruction of value for the stakeholders. Thus, an independent IP needs to be entrusted to conduct the Liquidation process of the CL) for value maximisation while also ensuring the transparency and complete independence in two separate assignments.

(iii) The Code envisages CIRP and liquidation as two distinct processes with distinct roles and responsibilities. Thus, an IP undertakes the two different assignments as RP and Liquidator, separately. Segregating the dual role of an IP in the same CD as RP and liquidator will Foster an inbuilt system of check and balance in the process, thereby enhancing the accountability of each job and strengthening stakeholder's trust in the processes under the Code. Further, it would eliminate any perverse incentives, whatsoever, available with RP in deliberately pushing the CD towards liquidation and secure next assignment on ex-ante basis.

3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b), recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth.

5. Pursuant to the above advisory this Bench had appointed an Insolvency Professional as Liquidator from IBBI Panel. We find that the Stakeholder Committee is yet to be constituted.
6. On verification of credential of proposed Insolvency Professional, we find that he does not have valid AFA. The screenshot of IBBI web page is as follows.

Name of the IP	Mr. Mahender Kumar Khandelwal
Registration no	IBBI/IPA-001/IP-P00033/2016-2017/10086
Date of Registration	29-Mar-17
Member of IPA	Indian Institute of Insolvency Professionals of ICAI
Member of IPE	
Email id	Khandelwalmahendar2[at]gmail[dot]com
Address	B-2A, Sunny Valley C.G.H.S., Dwarka, Sector 12 ,New Delhi,National Capital Territory of Delhi ,110078
Have Valid AFA	No
AFA Certificate No.	NA
AFA Valid Upto	NA
Total CPE Earned	60
Total Assignments	19

7. In view of above, we do not find any merit in the application of Applicant.

8. Accordingly, **IA No. 5757/2023** is **dismissed**.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Sapna