

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

IA No. 2528 of 2021

in

C.P. (IB) No. 2336/MB/2018

**Interlocutory Application under Section 33 (1) of the Insolvency and
Bankruptcy Code, 2016 read with applicable provisions of the Insolvency
& Bankruptcy Board of India (Insolvency Resolution Process for
Corporate Persons) Regulations, 2016**

Manoj Kumar,

Resolution Professional of

M/s. Chuo Senko Advertising India Private Limited,

Registration No.: **IBBI/IPA-001/IP-P01653/2019-20/12535**

C- 305, ATS Advantage, Indirapuram, Ghaziabad,

Uttar Pradesh- 201 104

...Applicant

In the matter of

M/s. Sixth Sense Inc.

...Operational Creditor

V/s

M/s. Chuo Senko Advertising India

Private Limited

...Corporate Debtor

Order delivered on 17.10.2023

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CORAM:

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

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

Appearance:

For the Applicant : Mr. Avinash Khanolkar, Advocate

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

ORDER

- 1) This is an Interlocutory Application filed by the Resolution Professional **Manoj Kumar** under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against **M/s. Chuo Senko Advertising India Private Limited** (Corporate Debtor).
- 2) The brief 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 **24.09.2019** upon admission of a Company Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) and one **Mr. Deepak Kumar Agarwal** was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor.

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- b. It is however submitted that the said Order came to the knowledge of the IRP only on 10.10.2019, when the said Order got uploaded on the Official Website.
- c. Pursuant to the said Admission Order, the IRP made a public announcement in two Newspapers namely Free Press Journal and Nav Shakti of the Mumbai on 13.10.2019, as the registered office of the Corporate Debtor is in Mumbai.
- d. It is however submitted that the IRP received an only claim by the Original Petitioner and no other Stakeholder, till date, filed a claim either with the IRP or with the Applicant.
- e. Since, there were no claims by any Financial Creditors, IRP formed a Committee of Creditors of the Corporate Debtor only consisted of the Operational Creditor i.e. Original Petitioner with 100% voting share with it. Further, the IRP called a first meeting of the CoC on 09.11.2019. In the said meeting the CoC confirmed the IRP as Resolution Professional (RP) of the Corporate Debtor to carry out the CIRP.
- f. Further, it is submitted that during the month of November 2019 to January 2020, the RP visited the place of the Registered Office

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of the Corporate Debtor along-with the other business/corporate office places of the Corporate Debtor; however, it was found by the RP that none of the office is functional and the two of Directors of the Corporate Debtor are Foreign National and residing in Tokyo and Singapore respectively.

- g. Thereafter, RP also tried to gather the relevant information about the affairs of the Corporate Debtor from an Indian Resident Director viz. **Shri Tarun Khanna**. However, that Director informed the RP that he doesn't have any records of the Corporate Debtor and therefore consequentially there is no record available with the RP about the affairs of the Corporate Debtor. Further, the Applicant also moved an Application under Section 19 (2) of the Code seeking Orders from this Bench against the Directors of the Corporate Debtor.
- h. Thereafter, the CoC in their meeting held on 24.01.2020 resolved to replace the RP with the Applicant herein and thereafter the Application in that regard was filed on 25.02.2020. However, the said Interlocutory Application got adjudicated only on **11.05.2021** wherein this Bench confirmed the appointment of the Applicant

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herein as the Resolution Professional of the Corporate Debtor. Further, this Bench also pleased to consider the development in the present case during the Pandemic and hence, this Bench has excluded the lapsed time amid Pandemic from the statutory period of the CIRP and directed the Applicant to complete the CIRP within 90 days w.e.f. 11.05.2021.

- i. It is submitted that when the Applicant took charge as the RP; it was noticed that certain compliances has not been done such as publication of Form- G (Invitation for Resolution Plan for Corporate Debtor), Forensic Audit, Valuation, completion of Books of Accounts, various other legal and secretarial compliances of the Corporate Debtor etc. Hence, it was opined by the Applicant all these exercises could not be completed within 90 days. Accordingly, the Applicant moved an Application before this Bench under the provisions of Section 12 (2) of the Code seeking an Extension of the period which was subsequently allowed on 20.07.2021 and the CIRP of the Corporate Debtor was extended till 07.11.2021.

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- j. It is submitted that the CoC in their 6th meeting held on 23.06.2021 resolved to publish Form – G (Notice for inviting Expression of Interest to submit Resolution Plan for the Corporate Debtor) for the first time. Accordingly, Form G was published on 25.06.2021; however, it is submitted that no Prospective Resolution Applicant showed interest to Submit Resolution Plan despite of some enquiries.
- k. Thereafter, the CoC in their 7th meeting held on 14.08.2021, discussed about the publication of Form - G for second time however, it was opined by the CoC that since there are no major assets with the Corporate Debtor no one may place a Resolution Plan and hence, the CoC dissented from publication of fresh Form-G.
- l. Thereafter, the Applicant herein called 8th meeting of CoC on 09.10.2021, on which date, CoC discussed the progress of the CIRP. Thereafter, the Applicant informed that there are only 30 days have been left for completion of the Statutory Period of the CIRP and till date no Resolution Plan has been came forward. Accordingly, CoC decided to opt for Liquidation of the Corporate

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Debtor and further Resolved to appoint the present Resolution Professional to act as the Liquidator of the Corporate Debtor. The necessary Resolutions are quoted below for the convenience:

"RESOLVED THAT pursuant to section 33(2) of the IBC, 2016 the Committee of Creditors be and hereby authorizes the Resolution Professional Manoj Kumar to file an application before the Hon'ble NCLT for initiation of Liquidation of the Corporate Debtor and take all necessary actions for the purpose".

"RESOLVED THAT the consent of members be and is hereby accorded for recommendation of Mr. Manoj Kumar, Resolution Professional to the Hon'ble NCLT to act as Liquidator subject to his consent for the same. "

- 3) Further, the CoC has also approved the estimated Liquidation cost and also further resolved that if the gap arises between the realised value of the Corporate Debtor and final Liquidation value then the CoC will be fulfilling this gap. The necessary Resolutions are quoted below for the convenience:

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***"RESOLVED THAT** the above estimate of Liquidation Cost be and is hereby approved for completion of the liquidation process of the Corporate Debtor."*

***"RESOLVED FURTHER THAT** the consent of members be and is hereby accorded that the gap, if any, between the Liquidation Cost and the actual realised value shall be filled by the member of the CoC"*

- 4) It is stated and submitted that the CoC consists of only one member i.e. the Original Operational Creditor and therefore, all afore-stated Resolutions have been passed with 100% majority.
- 5) It has been observed that the Applicant availed all the remedies for the resolution of the Corporate Debtor; however, despite the efforts of the Applicant, after obtaining the maximum exclusions and extensions of the CIRP period, no revival of the Corporate Debtor made possible and no Prospective Resolution Applicant shown interest to submit the Resolution Plan for the Corporate Debtor.
- 6) It would further appear that the members of CoC does not want to proceed in the matter of Corporate Insolvency Resolution Process of

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M/s. Chuo Senko Advertising India Private Limited in accordance with provisions of the IBC, 2016.

- 7) Further, the Applicant herein has given written consent to act as the Liquidator of the Corporate Debtor. The same written consent is annexed to the present Interlocutory Application as **Annexure – 4**.
- 8) Having considered the submission and on perusal of the averments made in the present Interlocutory Application, this Bench is of the considered opinion that the present Interlocutory Application is in consonance with Section 33(1) of the Code, and as a last resort to seek the conclusive end of the CIRP, this Authority has left with no option except to pass an order for liquidation of the Corporate Debtor, **M/s. Chuo Senko Advertising India Private Limited**, in the manner laid down in Chapter III of the Code. Hence ordered.

ORDER

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

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- b) Manoj Kumar** having Registration No. **IBBI/IPA-001/IP-P01653/2019-20/12535** is appointed as Liquidator of **M/s. Chuo Senko Advertising India Private Limited**.
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as Resolved by the CoC in its meeting dated 09.10.2021.**
- 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**

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transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- 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.

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- n) **Registry shall furnish a copy of this Order to the Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor; and the Liquidator, Mr. Manoj Kumar, having address at C- 305, ATS Advantage, Indirapuram, Ghaziabad, Uttar Pradesh- 201 104.**
- o) The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.
- 9) With the aforesaid observations and directions, the Interlocutory Application bearing **IA No. 2528 2021**, stands disposed of as Allowed.
- 10) There would however be no order as to costs. Ordered Accordingly.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Vedant Kedare