

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201

IA/216(MP)2021 in TP 30 of 2019 [CP(IB) 510 of 2018]

Proceedings under Section 33(2) IBC,2016

IN THE MATTER OF:

Mahesh Sureka RP of R Square Shri Saibaba Abhikaran PvtApplicant
Ltd

Order delivered on 25/11/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA/216/2021
IN
TP/30/MP/2019
CP(IB)/510/2018

*(Application under Section 33 of the Insolvency and Bankruptcy Code,
2016)*

Through:

Mr. Mahesh Sureka

Resolution Professional of:
R Square Shri Sai Baba Abhikaran Pvt Ltd

.....Applicant

In the matter of:

(Application under section 9 of the Insolvency and Bankruptcy Code, 2016)

Saiom Developers Pvt Ltd

Laalasis, Plot No. 219,
11th Road, Chembur,
Mumbai,
Maharashtra- 400071

.....Operational Creditor

R Square Shri Sai Baba Abhikaran Pvt Ltd

32, Royal Bunglow,
Nipania, Indore,
Madhya Pradesh- 452010

.....Corporate Debtor

Order Reserved On: 17.11.2022
Order Pronounced On: 25.11.2022

Coram: Dr. Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For the IRP/RP: Ld. Adv. Mr. Vishal Raval

ORDER

1. The application is filed by Mr. Mahesh Sureka resolution professional of **M/s R Square Shri Sai Baba Abhikaran Private Limited** under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (**the Code**) for initiating the liquidation process of the corporate debtor.

2. The submissions made by the applicant in its application and presented/argued by the learned advocate are summarized hereunder:

(i) The operational creditor filed an application under section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) against the corporate debtor M/s R Square Shri Sai Baba Abhikaran Private Limited, which was admitted by the Adjudicating Authority vide order dated 18.01.2021. Ms. Teena Saraswat Pandey was appointed as the Interim Resolution Professional (IRP) of the corporate debtor. COC in its 3rd meeting resolved to replace the IRP and proposed the name of the applicant to be appointed as Resolution Professional (RP). Accordingly, the Adjudicating Authority vide order dated 03.06.2021 replaced the IRP by appointing Mr. Mahesh Surekha as RP of the corporate debtor.

(ii) Erstwhile IRP conducted first meeting of the COC on 27.02.2021. The COC at the said meeting was informed that the corporate debtor has not done any business for more than two years and the premises in Mumbai from which the corporate debtor was operating were taken into control by the landlord along with assets worth Rs 1 Crore and the suspended directors have lodged a criminal complaint against the landlord. As there were no fixed assets in the corporate debtor, the decision on appointment of valuers was not taken.

(iii) Suspended directors did not give a single piece of information or documents as sought by the applicant and even refused to hand over cash, details of fixed deposits reflecting in the audited balance sheet. The applicant was constrained to file an IA No. 126 of 2021 seeking

appropriate directions against the suspended directors, which is pending before the Tribunal.

(iv) In the 8th COC meeting dated 02.11.2021, the applicant proposed to discuss the issue of publication of Form- G but the COC members rejected the proposal and decided not to issue Form-G. The COC thereafter explained that the corporate debtor does not have any assets or intellectual property left. Hence, the chances of revival would be difficult. In that meeting, the COC unanimously resolved for liquidation of the corporate debtor. It was also discussed and decided that the corporate debtor would not be sold as a going concern.

(v) The COC in accordance with Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016, resolved that a lump sum fee of Rs 3,00,000 plus taxes along with reimbursement of all expenses to be paid to the liquidator for the entire duration of the liquidation period till the dissolution order is passed, and the same to be shared in the claim ratio of the financial creditors. The COC also resolved to appoint the applicant as the liquidator of the corporate debtor. The applicant has provided his written consent and the same is placed on record.

3. We heard the learned counsel for the Resolution Professional and peruse the relevant record. It is noted that the COC in its 8th meeting dated 02.11.2021 has passed a resolution to liquidate the corporate debtor by 100% vote. The COC has also passed a resolution to the effect that the liquidation cost shall be born by the financial creditors. Keeping in view the COC's wisdom to liquidate the corporate debtor, we hereby pass the following order:

ORDER

I. The corporate debtor M/s R Square Shri Sai Baba Abhikaran Private Limited shall be put to liquidation in terms of the provisions of section 33(1) and 33(2) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order. Accordingly, we allow IA No. 216 of 2021.

II. The moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of the liquidation.

III. As per section 34(1) of the Code, Mr. Mahesh Surekha having registration no. IBBI/IPA-001/IP-P00413/2017-2018/10736 is hereby appointed as a liquidator of the corporate debtor M/s R Square Shri Sai Baba Abhikaran Private Limited, who shall complete the liquidation process as per the provisions of the Code r.w. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

IV. All the power of the board of directors, key managerial persons, and the partners of the corporate debtor, as the case may be, hereafter cease to exist. All the powers henceforth vest with the liquidator.

V. The personnel of the corporate debtor is directed to extend all cooperation to the liquidator as required by him in managing the liquidation process of the corporate debtor.

VI. The liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and the same shall be paid to the liquidator from the proceeds of the liquidation estate under section 53 of the code.

VII. This liquidation order shall be deemed to be 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.

VIII. The registry is directed to communicate this order to the concerned Registrar of Companies, the registered office of the corporate debtor, and the liquidator by speed post within one week from the date of this order.

4. Accordingly, IA 216 of 2021 in TP/30/MP/2019, CP(IB)/510/2018 is disposed of.

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Kaushalendra Kumar Singh
Member (Technical)

Dr. Madan B. Gosavi
Member (Judicial)