

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

IA 1167/MB/C-I/2021

In

CP (IB) 1095/MB/C-I/2017

Under Section 33(3) of the Insolvency and Bankruptcy
Code, 2016

In the Application of

IA 1167/MB/C-I/2021

Punjab National Bank Limited

Assets Recovery Management Branch, Nagpur - 440001.

...Applicant/ Resolution Professional

Versus

1. Dera Finvest Private Limited

201, M.G. House, R. T. Road, Civil Lines, Nagpur –
MH 440001

2. Bank of Baroda, Regional Office

2nd Floor, Opp. Empress Mall, Sir Bezoujee Mehta
Road, Nagpur – 440018.

In the matter of

CP (IB) 1095/MB/C-I/2017

Punjab National Bank Limited

...Financial Creditor

Versus

Anand Distilleries Private Limited

...Corporate Debtor

Order Delivered on 11.08.2021

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant in IA 1167 of 2021 : Mr. Pankaj Vijayan, Advocate.

ORDER

Per: H. V. Subba Rao, Member (Judicial)

1. The present application **IA 1167/MB/C-I/2021** is moved by Punjab National Bank being 97% of Financial Creditor (hereinafter called as “the Applicant”) **under Section 33(3) of Insolvency and Bankruptcy Code, 2016 seeking direction of initiation of the Liquidation Process** of the Corporate Debtor **Anand Distilleries Private Limited** (hereinafter called as the “Corporate Debtor”) on account of on account of failure of implementation of approved Resolution Plan.

Brief facts/submissions of the Applicant:

2. This Tribunal admitted the Application for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the said “**Code**”), by an Order dated 14.02.2018, (hereinafter referred to as “**Admission Order**”). Vide Admission Order this Tribunal appointed an Interim Resolution Professional, who was subsequently confirmed as Resolution Professional. The Committee of Creditors was formed thereafter comprising of Applicant and Respondent No. 2 Bank i.e. Bank of Baroda.
3. The Resolution Professional invited bids for Resolution of

Corporate Debtor. The Resolution Plan submitted by Respondent No. 1 amounting to Rs.23.51 Crores was accepted. The copy of the Resolution Plan submitted by Respondent No. 1 is Annexed to the Application marked as “**Exhibit B**”. This Tribunal vide order dated 08.04.2019 u/s 31 of the IBC approved the Resolution Plan submitted Respondent No. 1. As per the terms and conditions of the Resolution Plan, the Respondent No. 1 was expected to make payments as mentioned in the schedule more particularly. Schedule of payments is annexed to the Application marked as “**Exhibit D**”. As per Resolution Plan, the total payment of Rs. 23.51 Crores ought to have made on or before 08.10.2019. Schedule of the payment made by the Respondent. No. 1. is annexed to the Application and marked as “**Exhibit E**”.

4. The implementation of Resolution Plan was monitored by a Monitoring Committee comprising of the Resolution Professional and one nominee from the Applicant Bank. That Monitoring Committee met four times and in all the meetings, the Respondent No. 1 was invited to participate. The copy of the minutes of the meetings dated 28.05.2019, 26.06.2019, 15.07.2019 and 25.11.2019 is annexed to the Application and marked as “**Exhibit F (Colly)**” . The Respondent No. 1 though

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I
IA 1167/MB/C-I/2021 In CP (IB) 1095/MB/C-I/2017
promised in the meetings to make the payment as per the
Resolution Plan, failed to comply. The Respondent No. 1 has till
date paid Rs.9.91Cr being 40% of the total payment and failed to
make the balance payment.

5. That the contravention of the Resolution Plan approved by the Adjudicating Authority has put the CIRP process in disarray and prejudiced the interest of the Applicant and all other stake holders, leaving no other option but to liquidate the Corporate Debtor.
6. The contravention of Resolution Plan by Respondent No. 1 is intentional, knowingly and wilfully and is punishable under Sec 74(3) of the IBC. It is therefore necessary that necessary order may be passed to initiate criminal action against the Respondent no. 1 for committing offence punishable under Section 74(3) IBC.

Submissions of Dera Finvest Private Limited being Successful Resolution

Applicant:

7. Submissions on the alleged contravention of the Resolution Plan Without prejudice it is submitted the balance amount, at the relevant time, had not become due and payable, for the following two reasons:

I. Pendency of Appeals challenging the Approval of RA's Resolution Plan:

8. Firstly, upon filing of the appeals by certain parties before the Hon'ble NCLAT, the “effective date” was postponed till the disposal of the appeal. The relevant part of the para 14 of the Order dated 08.04.2019, passed by this Tribunal, while approving the plan is reproduced herewith.

1. *The Resolution Plan states that the term of the proposed resolution plan will commence from the Effective Date i.e. the next date of the date of approval of the plan by the Adjudicating Authority or Appellate Authority, as the case may be, and shall continue until the dues are paid in full as per the resolution plan and all other related provisions are fully implemented.”*

9. Similarly, relevant part of the resolution plan defining the “effective date” is reproduced herein under:

Effective Date means the date following the next date on which NCLT has sanctioned the resolution plan of Resolution Applicant, in case an appeal is filed before NCLAT or another forum/court the date of disposal of by NCLAT or forum / court sanctioning the resolution plan of Resolution Applicant”

10. That the entire payment and implementation of the plan had to start upon and from “effective date”. That after the plan was passed and the order came to be formally communicated in or around 18.04.2019, the resolution Applicant took swift steps so as to implement the plan and accordingly started taking steps for various compliances including making of the payment, even

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I
IA 1167/MB/C-I/2021 In CP (IB) 1095/MB/C-I/2017
though the various covenants/stipulations/assurances were not
complied with by the Resolution Professional/COC.

11. That meanwhile, two appeals i.e. *Company Appeal (AT) (Ins) No. 461 of 2019*; *Chhattishgarh Distilleries v. Dushyant Dave*, another appeal bearing *Company Appeal (AT) (Ins) No. 613 of 2019*; *Abhay Bhamore v. Dushyant Dave*, came to be filed before Hon'ble NCLAT and a specific order came to be passed therein that the resolution plan will be subject to the outcome of the appeal. Since, the aforesaid appeals came to be filed, the “effective date”, stood suspended in the eyes of law, even though according to Applicant, the effective date had commenced on 08.04.2019 itself.

II. Pendency of Application for renewal of excise Licenses before State Government

12. That, since March, 2019, and until 14.06.2021 (the date of renewal of excise licenses) the Corporate Debtor Unit was close down, and the relevant part of the unit was sealed by the state Excise authorities, for want of the renewal of license, as the excise licenses required to run the unit, had expired as on 31.03.2019. (though the unit is still not functioning owing to corrosion of the plant and machinery) Thus, even the possession and control of the unit was not with the applicant, in practical and legal sense,

due to sealing of the unit. Admittedly and as can be summarised from the Applicant's Affidavit In Rejoinder dated 13.02.2020 and document appended to the Resolution Professional's Rejoinder titled as 'Annexure B', filed in IA No. 3720/2019, the excise licenses of the Corporate Debtor never came to be renewed for the years 2019-20. Since, as on 01.04.2020, the Corporate Debtor unit, in terms of provisions of Section 23(1) read with Section 20 of the Code, was in possession and control of the Resolution Professional, it was his duty to get those licenses renewed. Admittedly, the Resolution Professional failed to discharge this obligation. Thus, as on 01.04.2019, the Corporate Debtor ceased to remain a **"going concern"**, and any statement otherwise is false and contrary to the factual position. The Applicant and the Resolution Professional have wrongly attempted to put that onus on the Resolution Applicant, when in fact, at the time of expiry of the said excise licenses, the Corporate Debtor unit was under Resolution Professional's control.

13. That, on the other hand, the Resolution Applicant was and still is running from pillar to post to get the Corporate Debtor unit revived and make it going concern. In terms of the order of this Tribunal dated 08.04.2019, it was held at para 23 as under:

“It is directed that all consents, licenses, approval, rights, entitlement, privileges, whether under law, contract, lease or license, granted in favour of the company shall not be discontinued or terminated on the basis of the fact of admission of CIRP or change of management/ownership of the Corporate Debtor, if it is otherwise not prohibited under any other law. The name of new management be endorsed on all such rights and entitlements as may be required only to the extent necessary for operating the Corporate Debtor”

14. On strength of this order, the Resolution Applicant approached various governmental departments, including the state Excise Department, and requested them to renew the Corporate Debtor’s excise licenses, and even expressed its readiness and willingness to remit the renewal amounts (despite the obligation being that of the Resolution Professional/CoC). The office copies of various communications addressed to the said department are collectively being filed herewith as **Annexure Resolution Applicant-1 (Colly)**.
15. That, despite these aforesaid directives, the Resolution Applicant could not get any relief *qua* commencement of Corporate Debtor’s operations as the State Excise Department did not renew the Corporate Debtor’s excise licenses. Accordingly, Respondent no. 1, moved this Tribunal, vide an **IA No. 1908/2019**, seeking a direction against the State Excise Department to renew the Corporate Debtor’s licenses and permit

the production. State Excise Department, despite being served, did not appear in the matter. However, this Tribunal, vide its order dated 19.06.2019, refused to issue any directions to said State Excise Department, and held that

“..under the Excise Act, power is given to Excise Authorities, and we cannot issue any direction to the Excise authority for renewal of licenses...”

The said order, dated 19.06.2019, is annexed to Reply of Respondent No. 1 as **Annexure-Resolution Applicant-2**.

16. That, being faced with such a peculiar situation, the Resolution Applicant moved before the Hon’ble Bombay High Court, Bench at Nagpur vide WP No. 6150 of 2019 seeking directions against the State Excise Department for renewal of Corporate Debtor’s licenses. In this proceedings, the Hon’ble High Court, vide its orders dated 06.03.2020, 17.09.2020 and 07.10.2020, directed the said department to decide the Corporate Debtor’s renewal applications. These orders are collectively placed at **Annexure-Resolution Applicant-3(Colly)**.

17. Pertinently, the State Excise Commissioner, for various reasons (ranging from imposition of model code of conduct to absence of minister for the portfolio), sought time from Hon’ble High Court for deciding the Corporate Debtor’s application for withdrawal.

18. Simultaneously, the Resolution Applicant was also vigorously taking up the matter with the State Excise Commissioner, Mumbai, and the matter was heard before her on 01.11.2019. However, no response was forthcoming during the material time. The Resolution Applicant repeatedly approached the office of the Excise Commissioner, Mumbai, but no worthwhile response was being provided.
19. At this juncture, it is pertinent to mention that the erstwhile directors, Mr. Anand Bhamore and Mr. Abhay Bhamore, were filing repeated and persistent objections with the State Excise Department and Excise Ministry against the renewal of Corporate Debtor's licenses and substitution of their names in their names on the licenses.
20. Owing to the orders of Hon'ble High Court and the repeated objections being filed by the erstwhile directors, the Hon'ble Minister of State Excise, finally, decided to hear the matter on 02.12.2020 and 10.12.2020. However, despite the hearing, no update or renewal was forthcoming. The relevant communications about these hearings are being filed herewith as **Annexure-Resolution Applicant-4 (Colly)**.
21. It was only on 03.06.2021, when the decision about Corporate Debtor's application for renewal of licenses and substitution of

names of its new directors was allowed and processed. That on 14.03.2021, the licenses of Corporate Debtor were finally renewed and names of new directors transposed. This communication, addressed to the commissioner, dated 03.06.2021 is being filed herewith as **Annexure-Resolution Applicant-5**. The updated/renewed license are being filed herewith as **Annexure-Resolution Applicant-6(Colly)**.

22. At this juncture, it is relevant to mention that this order has now been challenged by the said erstwhile directors vide WP No. 2337 of 2021 and the Hon'ble Bombay High Court was pleased to issue notice and the Resolution Applicant has appeared and filed its reply, defending the action of the state in renewing the license.
23. Relevantly, the licenses were renewed only after the Resolution Applicant/Corporate Debtor paid license fees for the year 2021-22, along with arrears (and interest thereon) for the unpaid license fees for the years 2019-20 and 2020-2021. Admittedly, the license fees for the year 2019-2020 was partly paid by the Resolution Professional, thereby imputing an admission of responsibility/liability to pay license fee for that year. Thus, as a matter fact, the license fee borne by the Resolution Applicant, was in fact payable by the Resolution Professional during the CIRP Period, which he failed to do. Any submission otherwise,

either by the Resolution Professional or CoC, would be contrary to their own conduct and in fact, they are estopped from taking that plea, at all.

24. Thus, it can be seen that the R-1 has been taking all possible steps to see that the status of the Corporate Debtor is revived to that of “going concern”. Even right now, due to lapse of considerable time, the Resolution Applicant/Corporate Debtor will have to expend considerable amount of resources, in terms of time and money, to completely revive the Corporate Debtor. Having stated this and subject to the decision of this Tribunal in IA No. 877/2020, the Corporate Debtor is in a position to get revived and the Resolution Applicant undertakes to do everything in its power to make it ‘going concern’ again.
25. That the Resolution Applicant has been incurring significant monthly expenses, on security, electricity, salary and so on, which amount is in the range of approximately Rs. 10 lakhs per month, to keep the unit in readiness.
26. The Resolution Applicant submits that the viability of its resolution plan strongly relied upon the currency of its excise licenses and an educated presumption that until the Resolution Applicant’s resolution plan is approved by this Tribunal, the Resolution Professional would keep the Corporate Debtor unit

‘going concern’. In absence of license approvals and specific sanction to the resolution plan by the state government, the effective date, both in letter and spirit, never got triggered. It was only after grant of licenses (and disposal of appeals before Hon’ble NCLAT) has the ‘effective date’ actually triggered, which the Resolution Applicant solemnly vows to honour and shall pay to the creditors, in terms of the payment schedules envisaged in the resolution plan and subject to the decision of this Tribunal regarding losses incurred during CIRP period.

27. Pertinently, the Resolution Professional, during the period 01.04.2018 to 31.03.2019, pushed the Corporate Debtor into severe losses, which have been quantified at **Rs. 6.22 Crores**, (in addition to an amount of **3.48 Crores**, as can be demonstrated from the audited financial statements of the Corporate Debtor for **FY 2019-20**) in the Corporate Debtor’s audited financial statements for the said period. The Resolution Applicant/Corporate Debtor have moved a separate IA, bearing IA No. 877/2020, seeking necessary directions vis-à-vis this amount, as the viability of Resolution Applicant’s resolution plan hinges significantly on this amount.
28. We heard the counsels for both sides and perused the records.
29. It is noted that the Plan was Approved by this Authority in 2019

Resolution Applicant is considered that he ran from pillar to post to revive the Corporate Debtor which includes renewal of licenses, the said licenses were renewed by the authority in 2021 on 14.03.2021 till date two and half years passed. In the aforesaid circumstances the fact cannot be ignored that as per Resolution Plan, the total payment of Rs.23.51 Crores ought to have been made on or before 08.10.2019. The Respondent No. 1 has till date paid Rs.9.91Cr being 40% of the total payment and failed to make the balance payment.

30. In view of the above facts and circumstances, it won't be out of place to mention over here that the Resolution of the Corporate Debtor is not sole objective of the Code but Resolution adhering to timelines as enshrined under Code.
31. In the backdrop of above facts, we are of the considered view that the Corporate Debtor deserves to be liquidated. While submissions Ld. Counsel for the Applicant submitted that they have filed IA 1777 of 2022 for replacing erstwhile Resolution Professional and appointing Mr. Atul Rajwadkar having Registration No. IBBI/IPA-001/IP-P00152/2017-18/10321 as Liquidator.

32. Considering above facts and circumstances, this Bench hereby

Orders that:

- i. The Process of Liquidation of the Corporate Debtor '**Anand Distilleries Private Limited**' shall commence as per the Chapter III of the I&B Code from date of this Order.
 - ii. **Mr. Atul Rajwakdar, having IBBI Registration No: IBBI/IPA-001/IP-P00152/2017-18/10321** is hereby appointed as a "Liquidator" as per the provisions of Sec. 33 of the I&B Code.
 - iii. The Liquidator shall advertise in two Newspapers, one in English language and one in Regional Language about the Liquidation of the Corporate Debtor as per the provisions of the I&B Code.
 - iv. Copy of this Order shall be forwarded to the Registrar of Companies with which the Corporate Debtor is Registered.
33. This order for liquidation 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.
34. The fees payable to the Liquidator shall be in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.
35. The Liquidator shall submit progress reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016.
36. The Liquidator is at liberty to seek any directions, if need be, from

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I
IA 1167/MB/C-I/2021 In CP (IB) 1095/MB/C-I/2017
this Adjudicating Authority during the Liquidation Process.

37. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
38. Ordered Accordingly. Application for U/s. 33 (3) is Allowed and with the aforesaid observation the present IA No. 1167 of 2021 in CP 1095 of 2017 is stand disposed of.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
11.08.2023
SAM

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)