



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court - I)
KOLKATA**

IA (IB) No. 579/KB/2022
in
CP (IB) No. 223/KB/2019

An application under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

J.D. India Corporation

... Operational Creditor

Versus

Naresh Retail Mart LLP

... Corporate Debtor

-And-

In the matter of:

Ms. Jayshree Bhandari,

Resolution Professional of Naresh Retail Mart LLP

... Applicant

Order pronounced on : 18.09.2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the Applicant:

1. Ms. J. Bhandari, Resolution Professional, in person
2. Mr. A. Kumar, AGM, UBI
3. Mr. Manish Garani, Law Officer



ORDER

Per: Balraj Joshi, Member (Technical)

1. This court was convened via video conferencing.
2. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., Naresh Retail Mart LLP, on the ground that the CoC has decided to liquidate the Corporate Debtor by 100 % votes. The applicant has sought for the following reliefs:
 - a. To allow the present application under Section 33 of the Insolvency and Bankruptcy Code, 2016 and initiate the liquidation process of the Corporate Debtor;*
 - b. To pass an order directing the CoC members to pay the fees of the Applicant;*
 - c. To pass such other order / orders as this Adjudicating Authority deems fit and proper in the interest of justice.*
3. This Adjudicating Authority *vide* its order dated 22.10.2019 on a Petition filed by J.D. India Corporation ('operational creditor') under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed **Shri Uttam Sarkar** as the Interim Resolution Professional ('IRP'). The said IRP was later appointed as the Resolution Professional ('RP'). However, due to the demise of the erstwhile RP on 12.05.2021, the Adjudicating Authority *vide* order dated 03.03.2022 appointed **Ms. Jayshree Bhandari** (the Applicant herein) as the RP for the Corporate Debtor.



4. It is submitted that the Applicant, despite several attempts to communicate with the designated partners of the Corporate Debtor, was unable to reach them. The Applicant had also visited the registered office of the Corporate Debtor and it was found that the said registered office is now the office of another person and both the designated partners Naresh Agarwal and Babita Sharma were not available in the address given.
5. In light of the non co-operation from the end of the designated partners of the Corporate Debtor, the sole CoC member *i.e.* Union Bank of India was unwilling to continue the CIRP Proceedings and was of the considered view that the Corporate Debtor does not have any tangible assets and to be recommended for liquidation.
6. Accordingly, in the 9th CoC meeting held on dated 08.06.2022 through virtual mode at 5:30 p.m., the CoC resolved to put the Corporate Debtor into liquidation.
7. The Applicant has further submitted that she is entitled to a remuneration of Rs. 1,50,000/- per month as well as the reimbursement of out of pocket expenses incurred by the Applicant (on actual basis) and applicable taxes which has not been approved by the CoC to which the Applicant has an objection.
8. In light of the aforementioned circumstances, the RP has filed the instant application under section 33 of the Code, before the Adjudicating Authority seeking orders for liquidation of the Corporate Debtor.
9. The applicant /Resolution Professional, **Ms. Jayshree Bhandari** [Reg. No. IBBI/IPA-001/IP-P01174/2018-19/11838], *vide* supplementary affidavit dated 25.01.2023, agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code



and has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member.

10. We have considered the submission made by the learned Counsel on behalf of the applicant /RP and perused the record.
11. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor 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 CoC approved by not less than sixty-six percent of voting share to liquidate the corporate debtor.
12. The Applicant has submitted in paragraph 11 of page 11 of the application that the CoC, in its 9th Meeting held on 08.06.2022, resolved to put the Corporate debtor into liquidation. In support thereof, the Minutes of the 9th CoC meeting dated 08.06.2022 has been annexed to the Application. On perusal of said minutes of meeting, specifically page 28 of the Application, it can be seen that the CoC by 100% votes has approved the resolution to liquidate the Corporate Debtor. As such, we are satisfied that the liquidation of the Corporate Debtor should be allowed.
13. We have also considered the prayers of the Applicant regarding its remuneration. The Applicant's submissions regarding the same in paragraph 12A on page 12 of the application have been reproduced hereinunder:

“12A. The Applicant has further submitted that she is entitled to a remuneration of Rs. 1,50,000/- per month as well as the reimbursement of out of pocket expenses incurred by the Applicant (on actual basis) and applicable taxes which has not been approved by the COC to which the Applicant has an objection.”



14. Upon perusal of the Minutes of the 9th CoC Meeting, it can be seen that the Applicant had initially quoted a remuneration of ₹2,00,000/- per month or a part thereof plus reimbursement of out-of-pocket expenses (on actual basis) and applicable taxes. On the other hand the representative of the CoC quoted a fee of ₹50,000/- per month. Since the representative of the CoC did not agree to the same and asked the Applicant to reduce the fee, the Applicant quoted a fee of ₹1,50,000/- per month or a part thereof plus reimbursement of out-of-pocket expenses (on actual basis) and applicable taxes. However, the same was also not agreed to by the representative of the CoC who voted against the resolution. It is seen from the remark beside the said resolution that the Applicant has been further asked to reduce its fee.

15. In this regard, we would like to refer to Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) regulations, 2016 (“CIRP Regulations”) which provides that the CoC shall fix the expenses to be incurred on or by the resolution professional. According to the Explanation provided in Regulation 34, the term “expenses” include among others, the fee to be paid to the resolution professional. Regulation 34 is reproduced hereinunder:

34. Resolution professional costs.

The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.]



16. In terms of the afore mentioned Regulation 34, the CoC must fix the fee of the Resolution Professional. As such, we direct the CoC to fix the fee of the Applicant at a reasonable rate and accordingly disburse the the fee & other expenses due to the Applicant for the services rendered by her within 10 days.
17. Lastly, regarding the appointment of the liquidator, it is noted that the Applicant has given her consent to act as the Liquidator of the Corporate Debtor. However, in view of direction of the IBBI vide Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, this Adjudicating Authority is appointing **Mr. Netai Basak** (Reg. No. IBBI/IPA-003/00327/2020-2021/13421], having email id- nbasak2002@yahoo.co.in and mobile no. 7596098877 as Liquidator as provided under section 34(1) of the Code.
18. This Bench, therefore, hereby orders as follows: -
- a. Prayers as sought for in **I.A. (IB) No. 579/KB/2022** filed by **Ms. Jayshree Bhandari, Resolution Professional** of Progress Cultivation Limited, the Corporate Debtor, are allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;
 - b. **Mr. Netai Basak** [Reg. No. IBBI/IPA-003/00327/2020-2021/13421], having email id- nbasak2002@yahoo.co.in , is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code. subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in



his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., *Financial Express* (English)(Kolkata Edition) and *Ekdin* (Kolkata Edition) (Bengali) , stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a 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.



i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

19. The application bearing **IA (IB) No. 579/KB/2022** shall stand disposed of in accordance with the above directions.

20. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

21. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

22. List the main **CP (IB) No. 223/KB/2019** for reporting progress on **10.10.2023**.

[Balraj Joshi]
Member [Technical]

[Rohit Kapoor]
Member [Judicial]

Signed on this, the 18th day of September 2023

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