IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

I.A./1306/ND/2023
IN
Company Petition No. (IB)-1112/ND/2018

(Under Section 33 of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions)

IN THE MATTER OF:

M/s. Knight Riders Sports Private Limited
…. Operational Creditor

Versus

M/s. Global Fragrances Private Limited
…. Corporate Debtor

AND IN THE MATTER OF:

Mr. Atul Kumar Kansal
Resolution Professional of
M/s. Global Fragrances Private Limited …. Applicant

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 31.03.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The above application i.e., I.A./1306/ND/2023 is filed by Mr. Atul Kumar Kansal ('Applicant') Resolution Professional of M/s. Global Fragrances Private Limited seeking liquidation of M/s. Global Fragrances Private Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code'), praying for the following relief(s):-

a) "To pass appropriate directions/orders requiring the Corporate Debtor to be liquidated in terms of provisions as laid down under the Code;
b) To appoint undersigned Atul Kumar Kansal as the Liquidator of the Corporate Debtor;
c) To direct to issue Public Announcement qua the commencement of liquidation process;
d) To pass such other/further orders that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case."

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:

i) The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Global Fragrances Private Limited ('Corporate Debtor') vide this Adjudicating Authority order dated 05.07.2021 in C.P.(IB)/1112/2018 an application under Section 9 of the Code, 2016 filed by M/s. Knight Riders Sports Private Limited ('Operational Creditor'). The applicant further submits that Ms. Arti Baluja was appointed as the Interim Resolution Professional of the Corporate Debtor by this Adjudicating Authority. The Applicant adds that the judgment dated 05.07.2021 was communicated to Ms. Arti Balija, IRP on 28.08.2022 and pursuant to which the Committee of Creditors ('CoC') was constituted on 17.09.2022 and first CoC Meeting was held on 12.10.2022.

ii) The applicant submits that the applicant was appointed as the Resolution Professional of the Corporate Debtor by the Committee of Creditors in the 2nd CoC Meeting held on 03.11.2022 and the same was confirmed by this Adjudicating Authority vide its order dated 23.12.2022.

iii) The applicant submits that the applicant had filed an application bearing I.A. No. 538/2022 before this Adjudicating Authority seeking exclusion of the period elapsed in NCLAT Litigation appeal filled by suspended director) from 19.07.2021 to 18.08.2022 i.e., 1 year 31 days and then from 22.11.2022 till 04.01.2023 i.e., 44 days from computation of 180 days in terms of Section 12(1) of the Code, 2016. The applicant further add that this Adjudicating Authority vide its order dated 24.01.2023 had allowed the exclusion sought from the CIRP period of the Corporate Debtor.

iv) The applicant submits that the applicant in view of the deliberate evasion by the suspended Board of Directors in providing the records and/ or information about the assets of the Corporate Debtor had filed an application (I.A/1087/2023) under Section 19(2) of the Code, 2016 on which notice was issued by this Adjudicating Authority vide order dated 17.02.2022.

v) The applicant submits that the CoC consisting of the sole Financial Creditor i.e., Bank of Baroda in the 3rd COC Meeting held on 09.02.2023 had not approved the Publication of Form-G on the ground that in the absence of records and/or assets, business model, revenue mode, employees etc., of the corporate debtor, there exists no possibility of revival of the Corporate Debtor.

vi) The applicant submits that the CoC in its 4th CoC Meeting held on 18.02.2023 had unanimously approved the Liquidation of the Corporate Debtor. The applicant adds that the resolution under Regulation 39B, 39C and 39D of the CIRP Regulation, 2016 were unanimously approved by the sole member of the Committee of Creditors having 100% voting share.

vii) The applicant submits that the present application is filed under Section 33(2) of the Code, 2016 as the sole member of the Committee of Creditors has resolved to initiate Liquidation of the Corporate Debtor. The applicant adds that the applicant has given consent to act as the Liquidator in terms of Section 34(1) of the Code, 2016.

3. We have considered the submissions made by the Learned Counsel on behalf of the applicant/Resolution Professional and upon perusing the material available on record, it is observed that the CoC in its commercial wisdom has decided to liquidate the Corporate Debtor. Further, it was noted that in the absence of the whereabouts of the records and assets of the Corporate Debtor, the process of inviting the resolution plan and publishing for Form G could not be started and CoC felt the best option is to initiate the liquidation of the Corporate Debtor.

4. From the minutes of the 4th CoC meeting held on 18.02.2023, it is observed that the CoC has unanimously decided to liquidate the Corporate Debtor and further decided to appoint the applicant as the liquidator for a professional fee at a consolidated fee of Rs.5,00,000/- plus GST till dissolution of the Corporate Debtor.

5. At this juncture, it is relevant to refer the judgment of the Hon'ble NCLAT in the matter of **Sreedhar Tripathy vs. Gujarat State Financial Corporation and ors. [MANU/NL/0788/2022]** wherein at para 7, the Hon'ble NCLAT observed as follows:-

   The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. ***The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The***

reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. *We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision.* ***CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant.*** *However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.*

6. Adverting to the facts of the instant case, it is clear that the CoC has come to a conclusion that in the absence of the whereabouts of the records and assets of the Corporate Debtor, the process of inviting the resolution plan and publishing for Form G could not be started and CoC in its commercial wisdom, resolved to liquidate the Corporate Debtor. It also seen from the record that the Applicant herein has accorded his written consent in Form AA to act as the Liquidator of the Corporate Debtor along with the IBBI registration certificate and Form - FA as Annexure A-12 to the present application. Further, in light of the above submissions, this Adjudicating Authority has not received any application for approval of Resolution Plan within the timeline prescribed under Section 12 of the Code, 2016 and the Resolution Professional under Section 33(2) of the Code, 2016 had intimated this

Adjudicating Authority of the decision of the committee of creditors to liquidate the Corporate Debtor being approved with 100% votes in favor in the 4th CoC Meeting held on 18.02.2023.

7. Accordingly, the instant application **I.A./1306/ND/2023** is **allowed** and M/s. Gobal Fragrances Private Limited ('Corporate Debtor') is ordered to be liquidated with the following directions:
   a. Mr. Atul Kumar Kansal, having IBBI Registration No. IBBI/IPA-001/IP-P00035/2016-2017/10088, and having E-Mail id: cakansal@yahoo.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code, 2016.
   b. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
   c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
   d. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.
   e. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
   f. 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.
   g. On having liquidation process initiated, 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
   h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of

steps for recovery of dues of the Corporate Debtor as per law.

i. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator and RoC, NCT of Delhi & Haryana for taking necessary steps.

With the above directions, this application i.e., **I.A./1306/ND/2023 in Company Petition No. (IB)-1112/ND/2018** is hereby allowed and disposed of.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (J)