IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-V

I.A. 1682 OF 2021

IN

CP (IB) – 2607/IBC/MB/2019

Under Section 33 (2) of the Insolvency & Bankruptcy Code, 2016

Filed by

Mr. Mayank Rameshchandra Jain

Resolution Professional for:

Panache Exports Private Limited

...Applicant

In the matter of

Oriental Bank of Commerce

("Now Punjab National Bank")

...Financial Creditor

Versus

Panache Exports Private Limited

...Corporate Debtor

Order delivered on: 23.09.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

(via videoconferencing)

For the Applicant: Mr. Ayush J Rajani a/w Mr. Manish Jha, (Advocates)

1. The above application I.A. No. 1682 of 2021 is filed by Resolution Professional, Mr. Mayank Rameshchandra Jain (hereinafter referred to as the "Applicant") seeking liquidation of Panache Exports Private Limited (hereinafter referred to as the "Corporate Debtor") under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

    a. *That this Hon'ble Tribunal be pleased to Order and Direct that the Corporate Debtor be Ordered and Directed to go under liquidation as per Section 33(2) of the Insolvency and Bankruptcy Code 2016;*
    b. *This Hon'ble Tribunal be pleased to appoint Mr. Ajit Gyanchand Jain, (IBBI/IPA-001/IP-P00368/2017-2018/10625), as the Liquidator of the Corporate Debtor;*
    c. *That this Hon'ble Tribunal be pleased to direct the Liquidator to pursue I.A. 1207 of 2020 against SEEPZ for access and possession of items in the locker;*
    d. *That this Hon'ble Tribunal be pleased to direct the Liquidator to pursue IA 1066 of 2021 for non-co-operation for remaining part of Liquidation;*
    e. *For such other and further reliefs at this Hon'ble Tribunal may deem fit in the facts and circumstances of the Present case.*

2. The brief facts of the application are as follows:

    A. The Applicant mentions that this Tribunal vide its order dated 25.11.2019 in Company Petition No. 2607/IB/MB/2019 admitted the petition under Section 7 of the Code, filed by Oriental Bank of Commerce (Now Punjab National Bank) (hereinafter referred to as the "Financial Creditor") and Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") was initiated against the Corporate Debtor. The Applicant was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal.

B. It is further stated that the Applicant on 28.11.2019 a public announcement was made inviting claims from the Creditors of the Corporate Debtor with last date of claims announced as 11.12.2019 for the attention of the Creditors of the Corporate Debtor.

C. On 27.12.2019, the 1st meeting of the Committee of Creditors (hereinafter referred to as the "CoC") took place wherein the Applicant was appointed as the RP of the Corporate Debtor by the CoC.

D. The Applicant submits that after receiving the approval from the CoC in the 2nd CoC meeting dated 05.02.2020, the Invitation for Expression of Interest in Form-G was published on 08.02.2020 in leading newspapers such as Free Press Journal, Pudhari and Gujarati Samachar. As per this Form-G, the last date of receipt of the EOI was mentioned as 23.02.2020 and the last date of submission of the Resolution Plan was mentioned as 08.04.2020.

E. The Applicant submits that, as against the Form-G which was published on 08.02.2020, the RP had received an inquiry from, Star Brillian Private Limited. However, the expression of interest along with the documents has not been received.

F. The Applicant submits that, upon receiving the approval from the CoC in the 3rd CoC meeting dated 06.01.2021, a second EOI in Form G dated 15.01.2021 prescribing the last date for submission of Resolution Plans as 16.03.2021 was published.

G. The Applicant submits that, as against the second Form-G which was published on 15.01.2021, the RP had received an inquiry from, Star Brillian Private Limited. However, the expression of interest along with the documents has not been received.

H. The Applicant submits that in the 5th CoC dated 18.06.2021 the CoC discussed and approval the liquidation of Corporate Debtor as a going concern.

I. The Applicant submits that in the 6th CoC dated 05.07.2021 the CoC resolved to appoint Mr. Ajit Gyanchand Jain (IBBI Registration No. IBBI/IPA-001/IP-P00368/2017-2018/10625). The CoC further resolved that approval of fees of Liquidator for liquidation of Corporate Debtor at discount of 20% on the fee as per table mentioned in Regulation 4(3) of Liquidation Regulations for the first 6 months.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, The Counsel for the Applicant submits that no Resolution Plan has been received and there is no option to except to put the Corporate Debtor Company into Liquidation as per the Code as well as also to protect the asset of the Corporate Debtor from further deterioration

since it is observed from the minutes of the 6th CoC meeting that the CoC with required mandate of 100% voting approved to liquidate the Corporate Debtor in view of not getting any Resolution Plans, This Tribunal has very limited judicial review in such matters of commercial wisdom therefore there is no option except to allow the above Liquidation Application. The CoC thereby has appointed Mr. Ajit Gyanchand Jain (IBBI Registration No. IBBI/IPA-001/IP-P00368/2017-2018/10625) as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The proposed Liquidator has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator. This bench, therefore feels this is a fit case for ordering Liquidation as going concern of the Corporate Debtor. Accordingly, the above Interlocutory Application Number 1682 of 2021 is allowed directing the Liquidation of the Corporate Debtor. Accordingly, we pass the following:

ORDER

a. The above I.A. No. 1682/2021 is allowed and the Corporate Debtor Panache Exports Private Limited is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.

b. Mr. Ajit Gyanchand Jain, having Registration No. IBBI/IPA-001/IP-P00368/2017-2018/10625, having office at:204, Wallstreet-1, Near Gujrat College, Ellisbridge, Ahmedabad, Gujrat- 380 006 , is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees at 20% discount as per table mentioned in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016, for first 6 months.

d. 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.

e. The Liquidator appointed under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

g. 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.

h. That 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.

i. 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.

With the above directions, this application i.e. I.A. No. 1682 of 2021 is hereby allowed and disposed of.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)