NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

IA (IBC)/259/2021
in CP (IB) No. 199/7/HDB/2019
Under Section 33 of the
Insolvency and Bankruptcy Code, 2016.

Filed by,

Mr. Naren Sheth
(Resolution Professional of M/s. Aster Private Ltd)
R/o. Plot No. 140 & 141/1, IDA Phase-II,
Cherlapally, Hyderabad - 500051.

... Applicant/Resolution Professional

In the matter of

IDBI Bank Limited
Hyderabad Main Branch
5-9-89/1, Chapel Road,
Hyderabad - 500001

... Operational Creditor

AND

M/s. Aster Private Limited

... Corporate Debtor

Date of order: 22.09.2021

Coram:

Shri Madan Bhalchandra Gosavi, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical

Appearance:

For the Applicant : Smt. J V L Bharati, Advocate

Heard on: 23.06.2021 & 11.08.2021

PER: BENCH

1. The instant Application is filed by the Resolution Professional of the Corporate Debtor, M/s. Aster Private Ltd under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") for liquidation of the Corporate Debtor due to non-receipt of resolution plan.

2. The Insolvency Petition was filed by IDBI Bank Limited under Section 7 of the Code against the Corporate Debtor vide CP (IB) No. 199/7/HDB/2019 and the same was admitted by this Tribunal vide order dated 19.11.2019 Shri Naren Sheth was appointed as an Interim Resolution Professional (IRP) for the Corporate Debtor.

3. The applicant issued public announcement inviting claims from stakeholders within 30 days of the public announcement. The Form G for inviting expression of interest (EoIs) for submission of resolution plan was published in The Hans India and Sanchalana Varta Patrika newspapers dated 23.11.2019.

4. In 2nd CoC meeting the applicant informed the members about the appointment of valuers as per Regulation 35 and appointed transaction auditor M/s. Sagar & Associates.

5. The applicant received 6 EoIs and the 6 prospective resolution applicants requested for extension citing COVID-19 and the applicant presented the status before the CoC members in the 4th

CoC meeting and members approved the extension of last date for submission of resolution plan to 13.07.2020.

6. Two prospective resolution applicants submitted their plan i.e, M/s.Triumph Commodities PTE limited and M/s. Sealoudasia PTE Limited and the same were found incomplete and inappropriate as per CIRP regulations.

7. In 6th CoC meeting the members suggested the prospective resolution applicants to revise the offer amount in the plan and ensure other compliances as stipulated in RFRP, IBC, 2016 as the offer amount of both the Resolution Plans were lower than the liquidation value as mentioned in the Valuation Reports submitted by the Registered Valuers.

8. In the 9th CoC meeting, the members decided to give last opportunity for submission of revised resolution plan on or before 05.11.2020 by the other resolution applicants as the two prospective resolution applicants didn't come forward to improve the offer amount.

9. In the 10th CoC meeting, the members decided to extend the timelines of Form-G with revised time lines and as per the Section 36 (2) (iv) of the Code the members directed the Applicant to file an application before this Tribunal for the exclusion of lockdown period w.e.f 01.07.2020 to 30.09.2020.

10. The details of extension and exclusion granted by this Tribunal are as follows:-

Sl No.	**Application filed by Resolution Professional for extension of CIRP Period/ exclusion of lockdown period**	**Date of Order**	**Order Passed**
1	IA No. 636/2020 for extension of CIRP period by 90 days	08.09.2020	Allowed extension of 90 days and 53 days were excluded from CIRP period which lost during lockdown. Accordingly, 143 days were granted for completion of CIRP.
2	IA No. 1134/2020 for exclusion of lockdown period from 01.07.2020 to 30.09.2020 and further extension of 60 days for completion of CIRP.	26.04.2021	Allowed 60 days extension of CIRP period and excluded 92 days from CIRP period which lost during lockdown. Accordingly, 152 days were added beyond 30.06.2020 and directed the applicant to complete CIRP by 21.04.2021.
3	IA (IBC)/201/2021 for exclusion of lockdown period	23.06.2021	As the CoC has passed the resolution for

कम्पनी विधि अधिकरण National Company Law Tribunal * हैदराबाद न्यायपीठ * Hyderabad Bench

			initiation of liquidation of the Corporate Debtor there is no use of exclusion hence the application becomes infructuous and disposed of.

11. In the 12th CoC meeting, the members directed the Resolution Applicant M/s. Triumph Commodities PTE limited to remove the conditions and to enhance the outright payment. The CoC made some observations and the Resolution Applicant requested time till 20.03.2021 for submission of revised plan. In 17th CoC meeting the Resolution Applicant informed the CoC that they are not intended to make any changes in the resolution plan as suggested by CoC. Accordingly, CoC rejected the Plan.

12. In 17th CoC meeting, the members discussed and deliberated the facts and unanimously agreed with 95.17% voting for liquidation of the Corporate Debtor and directed the applicant to file an application under Section 33 of the Code. The CoC members decided about the appointment of liquidator and fixation of liquidator fees as per the provisions of Section 34 of the Code, Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Regulation 4 of IBBI (Liquidation Process) Regulations, 2016. The Applicant has given his consent to act as the Liquidator of the Corporate Debtor.

13. We have heard the applicant in the matter. The Hon'ble Apex Court in K. Sashidhar vs. Indian Overseas Bank & Ors (2019) 148 LA 497 (SC) inter-alia held that,

"The adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33 (1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors".

14. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33 (1) (a) of the Code. Therefore, we have no option than to pass an order for liquidation of the Company in the manner laid down in Chapter – III of the Code.

ORDER

A. The Application is accordingly allowed with the following directions:-

a) The Corporate Person i.e., M/s. Aster Private Limited shall be liquidated in the manner laid down in Chapter-III of the Code.

b) The Applicant Mr. Naren Sheth, presently resolution Professional of M/s. Aster Private Limited is appointed as Liquidator.

c) He shall issue public announcement stating that the Corporate Debtor is in liquidation.

d) The Moratorium declared under Section 14 of the Code shall cease to operate here from.

e) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

राष्ट्रीय कम्पनी विधि अधिकरण * National Company Law Tribunal * हैदराबाद न्यायपीठ Hyderabad Bench

f) All powers of the Board of Directors, Key managerial personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

h) Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.

i) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)

Vismaya(LRA)

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
हैदराबाद न्यायपीठ
Hyderabad Bench

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench
30/09/21

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP(IB)No: 199/7/HDB/2019.
निर्णय का तारीख
DATE OF JUDGEMENT 22/9/2021
प्रति तैयार किया गया तारीख
COPY MADE READY ON 30/9/2021