



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

I.A.06/2024

In

C.P. (IB) No.41/BB/2020

Under Section 33(1) (a) of the

Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s Mos Logi Technologies Private Limited

...Operational Creditor

Versus

M/s Black Pepper Technologies Private Limited

...Corporate Debtor

In the matter of:

ADDANKI HARESH

Interim Resolution Professional

Black Pepper Technologies Private Limited

No-36/1, 2nd Floor Munnivenkatappa Complex,

Bellary Road, Ganganagar, Bangalore -560032

....Applicant

Order delivered on: 05.12.2024

Coram:

1. Hon'ble Shri. K. Biswal, Member (Judicial)

2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Resolution Professional: Shri Addanki Haresh

ORDER


Per: K. Biswal (Member Judicial)

1. The present application has been filed on 27.05.2024 under Clause (a) of sub-section (1) Section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016 by the Resolution Professional of the Corporate Debtor i.e. M/s




Black Pepper Technologies Private Limited for seeking order of Liquidation of the Corporate Debtor.

2. Brief facts of the present case are perused hereiunder:
 - a) The company petition bearing CP (IB) No.41/2020 for Corporate Insolvency Resolution Process (“CIRP”) was initiated by the Operational Creditor and admitted by this bench vide order dt.31.01.2023 whereby the applicant was appointed as the Interim Resolution Professional (“IRP”). The certified copy of the above dated order was received only on 09.02.2023 after which the IRP caused a public announcement.
 - b) The applicant continued with carrying CIRP in respect of Black Pepper as the decision of his appointment was not taken at the first CoC meeting dt.01.03.2023. The IRP presented a statement of claims received and admitted to the members. The members also discussed the tentative timelines for the completion of the CIRP of the CD. He also informed the members regarding the details of Bank Account and steps taken by him to take over control of these Bank Accounts, due to the non-cooperation of the Directors, he preferred an application under Section 19 sub-section (2) of the Code.
 - c) The IRP also informed the members that during the intervening period of the commencement of CIRP i.e.31.01.2023 and the date of receipt of the Order i.e.9.02.2023, Mr. Hari Krishnan Puravankara, Director of the Company has made certain urgent payments from the Bank Accounts. Resolutions proposed for the appointment of RP in place of IRP, raising of Interim Finance, and Approving of CIRP expenses were rejected by the CoC.
 - d) At the 6th meeting of the CoC dt.30.06.2023, the RP appointed a registered valuer and forensic auditor who were present at the meeting and expressed their difficulties they were facing while completing their assignments. The RP informed the members that in one of the ongoing litigations, the Respondent came forward for a settlement. The IRP informed the members that he has received 9



Expressions of Interest in time and One EOI was received with slight delay, and CoC members condoned the delay and other minor violations of RFRP process. In view of the progress in the CIRP process, the CoC members also recommended for extension of CIRP process by another 90 days from 31.07.2023 to 28.10.2023.

- e) Pursuant to the recommendation of the CoC, the Applicant filed I.A No.476/2023, requesting for extension of the Insolvency Resolution Period from 31.07.2023 to 28.10.2023 which was duly approved by this Tribunal vide order dt.22.08.2023.
- f) In the 11th CoC meeting held on 11.10.2023, Mr. Hari Krishnan Puranvanakara, suspended Director and the Resolution Applicant were also present in the meeting. The IRP presented the analysis of the Resolution Plan and also highlighted certain deviations in the Resolution Plan from the provisions of the IBC. The members discussed the Resolution plan and advised the Resolution Applicant to resubmit the Resolution Plan after improving the plan amount and rectifying the defects in the plan. The same was agreed upon and the Resolution Plan sought time for submitting a revised Resolution Plan. In view of the progress made in the Resolution of CD, the members recommended for extension of the CIRP period by another 60 days i.e., from 27.10.2023 to 27.12.2023 so that the CoC can further negotiate and improve the Value of the Resolution Plan.
- g) Pursuant to the discussion in the CoC meeting, the IRP submitted IA. 727/2023 and the same was approved by this Tribunal which extended the CIRP period by 60 days beyond 270 days.
- h) The Revised Resolution Plan was received from the Resolution Applicant and was discussed at 12th CoC meeting, 13th CoC meeting, 14th CoC meeting and 15th CoC meeting, and the RA was advised to improve the Plan. However, when the Resolution Plan was put to voting at the 15th CoC meeting, the same was rejected.
- i) The IRP convened 16th CoC meeting on 22.12.2023 wherein the IRP informed the members regarding the Voting Results of the rejection



of the Resolution Plan and proposed for Liquidation of the CD. The RP also received a Revised Proposal through email dt.22.12.2023 improving the Plan outlay and reducing the Plan period, and the same was also discussed during the meeting.

- j) The members discussed about the contents of the said Email dt.22.12.2023 received from the Resolution Applicant and since there was an improvement in the Value of the Resolution Plan and reduction in the Resolution Plan period, wanted to consider the same by taking up with their sanctioning authorities. After detailed discussions in the 16th CoC meeting, the CoC has recommended to file an application before this Hon'ble Tribunal for an extension of CIRP beyond 330 days by 30 days from the date of receipt of the order of such extension from the Adjudicating Authority. Accordingly, the IRP filed IA. No.58/2024 seeking suitable directions. However, the same was rejected vide order dt.28.02.2024 and the IRP was directed to "file separate appropriate application after obtaining approval of CoC as per provisions of Code."
- k) The IRP then conducted the 17th CoC meeting on 12.02.2024 to discuss the impact of the Order of Honourable NCLT dt.28.02.2024. The IRP informed the outcome of I.A. No.58/2024 to the members wherein the Hon'ble NCLT directed the IRP to consult the CoC and "file appropriate application." The CoC was in favour of an extension beyond 330 days i.e.27.12.2024. The members felt that as on the date of the meeting, 70 days had already expired from the last date of CIRP i.e.27.12.2023 and hence a total of 170 days from the last date of CIRP would be required for providing various activities like application to be made to NCLT, obtaining order considering the Resolution Plan by CoC, voting thereon and filing an application with the NCLT for approval of the Plan. Thus, IRP filed I.A.298/2024 seeking an extension of the CIRP period by 170 days. However, NCLT by an order dt.15.04.2024 rejected the request for extension and directed the IRP to "take necessary steps in



accordance with Code and Regulations made thereunder for further action to be taken in the matter.”

- l) IRP held the 18th CoC meeting on 29.03.2024 wherein the CoC discussed the Order dt.15.04.2024 in I.A. No.298/2024. However, the CoC did not take any decision regarding the Liquidation of the CD or suggest to IRP to take anything forward in the 18th CoC meeting.
- m) In view of the order of Hon’ble NCLT in I.A. 298/2024, and since the CoC did not take any decision at the 18th CoC meeting, the IRP conducted the 19th CoC meeting on 13.05.2024. At the 19th CoC meeting the members amongst other Resolutions, Recommended for Liquidation of the CD. The following resolutions were discussed and approved/rejected by the CoC:

“A) RESOLVED THAT the CoC recommends to liquidate the Corporate Debtor and authorised the Interim Resolution Professional to intimate the Hon’ble NCLT to pass necessary orders for liquidation of the Corporate Debtor in terms of Sec 33(2) of IBC, 2016.

| | Votes Cast in Favour | Votes cast Against | Abstained |
|----------------------------|-----------------------------|---------------------------|------------------|
| Resolution for liquidation | 57% | 42% | 0% |

B) RESOLVED THAT the CoC shall examine under Regulation 39BA of IBBI(CIRP) Regulation, 2016 whether to explore compromise or arrangement as referred to under sub-regulation (1) of Reg 2B of IBBI (Liquidation Process) Regulations 2016 and the Interim Resolution Professional shall submit to the committee’s recommendation to the Adjudicating Authority while filing application u/s.33 of IBC, 2016.”



C) RESOLVED THAT the CoC recommends and directs the Liquidator to be appointed to explore selling the Corporate Debtor as a Going Concern in pursuance of Reg 39C of IBBI (CIRP) Regulations 2016 and other applicable provisions.

D) RESOLVED THAT in terms of Reg 39D of IBBI (CIRP) Regulations, 2016, the Committee approves Rs.1.50lakh per month as the fee payable to the Liquidator for the period of 90 days to explore Compromise or to sell the Corporate Debtor as a going concern, if an order for liquidation is passed u/s.33 of IBC, 2016.

In the event the Compromise or sale of the Corporate Debtor as a Going Concern do not materialize for any reason within a period of 90 days, for the remaining period the liquidator fee payable shall be in accordance with the Reg 4(2)(b) of IBBI (Liquidation Process) Regulations 2016.

E) RESOLVED THAT the estimated cost of liquidation of the Corporate Debtor is Rs.19,60,000/- and the same shall be contributed by the financial creditors, being financial institution ie., Kotak Mahindra Bank.

RESOLVED FURTHER THAT the funds contributed by the Financial Institution – Kotak Mahindra Bank, shall carry applicable interest at Bank Rate referred to in section 49 of Reserve Bank of India Act, 1934 and shall form part of the Liquidation Cost.

RESOLVED FURTHER THAT the contribution from Kotak Mahindra Bank shall be deposited in a designated escrow account to be opened and maintained in a scheduled bank within seven days of the passing of the liquidation order.

RESOLVED FURTHER THAT Liquidator be and is hereby to operate the said escrow account.

RESOLVED THAT, Mr. Suresh Kannan having IBBI Registration No. IBBI/IPA/IP-P-01434/2018-19/122277, having validity of Authorisation for Assignment upto 21st December, 2024, be and is



hereby recommended by the Committee of Creditors to act as the Liquidator during the Liquidation Process of the Corporate Debtor, subject to the Order of the Adjudicating Authority under Section 34 of the Insolvency and Bankruptcy Code, 2016.

- n) By the present I.A, the applicant is seeking directions for Liquidation of the CD under section 33(1)(a) of the Code, since no Resolution Plan was received before the expiry of the CIRP period, since CoC did not recommend any Resolution Plan and by the 19th CoC meeting the members did not recommend Liquidation of the CD.
- o) It is submitted that the IRP and CoC had put in all efforts for the revival of the CD during the CIRP period. In view of the Non-Cooperation from the Promoters/Suspended Directors, the IRP has also filed an application under S.19 (2) of the IBC. Once the Liquidation Order is passed by the Adjudicating Authority, the Liquidator would be pursuing the applications filed under the above section, if not disposed of.
3. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the materials on record.
4. The relevant provisions of Section 33 sub-section (1) and sub-section (2) of the Code read as follows:

“33 Initiation of liquidation-


(1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and



(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) 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 committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

5. **Prescribed period for filing application** – It is mentioned in the present application that, the Petition under 9 of the Code was admitted on 31.01.2023. As per the submissions made by the Applicant/RP, this bench had approved the extension of the CIRP period by 90 days from 31.07.2023 to 28.10.2023. On 11.10.2023, the CoC recommended extension of CIRP period by 60 days from 28.10.2023 to 27.12.2023. The Resolution Plan was discussed at various CoC meetings and put to vote at the meeting held on 11.12.2023. However, the plan was rejected by the CoC. The RP has filed two condonation of delay application for extension of CIRP period beyond 330 days but both the applications were rejected by this bench. In the meantime, the CoC members have rejected the Resolution Plan and decided to liquidate the CD. It is clear from the above discussion that the Resolution Plan was received before the expiry of the CIRP period and was rejected due to non-compliance of the requirements specified by the CoC, Hence, the present application falls under Clause (a) of sub-section (1) of section 33 of the Code.
6. **Appointment of Liquidator** – It is submitted that in the 19th CoC meeting dt.13.05.2024, the members finalised the appointment of Mr. Suresh Kannan as the Liquidator as per Section 34 of the Code. Therefore, to conduct the process of liquidation of the CD, this tribunal hereby approves the appointment of Mr. Suresh Kannan as the Liquidator of the CD bearing IBBI Registration No. IBBI/IPA/IP-P-01434/2018-19/122277, having validity of Authorisation for Assignment upto 21st December, 2024. This Tribunal also directs the

Liquidator to file for renewal of the AFA and file a memo for extension of AFA within two weeks of passing this order.

7. Regulations 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/201920/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.
- a) **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The Liquidation cost as per the resolution passed in the 19th CoC meeting held on 13.05.2024 is that the cost of Liquidation of the CD is Rs.19,60,000/- and the same shall be contributed by the financial creditors being financial institution – Kotak Mahindra Bank.
- b) **Assessment of Sale as a going concern [Regulation 39C of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The members of the CoC have recommended and directs the Liquidator to be appointed to explore selling the CD as a Going Concern in pursuance of Reg 39C.

| | Votes Cast in Favour | Votes Cast Against | Abstained |
|--|----------------------------|-----------------------|-----------|
| Sale of CD as going concern during Liquidation | 57% | 0% | |

In terms of Reg 39D of IBBI (CIRP) Regulations, 2016, the Committee approves Rs.1.50lakh per month as the fee payable to the Liquidator for the period of 90 days to explore Compromise or to sell the Corporate Debtor as a going concern, if an order for liquidation is passed u/s.33 of IBC, 2016.



In the event the Compromise or sale of the Corporate Debtor as a Going Concern do not materialize for any reason within a period of 90 days, for the remaining period the liquidator fee payable shall be in accordance with the Reg 4(2)(b) of IBBI (Liquidation Process) Regulations 2016.

- c) **Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** - The fee payable to the Liquidator is as per the resolution passed in reference to the Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016 has been approved by the CoC which is Rs.1.50 lakh per month as the fee payable to the Liquidator for the period of 90 days to explore compromise or to sell the CD as a going concern. Additionally, the CoC has approved the payment of the Liquidator Fee as per Regulation 4.

8. Pending Applications, if any, and its effects – In the 19th CoC Meeting, the CoC was informed about the applications filed by the IRP which are still under consideration of the Adjudicating Authority:

| Si. No | I.A No. | Filed on | Remarks |
|--------|----------|------------|---|
| 1 | 370/2023 | 5.3.2023 | Application under s.19(2) of IBC, 2016 non-cooperation of Suspended Directors |
| 2 | 414/2023 | 9.6.2023 | Application for taking custody of property at Mysore |
| 3 | 566/2023 | 28.07.2023 | Application u/s 43 of IBC |
| 4 | 01627 | 23.10.2023 | Application filed under S.96 of IBC, 2016 |

It is submitted by the RP that once the Liquidation Order is passed by the Adjudicating Authority, the Liquidator would be pursuing the above applications, if not disposed of.



9. In view of the conditions provided under Section 33 (1) (a) of the Code, the Corporate Debtor **M/s. Black Pepper Technologies Private Limited is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:
- i. That as per Section 33 sub-section (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the Corporate Debtor;
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
 - ii. That the provisions of sub-section (5) of Section 33 of the Code shall 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; and
 - iii. That this order of liquidation under Section 33 of the Code 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; and
 - iv. That all the 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 in the Liquidator; and
 - v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
 - vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and



Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

- vii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 of the said Regulations thereafter.
 - viii. The Liquidator shall file his written consent within one week from today.
10. Thus **I.A No. 06 of 2024** stands disposed of.
11. Copy of this order to be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is directed to send a copy of this order to the Liquidator at his e-mail address.

S/d

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

S/d

(K.BISWAL)
MEMBER (JUDICIAL)