

9

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH – I, CHENNAI**

**IA/IBC/983/CHE/2022 in IBA/988/2019**

*(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016  
read with Rule 11 of the NCLT Rules, 2016)*

In the matter of **JKS THE BANYAAN PRIVATE LIMITED**

**Ms. Rajalakshmi Varadarajan**  
RP of JKS The Banyaam Private Limited,  
351/18, Second Floor, Ishwarya Flats,  
36<sup>th</sup> Street, I Block,  
Anna Nagar,  
Chennai- 600 040.

*... Applicant*

*Order Pronounced on 09<sup>th</sup> November 2022*

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT  
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : *B.Dhanraj, Advocate*

**ORDER**

***Per: SAMEER KAKAR, MEMBER (TECHNICAL)***

This is an application filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 and 32 of the NCLT Rules, 2016 seeking an order of Liquidation against the Corporate Debtor viz., JKS The Banyaam Private Limited

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated on 23.04.2021 by an Application filed by the Corporate Debtor viz., JKS The Banyaan Private Limited under Section 10 of the Insolvency and Bankruptcy Code, 2016 and the one Mr. J Manivannan was appointed as the Interim Resolution Professional ("IRP" for brevity) and the IRP had caused the Public Announcement on 12.05.2021.

3. It was submitted that the 1<sup>st</sup> COC meeting was convened on 06.08.2021 with the Sole Financial Creditor viz., Bank of Baroda with 100% voting rights. Further it can be seen from the averments made in para 3 of the Application that in civil Appeal No. 2230 of 2021 filed by the sole COC member, before the Hon'ble SC as against the Hon'ble NCLAT order. The said matter was remanded back to this Tribunal consequent to which the Corporate Insolvency Resolution Process of the Corporate Debtor herein was in progress.

4. Subsequently, in the 2<sup>nd</sup> COC meeting held on 26.10.2021, owing to the CIRP period ending on 17.10.2021, it was resolved to seek extension of the CIRP period by 90 days and file an application to that accord before this Tribunal. The copy of the said minutes is attached as *Annexure II (3) & II (4)* of the Application typeset.

5. Subsequently, in the 3<sup>rd</sup> COC meeting held on 24.12.2021, it was resolved to replace the erstwhile IRP with the Applicant herein as the Resolution Professional and various discussions in relation to EOI and RFRP and evaluation matrix was discussed. The copy of the said minutes is attached as Annexure II (5) of the Application typeset.

6. Further it was submitted that the 1<sup>st</sup> EOI dated 05.01.2022 was published on 10.01.2022 fixing the last date of submission of Resolution plan as 07.03.2022. However it can be seen from the averments made in para 6 of the Application that the COC extended the last date of EOI and a revised FORM G was published on 05.03.2022 fixing the last date of submission of Resolution plan as 18.03.2022. The said FORM G is placed as Annexure II (7) of the Application typeset.

7. It was submitted that in the 6<sup>th</sup> COC meeting held on 24.05.2022 it was elaborately discussed about the non-cooperation of the promoter to provide the details of the fixed assets and receivables. The said minutes is placed as Annexure II (10) of the Application typeset.

8. Further it was submitted by the Ld. Counsel for the Applicant that IA/565/CHE/2022 was filed before this Tribunal seeking exclusion of the COVID-19 period from 23.04.2021 to 28.08.2022 along with an extension of the CIR period. The same was allowed by this Tribunal in order dated 09.06.2022 granting the extension of the CIRP of the Corporate Debtor till 28.08.2022.

9. The Ld Counsel for the Applicant submitted that pursuant to the 7<sup>th</sup> COC meeting held on 15.06.2022 the Applicant published a revised FORM G dated 20.06.2022 fixing the last date of submission of Resolution plan as 06.08.2022 from prospective resolution applicants. Further, from the 9<sup>th</sup> COC meeting held on 02.08.2022 it can be seen that the COC resolved to 'liquidate' the Corporate Debtor as 'NIL' EOI was received owing to no construction activity in the past 8 years and no approval from RERA. The same is averred by the Applicant in 'para 14' of the Application.

10. It was further submitted that in the 9<sup>th</sup> meeting of the COC on 02.08.2022, the COC with the sole Financial Creditor passed a unanimous resolution recommending liquidation of the Corporate Debtor and then said resolution is extracted hereunder:-



"Resolved to recommend the Liquidation of the Corporate Debtor JKS The Banyaan Private Ltd., and to authorise the Resolution Professional Ms Rajalakshmi Vardarajan to apply for Liquidation with the Adjudicating Authority."

11. The Copy of the 9<sup>th</sup> COC minutes is placed as Annexure II (16) of the Application typeset.

12. Heard the submissions of the Ld. Counsel for the Applicant. It can be seen from the submissions that the CIRP of the Corporate Debtor ended on 28.08.2022 and the Committee of Creditors in the 9<sup>th</sup> COC meeting held on 02.08.2022 has unanimously resolved to place the Corporate Debtor for liquidation. In such circumstances, this Adjudicating Authority is left with no other option but to liquidate the Corporate Debtor and concludes that this present application deserves to be allowed.

13. It is further seen that the Applicant RP has filed FORM-H dated 28.08.2022 and the same forms a part and parcel of the Application typeset.

14. At this juncture it is relevant to refer Section 33 of the IBC, 2016 which is as follows:-



### Section 33

(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 approved by not less than sixty-six percent of the voting share 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).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

15. It is also seen from the records that the Applicant herein has accorded the written consent, and has attached Form AA to act as the

Liquidator of the Corporate Debtor and further from the IBBI website it can be seen that the Applicant has valid AFA.

16. Under the abovementioned circumstances this Adjudicating Authority is left with no other choice but to liquidate the Corporate Debtor. We hereby '**allow**' the liquidation of the Corporate Debtor.

Therefore **Ms. RAJA LAKSHMI VARDARAJAN**(cma.rajalakshmi@gmail.com)with Registration

No:IBBI/IPA-003/IP-N00145/2017-2018/11597is appointed as the Liquidator of the Corporate Debtor to carryout the liquidation process subject to the following terms of the directions:-

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.



- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

17. With the above directions, this IA/IBC/983/CHE/2022 stands disposed of.

- Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

- Sd -

**JUSTICE RAMALINGAM SUDHAKAR**  
PRESIDENT

*Vinita Varshini.K*