

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH- BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web based video-conferencing platform)

IA No.388/2022
In
C.P. (IB) No.66/BB/2021
(Admitted Matter)
Under Section 33(1) of the
Insolvency and Bankruptcy Code, 2016

In the matter of:

Sushma Ramanna ...Petitioner /Operational Creditor

VERSUS

Coursecube Private Limited ...Respondent/Corporate Debtor

And in the matter of IA No.388/2022:-

Mr.Manishkumar Patel
Resolution Professional,
Coursecube Private Limited ...Applicant

Order delivered on: 24.08.2023

Coram: 1. Hon'ble Justice (Retd) T.Krishnavalli, Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the RP : Shri.Ganapathy K
RP : Shri. Manishkumar Patel

O R D E R

I.A No.388/2022

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application has been filed by Mr Manishkumar Patel, Resolution Professional of M/s. Coursecube Private Limited (Corporate Debtor) under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s Coursecube Private Limited

(Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.

2. CP (IB) No. 66/BB/2021 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by “Sushma Ramanna” to initiate Corporate Insolvency Resolution Process (**in short ‘CIRP’**) against M/s. Coursecube Private Limited was admitted on 01.02.2022 and Mr. Manishkumar Patel was appointed as Interim Resolution Professional (IRP).
3. After receiving the Order, the IRP made a Public Announcement on 08.02.2022 in the prescribed form i.e, Form A. On the basis of claims received and admitted from the operational creditor, the applicant constituted the CoC with the sole operational creditor and there were no claims from the financial creditor. The First CoC meeting was held on 09.03.2022, the interim resolution professional had given consent to act as Resolution Professional. In the meeting there was no proposal from any CoC members for appointment of another eligible Insolvency Professional as Resolution Professional. In the e-voting it was seen that the proposal for continuation of IRP as RP received requisite voting share of total voting share as is required in terms of Section 22 of the Code.
4. It is submitted that the applicant had sent requisite intimation to various statutory authorities. However, no claims have received from statutory authorities or employees/workmen till the date of filing this Application.
5. It is further submitted that during the visit of the applicant, it was found that the Registered Office was on rental basis and was vacated by the suspended management longback during the Covid period. The Suspended Director informed that the fixed assets of the company were computers, electronic equipments and furniture and fixtures at the rental premises to conduct classes. During the Covid period, the business suffered losses due to restriction in physical classes. The assets were seized by the Landlords of premises against the rent payable by the suspended management. The employees of the corporate debtor did not return back to work due to non-

payment of salaries. Further there has been no business activities in post Covid period.

6. The applicant state that he appointed Mr. Vishnu Upadhyay and Mr. Prashant Jain on 08.01.2022 to value the assets of the corporate debtor in terms of Regulation 27 of CIRP Regulations. Since there were no assets available with corporate debtor, the valuation could not be taken up.
7. It is submitted that in Second CoC meeting held on 21.04.2022, approved the evaluation matrix. Further, information Memorandum was prepared and Form G was published on 23.04.2022. However, no EOI was received from any prospective Resolution Applicant.
8. In the third meeting of CoC held on 19.07.2022, the CoC opted for liquidation of corporate debtor and the same is as under:

“RESOLVED THAT pursuant to Section 33(1)(a) of Insolvency and Bankruptcy Code, 2016 and other applicable provisions, the committee of creditors be hereby and approve to liquidate Coursecube Private Limited and to file an Interlocutory Application with Adjudicating Authority.

RESOLVED THAT pursuant to Section 34 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and Rules and Regulations made thereunder, the committee of creditors be and is hereby approved to appoint Mr.Manishkumar Patel, as liquidator.

RESOLVED FURTHER THAT the liquidator shall draw his remuneration of Rs. 1,00,000/- lumpsum for whole process plus out of pocket expenses as Regulation 39-D of the IBC.”

9. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar v.VSL Securities Pvt Ltd. in CA No.1/2020 in CA No.308/2000, dated 09.06.2020, observed as under:-

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business

decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

10. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records.

11. The relevant provisions of Sections 33(1) and 33(2) of the Code are 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).”

12. **Prescribed period for filing application-** In the present case, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 01.02.2022. The present Application is filed on 19.08.2022 i.e., before the expiry of the CIRP period. Hence, this application shall be considered under section 33(1).

13. **Appointment of Liquidator** - Appointment of Liquidator - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP submitted the written consent in Form-AA, to act as the Liquidator for the purpose of Liquidation. Shri Manishkumar Patel, Resolution Professional with Registration No. IBBI/IPA-001/IP-P01342/2018-19/12061 has been proposed by the COC to act as the Liquidator. The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, Shri Manishkumar Patel is appointed as the Liquidator.

14. Regulation 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 is as per the resolution passed at agenda Item No.11 of Annexure H.

b. Assessment of Sale as a going concern [Regulation 39C of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016] – The CoC approved the sale of asset of Corporate Debtor as a going concern as per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

in their 3rd meeting held on 19.07.2022. Therefore, the Liquidator shall follow the Regulation 32 of the 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.

15. **Pending applications, if any, and its effects** – On 21.10.2022, the Learned Counsel for the RP/Applicant was directed to file an Form H and affidavit regarding no legal proceedings being pending against the corporate debtor, of the corporate debtor, within 10 days. In compliance to the Order dated 21.10.2022, an affidavit is filed vide Diary No. 5065 dated 24.11.2022, disclosing the pending cases of Corporate Debtor. The learned counsel for the applicant has stated that there are pending cases against the corporate debtor, but the same have no effect on the instant application.
16. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Coursecube Pvt Ltd 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 (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 the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
- viii. 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 thereafter.

- ix. The Liquidator shall file his written consent within one week from today.

17. Thus **I.A No. 388 of 2022** stands disposed of.

18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

-Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd/-

**(T.KRISHNAVALLI)
MEMBER (JUDICIAL)**