THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No. 933/2020
In
CP (IB) No. 261/Chd/Hry/2019

Under Section 33(1) of IBC, 2016

In the matter of:

Glister Hospitality Gurgaon Private Limited

…Corporate Debtor

<u>In the matter of IA No. 933/2020</u>

Atul Mittal
Resolution Professional of Glister Hospitality Gurgaon Private Limited
having its Registered Address at
174, Balco Apartments,
Plot No. 58- IP Extension
Delhi-110092,

…Applicant/Resolution Professional

Judgement delivered on: 28.06.2022

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Applicant : Mr. Vinod Kumar Mahajan

<u>Per: Subrata Kumar Dash, Member (Technical)</u>

ORDER

IA No. 933/2020

The present application has been filed by the Resolution Professional to liquidate Corporate Debtor under Section 33(1) of the Insolvency and Bankruptcy Code, 2016. In this case, the petition for initiation of CIRP process filed by M/s Glister Hospitality Gurgaon Private Limited against the Corporate Debtor under Section 10 of the IBC, 2016 was admitted by this Tribunal by order dated 08.01.2020. Accordingly, Mr. Atul Mittal was appointed as IRP. The IRP made public announcement dated 10.01.2020 in prescribed Form A, In accordance with Regulation 6 of IBBI (CIRP) Regulations, 2016 (hereinafter referred to as Regulations) read with Section 13(1)(b) and 15 of the Code. Copy of publication **(Annexure-B)**.

2. It is submitted that the IRP constituted the Committee of Creditors (CoC) with operational creditors as members on 25.01.2020 with 100% voting share. The First Meeting of Committee of Creditors (COC) was convened on 04.02.2020, as a result of voting of the members of the COC, Mr. Atul Mittal (IRP) was confirmed to act as a Resolution Professional (RP) to carry out the CIR Process.

3. It is further submitted that Second Meeting of Committee of Creditors was convened on 27.02.2020, whereby decision on Publication of invitation for Expression of Interest from prospective resolution applicants in FORM-G, Evaluation Matrix and Request for Resolution Plan (RFRP) document were taken by CoC, Eligibility criteria for prospective Resolution Applicants were finalized. As a result of which the Applicant published Invitation for Expression of Interest (in

Form G) for Submission of Resolution Plan, as per regulations 36A (1) and 36A (2), on 28.02.2020.

4. It is averred by the applicant that the third Meeting of Committee of Creditors was held on 14.03.2020, in which Resolution Professional tabled the Information Memorandum (IM) before the members of the Committee of Creditors. It is stated that claim was received from Haryana Tax for Rs. 42,53,952/- and the same was admitted on 17.03.2020. The report under Regulation 13(2) and 17(1) dated 19.03.2020, was submitted to the Adjudicating Authority on 16.06.2020 **(Annexure-H)**.

5. It is contended by the applicant that notice was issued on 05.06.2020 for convening the fourth meeting of Committee of Creditors to be held on 08.06.2020. However, the meeting was deferred at the request of Haryana Tax Officer, as they were deployed in Red Zone Area for Covid related duty. Thereafter, applicant again issued notice on 11.08.2020 for convening the fourth meeting of Committee of Creditors and the same was held on 13.08.2020. The meeting was attended by eight members of the CoC out of twelve members having voting right at the CoC. That the members present had aggregate voting share of 36.72%. That no representative of Haryana Sales Tax attended the meeting. A copy of the minutes of the said meeting are enclosed as Annexure-I.

6. It is further contended that at the fourth CoC meeting, the Resolution Professional informed that pursuant to Invitation for EOI published in Form G on 28.02.2020, one EOI was received, but no resolution plan was submitted by the proposed Resolution Applicant till the last date for submission of resolution plan, which was 28.04.2020. The Resolution Professional told the members of CoC that the timelines for submission of EOI may be extended by republishing the Form-G.

The members of CoC decided not to extend the timelines for submission of EOI and recommended Liquidation of the company.

7. The Resolution Professional stated that the resolution for Liquidation is required to be voted by the members. The CoC decided that the members present may cast their vote at the meeting and the members who are not present may be allowed to cast their vote by email. That the said resolution was put to vote at the meeting. The Seven CoC members present at the meeting aggregated to 30.99% of the voting share of the CoC, voted in favour of the resolution and one member having 5.73% voting share wanted to be allowed to cast his vote by email as he did not have authority to cast the vote. It was decided to send email to the remaining members of the CoC who have not cast their vote. Accordingly, email was sent on 15/08/2020 to five members of the CoC along with voting sheet to cast their vote. It is averred that the Resolution Professional received vote in favour of Liquidation from One CoC member having 6.56% of voting share but the other 4 members including Haryana tax did not cast their vote. Thus, no vote was cast against the resolution. The resolution was passed with 100% votes to initiate liquidation process of the Corporate Debtor, of the members casting their vote, representing 37.55% of the total voting shares.

8. The Resolution Professional tried his best to enable Haryana tax to cast their vote, by sending reminder mails on 20.08.2020 and 24.08.2020. The Resolution Professional received letter dated 26.08.2020 from the Tax department that their sanctioning authority are going to take time. Thereafter the RP providing all information requested by the Haryana Tax to facilitate the casting of the vote. The RP again sent reminder emails on 07.10.2020 and 08.10.2020 and had numerous telephonic conversations. However, no vote has been cast by the Haryana tax in

favour or against the Liquidation resolution passed by the CoC. Haryana Tax has 51.36% of the voting share in the CoC. A copy of all the said communication are enclosed as Annexure-J.

9. It is averred that CoC while approving the resolution for Liquidation of the Corporate Director has authorised the Resolution Professional to file application u/s. 33 of IBC, 2016. Further it was also resolved to propose the name of Mr. Atul Mittal as Liquidator of the Corporate Debtor- M/s. Glister Hospitality Gurgaon Private Limited. A copy of the written consent of Mr Atul Mittal to be the Liquidator is enclosed as Annexure-K.

10. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(1) of IBC and the same is reproduced below:-

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

11. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

i. before the expiry of the Insolvency Resolution Process period;

ii. 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; and

iii. If does not receive a resolution plan under sub-section (6) of Section 30.

12. In the present case, the Resolution Professional has published the Form G inviting the Expression of Interest (EOI) on 28.02.2020. However, pursuant to above publications, one EOI was received, but no resolution plan was submitted and received by the proposed resolution applicant till the last date for submission of resolution plan i.e. 28.04.2020. In the fourth Meeting of COC held on 13.08.2020, the COC has decided to liquidate the Corporate Debtor by passing Resolution in the aforesaid meeting and further resolved to appoint Resolution Professional as Liquidator. As per order dated 27.04.2020 of this Tribunal, repeated service has been effected on Haryana Tax (DTC Gurgaon), despite intimation none has appeared on their behalf. It is presumed that haryana Tax (DTC Gurgaon) is not interested in defending the present application.

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

14. It is submitted that the CoC in its 4th meeting held on 13.08.2020 has resolved to appoint the present RP i.e. Mr. Atul Mittal, Registration No. IBBI/IPA-001/IP-P00439/2017-2018/10762 as liquidator and he has filed his consent in Annexure-K. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. M/s Glister Hospitality Gurgaon Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code.

15. Accordingly, by exercising our power under Section 33(1) pass the following order:-

i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;

ii. Since the Resolution Professional has given his consent to act as Liquidator, therefore, Mr. Atul Mittal bearing Registration No. IBBI/IPA-001/IP-P00439/2017-2018/10762, resident of 174, BALCO Apartments, Plot No. 58, IP Extension, Patparganj, Delhi-110092, Mobile No. 9871830777, e-mail: a.mittalmc@gmail.com is hereby appointed as liquidator;

iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

iv. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

v. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

vii. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;

viii. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.

ix. On initiation of the liquidation process but 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, as provided in Section 33(5) of the Code read with its proviso.

x. 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;

xi. 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 provisions 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;

xii. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., Financial Express (English) and Jansatta (Hindi), stating that the Corporate Debtor is in liquidation.

xiii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

xiv. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, RoC shall send compliance report to the Registrar, NCLT within a period of 30 days;

xv. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

xvi. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

16. Thus, IA No. 933/2020 is allowed and stands disposed of.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

June 28, 2022
PB/ASH