



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA No. 572/JPR/2023
In CP No. (IB)- 77/7/JPR/2022

***UNDER SECTIONS 33 & 34 OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016***

IN THE MATTER OF:

FASHION SUITINGS PRIVATE LIMITED

...Financial Creditor/Applicant

VERSUS

NIRMAL CARS PRIVATE LIMITED

...Corporate Debtor/Respondent

IN THE MATTER OF:

IA No. 572/JPR/2023

SOURABH MALPANI,
Resolution Professional M/s
Nirmal Cars Private Limited
Guru Kripa Plot No. 93,
Neelkanth Colony, Queens
Road, Jaipur, Rajasthan-302021

... Applicant

For the Applicant

: Prateek Kedawat, Adv.

IA No. 572/JPR/2023
In CP No. (IB) – 77/7/JPR/2022

Sd/-

Sd/-



Order Pronounced On: 29.02.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') bearing IA No. 572/JPR/2023 is filed by the Resolution Professional ('Applicant' / 'RP') for *M/s Nirmal Cars Private Limited* ('Corporate Debtor') under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') for passing an order of Liquidation.
2. The Adjudicating Authority *vide* Order dated 15.06.2023 had admitted the Application filed by *M/s Fashion Suitings Private Limited* under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed the Applicant as Interim Resolution Professional ('IRP') and subsequently has been confirmed as Resolution Professional ('RP') in the 1st meeting of Committee of Creditors ('CoC') held on 13.07.2023.
3. In compliance with provisions of the Code, the IRP issued a public announcement, under Form – A in Economic Times and Jaipur Mahanagar Times on 17.06.2023, for inviting claims from the creditors of the Corporate Debtor. Consequently, the IRP constituted the Committee of Creditors ('COC') under Regulation 17 of the

IA No. 572/JPR/2023
In CP No. (IB) – 77/7/JPR/2022

Sdr

Sdr



Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and conducted the 1st meeting of the CoC.

4. Thereafter the RP has appointed two (2) registered valuers for asset class 'Securities & Financial Assets' under Regulation 27 of the CIRP Regulations on 20.07.2023 to determine the fair value and liquidation value of the assets of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulation.
5. The 2nd meeting of the CoC was held on 11.08.2023 wherein the CoC opined that the Corporate Debtor has no assets except bank account balance however the same is under lien of the Goods and Services Tax Department ('GST'). Further, the Applicant has submitted that due to the non-availability of the books of accounts and other statutory records, no information memorandum has been prepared in terms of Regulation 36 of the CIRP Regulation. Further, the CoC has decided to keep the publication of Form-G on hold until the receipt of claims from the financial institution.
6. The 3rd meeting of CoC was held on 19.09.2023, wherein the CoC has passed the following resolutions;

Sdr

Sdr

IA No. 572/JPR/2023

In CP No. (IB) – 77/7/JPR/2022



- 6.1 In accordance with the Regulation 40D of the CIRP Regulation, 2016 the CoC has decided to liquidate the Corporate Debtor in terms of Section 33(2) of the Code, 2016, and proposed the name of the Applicant to be appointed as Liquidator. The Applicant has also filed his written consent to act as Liquidator of the Corporate Debtor. Copy of the written consent dated 20.09.2023 is annexed as Annexure-A/5 of the Application.
- 6.2 Further it was decided that liquidation cost will be taken on an actual basis and which will be approved by the Stakeholder Consultation Committee. The CoC has also approved and ratified the remuneration of the Liquidator to the tune of Rs. 50,000/- per month (Rupees Fifty Thousand Only).
- 6.3 The CoC has approved the sale of the Corporate Debtor as a going concern under clause (e) or (f) of Regulation 32 & 32A of the IBBI (Liquidation Process) Regulation, 2016 and if the liquidator failed to sell the Corporate Debtor as a going concern, then proceed in terms clause (a) to (d) of the said Regulation.
- 6.4 Further in terms of Regulation 2B (1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 the CoC has also

SdrSdr



recommended the possibility of the Compromise or Arrangement during the period of the Liquidation of the Corporate Debtor.

The Copy of the 3rd meeting of CoC dated 19.09.2023 is annexed as Annexure-A/4 (Colly) of the Application.

7. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 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 creditor approved by not less than sixty-six per cent of the voting share to liquidate the

Sdr

Sdr



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

8. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 308 of 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 the 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”.

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

9. **The prescribed period for filing Application** - In the present case, the Application under Section 7 of the Code was admitted on 15.06.2023. Accordingly, the date for the completion of the CIRP was on 12.12.2023, within 180 days of the timeline prescribed under the Code, the RP filed the present application on 13.10.2023. Hence, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code.

Sd-

Sd-



10. **Appointment of Liquidator and fee to be paid** – 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 Corporate Insolvency Resolution Process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”

11. The present RP, *Mr. Sourabh Malpani*, is eligible as a Liquidator. It is noted that liquidation proceedings herein, at the instance of the CoC has given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any reason to replace the existing RP. *Mr. Sourabh Malpani*, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P01265/2018-19/12047, who has filed his written consent dated 20.09.2023

Sdr

Sdr



to act as the Liquidator as Annexure – A5 of the IA. Thus, *Mr. Sourabh Malpani* is appointed as the Liquidator.

12. It is also seen that Regulations 39B, 39C, and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019* along with Regulation 39BA of the CIRP Regulations, 2016 inserted *vide Notification No. IBBI/2022-23/GN/REG093, dated 16.09.2022*. The relevant aspects in this respect are examined hereunder.
13. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** — The CoC has decided on the estimated liquidation cost and decided that the liquidation costs will be taken on an actual basis which will be approved by the stakeholders formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs. The Applicant has appointed two (2) registered valuers for asset class ‘Securities & Financial Assets’ under Regulation 27 of the CIRP Regulation, 2016 to determine the fair value of the Liquidation of the assets of the Corporate Debtor in terms of Regulation 35 of the said Regulation. Moreover, it was found that the Corporate Debtor has no assets except bank account balances which are also under the lien of the GST Department

Sdr

Sdr



therefore the valuation of the Corporate Debtor was kept on hold, and the CoC has discussed that the valuation exercise shall be conducted only if any assets are discovered and information as to accounts of the Company is made available. Further, it is seen that no documentation has been provided by the RP in this regard. Thus, the Liquidator is directed to place on record the valuation reports along with the status report as provided under the concerned regulations and rules thereof.

14. *Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)* — The CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as referred to under Regulation 2B (1) of the Liquidation Regulations, 2016 and the RP should submit the CoC's recommendation to the Adjudicating Authority while filing an application under section 33 of the Code. In this regard, the CoC recommended the possibility of compromise or arrangement shall be explored during the liquidation process.
15. *Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016)* — Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable, movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such

Sdr

Sdr



property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority.

16. The CoC in its third meeting has discussed selling the Corporate Debtor as a going concern, as the first option or selling the business(s) of the Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if the Adjudicating Authority passes an order of liquidation. The RP explained that the CoC has resorted to selling the Corporate Debtor as a going concern and if it is unable to do so then proceed with other options such as sale on a standalone basis, slump sale, collective sale, and assets in parcels.
17. *Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)* — The fee payable to the liquidator shall be in accordance with the decision taken by the CoC under Regulation 39D of the CIRP Regulation, 2016, where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator

Sdr

Sdr



in its first meeting. Further, the RP proposes a fee to the tune of Rs. 50,000/- (Rupees Fifty Thousand Only) per month towards professional services of the Liquidator, and the CoC has approved and ratified the same.

18. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)*** – The RP submitted that continuing with the CIRP will not achieve any resolution and it will increase the cost/expense only. The status of the Corporate Debtor is non-operational for the preceding three years with the technology employed being obsolete for the continuation of the operations. Further, there are no tangible or intangible assets of the Corporate Debtor that could maximise the value of the Corporate Debtor. Therefore, the sale as a going concern will be the best option for an effective and efficient liquidation of the Corporate Debtor as it is not in operation for the last three years.

19. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, *M/s Nirmal Cars Private Limited* is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

19.1 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 by or against the Corporate Debtor;

Sdr

Sdr



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;

19.2 The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

19.3 This order of liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees, and workmen of the Corporate Debtor;

19.4 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 an effect and shall be vested in the Liquidator;

19.5 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 concerning the liquidation process as they apply to CIR process with the substitution of references to the Resolution Professional for the Liquidator;

19.6 The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016, and in Form B of Schedule II of

Sd/-

Sd/-

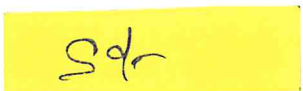


these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date;

19.7 Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

20. In view of the foregoing, IA No. 572/JPR/2023 is disposed of. A copy of this order is supplied to the counsel for the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.


**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**


**RAJEEV MEHROTRA,
TECHNICAL MEMBER**