

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA 468 of 2019 in

C.P. (I.B) No.204/NCLT/AHM/2017


Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.10.2019**

Name of the Company: Chandra Prakash Jain RP
V/s
Khushi Foods Ltd & Ors

Section of the Companies Act : Section 33(1), 33(2), 34(1) of the Insolvency and
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NIKITA C. JAIN	ADVOCATE	FOR THE RP	
2.				

ORDER

The RP is represented through learned counsel.

The Order is pronounced in the open court, vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 9th day of October, 2019

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA No. 468/NCLT/AHM/2019
in
C.P. No. (I.B) 204/9/NCLT/AHM/2017**

Mr. Chandra Prakash Jain
Resolution Professional

...Applicant

Versus

M/s Khushi Foods Ltd. & Ors.

... Respondent
[Corporate Debtor]

Order delivered 9th October, 2019

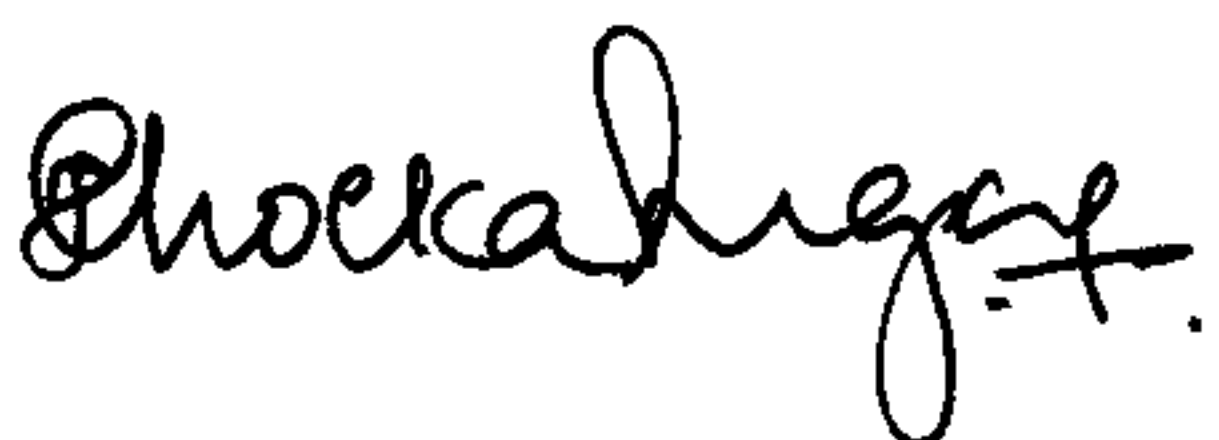
**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

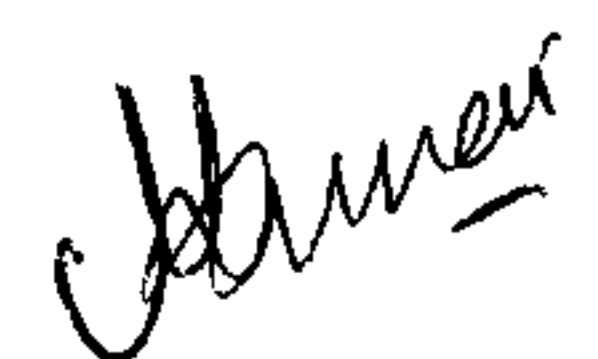
Appearance: Advocate Ms. Nikita C. Jain for RP and Mr. Rajendra Sharma
as Director of Suspended Board of Directors.

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed by the Resolution Professional (hereinafter referred as "RP") seeking order of liquidation under section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code"). The Applicant is represented through learned counsels.
2. On perusal of the records, it is found that a petition bearing No. CP (IB) 204/2017 was admitted on 02.11.2018 under section 9 of the IB Code and Mr. Ashok Pranshankar was appointed as the Interim Resolution Professional (hereinafter referred as "IRP").





3. On 28.11.2018, IRP made a public announcement for inviting claims from the creditors of the Corporate Debtor Company and constituted Committee of Creditors (hereinafter referred as "CoC") on 19.12.2018. Claims were received from two financial creditors i.e. Union Bank of India and Deutsche Bank AG.
4. CoC in its first meeting held on 26.12.2018, proposed to replace IRP. Accordingly, the IRP was replaced with Mr. Chandra Prakash Jain, the RP. CoC also appointed M/s Patel and Jesalpur, Chartered Accountants for providing support on financial matters to RP/CoC. Two registered valuers i.e. Mr. Parag Sheth and Mr. Suresh D. Hawani were appointed to determine the fair value and liquidation value of the Corporate Debtor Company in the 3rd CoC meeting held on 21.01.2019.
5. The RP in the 5th CoC meeting informed the CoC members about the huge losses, write-offs and reduction in inventory, thereby suggested to opt for Forensic Audit of records of the Corporate Debtor Company for a period of 2 years before the commencement of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"). RP further suggested to discontinue the services of M/s Patel and Jesalpur.
6. On perusal of the record, it is found that RP received a claim from M/s Jana Small Finance Bank Ltd. on 23.02.2019. After reviewing the same, RP requested M/s Jana Small Finance Bank Ltd. to submit a fresh claim as the documents submitted were not appropriate. RP also received a claim from M/s Vicky Overseas on 14.02.2019.
7. As per the directions of CoC, RP invited quotation from three Forensic Auditors to carry out Forensic Audit for the period from 03.11.2016 to 02.11.2018 on 25.02.2019 i.e. M/s

Shoaka Singh

Shoaka Singh

Rajvanshi & Associates, M/s R R Tibrewala & Co. and M/s VCAN & Co.

8. That in the 6th CoC meeting, the services of M/s Patel and Jesalpur was discontinued as per the direction of the CoC. Further, M/s Rajvanshi and Associates were appointed as Forensic Auditor. Moreover, the claims received from one Operational Creditor and one Financial Creditor could not be admitted as the same has some technical defects. It was stated by RP to the claimant that claim will be accepted once the defects are rectified.
9. It is further stated by the counsel that 2 EoI were received against the publication of invitation for calling EoI dated 09.02.2019 but no resolution plan were received due to high eligibility criteria. Considering the same, RP suggested the CoC to re-consider the eligibility criteria as it seemed that the present criterion is high. CoC also held the same view and agreed to make required changes in the next CoC meeting. The CoC also took the record of the commitment made by Mr. Sharma, the member of suspended board, of providing the details of pending statutory liabilities, which is unfortunately not yet received.
10. It is further submitted that continuous delay in submission of details and absenteeism of the suspended board members hampered the CIRP. It was felt by CoC that absenteeism of the other suspended board members i.e. Mrs Jyoti Sharma and Mr. Imtiyas Rahimbai Mogal amounted to non-cooperation under the IB Code.
11. In the 7th CoC meeting, CoC observed that the present eligibility criteria seems to be high, as disclosed earlier and therefore, the net worth of a Company/individual/ firm needs to be reduced to Rs. 50,00,000/- and directed the RP to

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publish the EoI which was published again with the modified criteria on 25.04.2019.


12. In the 9th CoC meeting, RP apprised the CoC about the revised public announcement made on 25.04.2019 for inviting EoI and the last date for submission was fixed on 06.05.2019. Since, no resolution plan was received, CoC directed the RP to call next meeting of CoC to discuss liquidation.
13. Accordingly, in the absence of any EoI, CoC passed a resolution in its 10th CoC meeting to liquidate the Corporate Debtor Company and further resolved the appointment of RP as liquidator.
14. We have gone through the records and also seen the reports submitted by the RP and the resolution passed thereon by CoC. It is found that CoC voted in favour of liquidation by 100% voting.
15. Under the facts and circumstances as narrated above, it is the commercial wisdom of the CoC, as such, we do not found any reason to interfere with the decision of the CoC. Accordingly, the application so filed by the RP is allowed and the RP may continue as liquidator. However, the liquidator is expected to dispose off the Corporate Debtor Company as a going concern.
16. In view of the order of the Hon'ble Supreme Court in a case of **Allahabad Bank vs. ARC Holding Ltd.** {[2000] 28 SCL 394 (SC) (para 19)}, we pass the following orders:
 - a) The Liquidator shall, as far as possible, try to dispose of the Corporate Debtor Company as a going concern after publication of notice in newspaper with the reserve price which shall be equal to the total debt amount including interest, and in the absence of good offer, the Liquidator shall try maximum to recover over and above the liquidation value


Shoera Hussain

and allow maximum period applicable for sale of the Corporate Debtor as a going concern, which will be applicable for three months from the date of the order. If the process of sale as a going concern is failed during this period, then process of sale of the assets of the Corporate Debtor Company will be according to the provisions contained in Chapter VI of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Tribunal directing the sale of the Corporate Debtor Company as a going concern shall stand set aside and Corporate Debtor Company to be liquidated in the manner as laid down in chapter III of the Liquidation Process as provided in IB Code.

- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor Company is in liquidation.
- c) It is also directed that copy of the order be sent to the Registrar of Companies with which the Corporate Debtor Company is registered.

17. Accordingly, the instant IA is allowed and stands disposed of with the above observations.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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