



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI MANOJ KUMAR DUBEY,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 284/JPR/2023
In CP No. (IB)-97/9/JPR/2021

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

IN THE MATTER OF:

Varun Kumar Prop. of M/s V.K. Foods

...Operational Creditor/Applicant

VERSUS

M/s Shreem Prime Foods Private Limited

...Corporate Debtor/Respondent

MEMO OF PARTIES

Varun Kumar Prop. of M/s V.K. Foods

R/o Gautam Industrial Area, 20 KM
Mile Stone, Pugal Road, Shobhasar,
Bikaner, Rajasthan- 334808

... Operational Creditor/Applicant

VERSUS

M/s Shreem Prime Foods Pvt. Ltd.

R/o F-243 Industrial Growth Center,
Khara Bikaner, Rajasthan- 334601

... Corporate Debtor/Respondent



AND IN THE MATTER OF
IA (IBC) No. 284/JPR/2023

Satyendra Prasad Khorania, RP
(M/s Shreem Prime Foods Pvt. Ltd.)
R/o 402, OK Plus D.P. Metro Opp. Pillar
No. 94, New Sanganer Road, Jaipur,
Rajasthan- 302019

... Applicant

For the Applicant: Amol Vyas, Adv.

Order Pronounced On:04.07.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') bearing IA No. 284/JPR/2023 is filed by the Resolution Professional ('Applicant' / 'RP') for M/s Shreem Prime Foods Private Limited ('Corporate Debtor') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') for passing an order of Liquidation.

2. The Adjudicating Authority *vide* order dated 28.07.2022 had admitted the Application filed by M/s V. K. Foods, Prop. Varun Kumar under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Ms. Parul Goyal as Interim Resolution Professional ('IRP'). In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('COC') under Regulation



17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and same was taken on record *vide* Order dated 14.09.2022.

3. The third meeting of the CoC was held on 20.10.2022, wherein the CoC deliberated on the agenda of appointing 'IRP' as the Resolution Professional of the Corporate Debtor. The CoC exercising its right under Section 22(2) of the Code unanimously appointed Mr. Satyendra Prasad Khorania as the Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority *vide* Order dated 10.11.2022. It is also seen that in the fourth CoC meeting dated 28.11.2022, the CoC noted that the IRP had appointed the registered valuers to determine the fair and liquidation values under Regulation 35 of the CIRP Regulations, 2016 on 13.09.2022. However, the registered valuers have not initiated the work due to the non-availability of records and documents.


4. Consequently, the RP issued the invitation of the Resolution Plan in Form G under Regulation 36A of the CIRP Regulations on 30.11.2022 wherein the last date for receipt of Expression of Interest ('EOI') was 16.12.2022. A copy of Form G is annexed as Annexure – 3 of the IA. The RP received neither the EOIs nor any resolution plan(s) under the Code's prescribed time. Therefore, in the fifth CoC meeting, it was unanimously approved to extend the period of submission of EOI further by twenty-one days. A copy minutes of the fifth CoC meeting held on 16.12.2022 is annexed as Annexure – 4 of the IA.



5. Subsequently, the extension notice for the date of submission of EOI was published on 17.12.2022 in Dainik Navjyoti (Hindi Newspaper) and Business Standard (English Newspaper) in which the last submission date was 06.01.2022. In furtherance of this, the RP had received two EOIs from Prospective Resolution Applicants ('PRAs') which were duly placed before the CoC in the sixth meeting. Supplementarily, it was decided by the CoC to file the necessary application for extending the CIRP period given the ensuing developments. A copy of the minutes of the sixth meeting held on 11.01.2023 is annexed as Annexure – 5 of the IA.

6. Accordingly, the RP filed IA No. 95/JPR/2023 under Section 12 of the Code read with Regulation 40 of the CIRP Regulations stating that the CIRP period is going to end on 24.01.2023 and needed an extension of time for deliberating EOIs received by the PRAs. This application was allowed and disposed of *vide* Order dated 21.02.2023.

7. Hence, in the seventh meeting on 13.03.2023, the CoC discussed the resolution plans and requested the PRAs for an enhanced financial arrangement and were given the necessary time for considering the same. A copy of the minutes of the seventh CoC meeting is annexed as Annexure – 6 of the IA. The eighth meeting of the CoC was conducted in two phases *viz.* on 20.04.2023 and 29.04.2023. The first phase was adjourned as one of the PRAs needed further extension for submitting the amended final resolution plan on the grounds of



seeking approval from the higher authorities. Thereafter, during the second phase, the amended sealed resolution plans were opened, and discussed by the CoC members to evaluate the resolution plan based on the approved evaluation matrix.

8. The resolution plan submitted by Mr. Satish Kumar Singhal, Proprietor of M/s Lalita Parshad Satish Kumar Singhal was declared as Highest 1 ('H1') and the resolution plan submitted by M/s Kapish International as Highest 2 ('H2'). These H1 and H2 were put up for vote and approval in the eight CoC meetings as item number 7 and 8, respectively. The CoC unanimously rejected both the resolution plan given the nominal value offers for the Corporate Debtor. Thus, an agenda for liquidating Corporate Debtor was also placed for consideration as item number 9. A copy of the minutes of eight CoC meetings is annexed as Annexure – 7 of the IA.

9. In the eight CoC meetings, the agenda proposed by the RP for liquidating the Corporate Debtor; the CoC has resolved to liquidate the Corporate Debtor by a unanimous majority vote of 100%. Moreover, the CoC has appointed the RP to act as the liquidator and has been accepted by the RP. A copy of the announcement of the e-voting result dated 11.05.23 and written consent of the RP to act as the liquidator are annexed as Annexures – 8 and 9 of the IA, respectively.

10. 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, if 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 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)”.*

6. 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.



7. **The prescribed period for filing Application** - In the present case, the Application under Section 9 of the Code was admitted on 28.07.2022, and the date for completion of CIRP was 24.01.2023, within the 180 days of the timeline prescribed under the Code, and an extension of further 90 days was sought. The extension was granted *vide* Order dated 21.02.2023. Accordingly, the RP filed the present Application on 19.05.2023 in accordance with Section 33(2) of the Code. 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.

8. **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)”

9. The present RP, Mr. Satyendra Prasad Khorania, is eligible as Liquidator.

It is noted that liquidation proceedings herein, at the instance of the CoC, have



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. Satyendra Prasad Khorania, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002, who has filed his written consent dated 29.04.2023 to act as the Liquidator as Annexure – 9 of the IA. Thus, Mr. Satyendra Prasad Khorania is appointed as the Liquidator.

10. 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.

11. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** — The CoC has not 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' committee 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. Moreover, it is seen that in the reports there is a reference for the appointment of the registered valuers during the CIRP of the Corporate Debtor, however, no documentation has been provided by the RP in this regard.



It is directed that Mr. Satyendra Prasad Khoania shall appoint two independent valuers for the assets of the Corporate Debtor following the provisions of the law. 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.

12. *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. In this regard, the Canara Bank, the sole member of the CoC and the Financial Creditor of the Corporate Debtor, opined that in view of the non-operational status of the business of the Corporate Debtor and such other factors, there was no scope for Compromise & Arrangement in the said matter.

13. *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 and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such 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 lay 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.

14. The COC in its eighth 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 Corporate Debtor has no means to run the business as the unit has already been closed for the past three years. With a 100% voting share, the CoC discussed that it is not possible to sell as a going concern, and they passed the resolution.

13. *Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)* — It is seen that the CoC, in consultation with the resolution professional, has resolved the fee payable to the liquidator as per following the resolution:

'RESOLVED THAT the members of COC have fixed the following fees which would be payable to Mr. Satyendra Prasad Khorania (IP Regn. No. IBBI/IPA-002/IP-N00002/2016-17/10002) the Liquidator in case the liquidation order passed by Hon'ble NCLT:



a) The fees of the Liquidator be the same as of Resolution Professional fees for that period which is used for any scheme for compromise or arrangement received by the liquidator under section 230 of the Companies Act, 2013.

b) The liquidator fees for the balance period, if the Secured Financial Creditor relinquishes their security interest, then the liquidator will be entitled to a fee as per Regulation 4(2)(b) of the Liquidation Regulations, 2016 and if the Secured Financial Creditor decides not to relinquish their security interest then a liquidator will be entitled to a fee at the same rate as the resolution professional was entitled during the corporate insolvency resolution process.'

Thus, the Liquidator shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 read with the aforementioned resolution passed by the CoC.

14. *Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)* –

The RP submitted that the property of the Corporate Debtor is situated at Village Khara, Bikaner where the food industry will not be established because of the presence of heavy dust particles. Therefore, it is not practically possible to explore the possibilities to sell as a going concern and the sale of assets on a standalone basis 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. Furthermore, the representative of Canara Bank expressed that they might not



relinquish the properties/ assets mortgaged with them and will realise the assets as per the provisions of the SARFAESI Act, 2002.

15. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, M/s Shreeom Prime Foods 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:

- (i) 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;

Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

- (ii) 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;
- (iii) 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;
- (iv) 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;



- (v) 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 with CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- (vi) 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 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;
- (vii) 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.

16. ***Pending Applications, if any, and its / their effect*** – The learned counsel for the Applicant has stated that there are no pending applications which have any bearing on the order of liquidation.



17. In view of the foregoing, IA No. 284/JPR/2023 is disposed of. 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.

-Sd-

MANOJ KUMAR DUBEY
TECHNICAL MEMBER

-Sd-

DEEP CHANDRA JOSHI
JUDICIAL MEMBER