In the National Company Law Tribunal
Mumbai Bench.

MA 1384/2018 in TCP(IB)-639 of 2017

Under Section 7 & 33(2) of Insolvency & Bankruptcy Code, 2016

In the matter of

Rajeev Mannadiar : Resolution Professional & Applicant

In the matter of

HDFC Bank Limited : Petitioner/ Financial Creditor

V/s

Nvento Foods Technologies Private Limited : Respondent

Order delivered on: 28.01.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Rajeev Mannadiar, Resolution Professional.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition U/s. 7 of the Insolvency & Bankruptcy Code, 2016 (The Code) filed by the Financial Creditor M/s. HDFC Bank Limited was Admitted on 23.08.2017 by this Bench wherein Mr. Sanjay Kumar Lunkad, (Registration No. 00446/2016-17/2001) was appointed as Interim Resolution Professional (IRP). As the Registration of Mr. Sanjay Kumar Lunkad, IRP, had expired on 06.07.2017, another IRP Mr. Rajeev Mannadiar, proposed by the Financial Creditor, was appointed vide Order dated 29.11.2017 (MA No. 575).

2. The Financial Creditor had filed the Petition U/s.7 of The Code for the outstanding Financial Debt of ₹20 Lakhs.

3. On 29.12.2017 during the **First** Committee of Creditors Meeting, the said IRP **Mr. Rajeev Mannadiar was confirmed as Resolution Professional** by the Committee of Creditors. In this Meeting, Mr. Ratish Shete (Director) of the Corporate Debtor informed that he would like to restart the operations for which he wanted

support from the Bank and also requested for deep cuts in the outstanding loan amounts. The Representatives of the Financial Creditor (HDFC) informed that they could not take any decision immediately regarding the deep cuts as requested. Mr. Ratish Shete even expressed his willingness to pledge his personal assets for obtaining additional loan facilities to restart the business by mid of January, 2018. He has also stated that as his name is appearing in the CIBIL as a 'defaulter', he was unable to borrow from any Banks.

3.1. Mr. Ratish Shete, said ex-director, also stated that he has intimated nearly all the Creditors of the Company regarding the start of the Corporate Insolvency Resolution Process (CIRP). He has also stated that some dues are payable to VAT authorities and the Income Tax scrutiny assessment proceedings were going on for the Financial Year 2014-15. The VAT authority has freezed the current account of the Company with SBI Powai Branch.

4. The Learned IRP has stated that Two Valuers have been appointed for valuation of the assets of Nvento Foods Technologies Private Limited (Corporate Debtor). As no current data were available they have not been allotted the work. The IRP further informed the Committee of Creditors that no claims have been received till the date of the meeting.

5. In the First Meeting of the Committee of Creditors it was *inter alia,* Resolved that the IRP Mr. Rajeev Mannadiar shall act as the Resolution Professional during the Resolution Period.

6. The **Second Committee of Creditors** meeting was held on 26th February, 2018 in which it was informed that a Claim has been received from M/s. DKSH India Pvt. Ltd. for ₹3,19,725/-. As the Balance Sheet of the Company was still under preparation the claim has been kept on hold.

7. Mr. Ratish Shete informed that in his personal CIBIL rating the loan outstanding by M/s. Nvento Foods Technologies Private Limited has been shown to his

account as a result he is unable to borrow any money in his personal name. It was also mentioned that substantial payments were made after the account was declared NPA.

8. The **Third Committee of Creditors** was held on 15.03.2018 in which the Resolution Professional informed that a Public Announcement calling for Resolution Applications is to be made to invite 'Expression of Interest'. Shri Ratish Shete (ex-director) has been asked to submit his concrete written Restructuring Plan. Ld. Resolution Professional has drawn attention of the members of the Committee of Creditors to Section 29A introduced under the Insolvency & Bankruptcy Code with effect from 18.01.2018 which bars the Promoters/ Directors of the Corporate Debtor from submitting Resolution Plans if the account has already become NPA for more than a year.

9. **Fourth Committee of Creditors Meeting** was held on 31st March, 2018. It was unanimously resolved to move the NCLT for direction against the Directors of the suspended Board of Directors of the Company with regard to their non-cooperation.

9.1. The Committee of Creditors was informed that due to non-submission of records by the suspended Board of Directors of the Company, the appointment of CA Abhijeet Deshpande, the previous auditor of the Company was not confirmed even though the Resolution Professional had met the auditor and taken his consent and quoted the fees for conducting the audit.

10. **Fifth Committee of Creditors Meeting** was held on 14.04.2018, in which the Committee of Creditors unanimously agreed to publish the 'Expression of Interest' calling for potential Resolution Applicant. Further Committee of Creditors observed that till that date no resolution plan was received from the suspended Board of Directors.

10.1. The Committee of Creditors has suggested the Resolution Professional to make an attempt and impress upon the suspended Board of Directors to cooperate with the IRP and in case the suspended directors do not cooperate, authorized the

Resolution Professional to move the Hon'ble NCLT to obtain necessary directions in this regard.

11. **Sixth Committee of Creditors Meeting** was held on 26.05.2018 and apprised the members about difficulties faced by CA Abhijit Deshpande in auditing the Books of Accounts for the Financial Year ended 31.03.2016 and subsequent years. It was further informed that the information was being given in bits and pieces and it has been going on since January 2018. Mr. Ratish Shete was once again asked to cooperate in completing the finalization of the accounts.

11.1. The Committee of Creditors were further informed that, on 27.04.2018 the **Valuers Mr. Anil Tarachandani from Delta Valuers and Appraisers LLP and Mr. Sagar Yadav from V.K. Associates** had gone to Sunrise Cold Storage Co. Pune-411048 for inspection of the machinery of the Debtor lying at the above address after fixing an appointment for the inspection. Mr. Ratish Shete (Ex-Director) had fixed the meeting with the owners but they were not allowed to inspect by the owners of Sunrise Cold Storage Co. The Resolution Professional has informed the Committee of Creditors that till date no reply has been received from M/s. Sunrise Cold Storage Company regarding the assets of M/s Nvento Foods Technologies Pvt Ltd lying in their premises.

11.2. As the accounting and valuation was in progress, the Committee of Creditors have agreed for extension of the Corporate Insolvency Resolution Process by a further period of 90 days.

12. The Resolution Professional informed the Committee of Creditors of the claim received from: The Department of Commercial Tax, Government of Karnataka – Mr. Raj Shekhar from the Department of Commercial Tax, Government of Karnataka had attended the meeting via Skype. The Resolution Professional has sought clarification from Mr. Raj Shekhar on the interest calculation and informed Mr. Raj Shekar that as per the Insolvency & Bankruptcy Code, 2016 interest could be claimed up to the date of the passing of the Insolvency Order against the Company and the

excess amount claimed would be disallowed. During discussion Mr. Raj Shekhar has requested Mr. Ratish Shete to submit the 'C' form so that VAT liability could be reduced.

13. Committee of Creditors was further informed that no proposal has been received till date although for inviting the Expression of Interest published in the Business Standard and Navshakti newspapers on 14/04/2018.

14. **Seventh Meeting of Committee of Creditors (CoC)** was held on 16.08.2018 and apprised the List of Creditors upto 14.08.2018. The List contained the amount of claims received, admitted, rejected, kept on hold as per the supporting documents provided by the creditors.

15. In the **Eighth Committee of Creditors Meeting** held on 25.10.2018, the Resolution Professional apprised the Committee of Creditors members about the Claim received from an Operational Creditor viz. Frigorifico Allana Private Limited. It was informed that the Operational Creditor had filed a Company Petition under Section 433, 434 and 439 of the Companies Act, 1956 with the Hon'ble Bombay High in the year 2015 for winding up of the Corporate Debtor. The Hon'ble Bombay High Court passed a winding up order and appointed an Official (OL) vide order dated 19.04.2018. The Resolution Professional informed the OL that the Corporate Debtor is already under Corporate Insolvency Resolution Process and that there is a "moratorium" period going on. The advocates of the said Operational Creditors filed an application to recall the earlier order of the Bombay High Court dated 19.04.2018 with regard to the winding up of the Corporate Debtor. Thereupon the **Hon'ble Bombay High Court passed an Order dated 26.09.2018 and recalled its previous order and discharged the OL from its duties.**

16. The Ld. Resolution Professional informed the members of the Committee of Creditors that till date no Resolution Plan was received to the advertisement released.

17. The **Committee of Creditors after examining all the documents, considering the facts of the case recommended that the Corporate Debtor be**

liquidated and requested the Resolution Professional to file a Liquidation Application before the Hon'ble NCLT, Mumbai.

18. On perusal of the Annexures annexed with this Application demanding declaration of Liquidation, it is noticed that followings are the Creditors:-

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SR. NO.	*NAME*	*AMOUNT CLAIMED*	*ADMITTED AMOUNT*
1	*HDFC BANK*	*Rs.27,73,641/-*	*Rs.27,73,641/-*
2	*DKSH India Pvt. Ltd.*	*Rs.319,725/-*	*Rs.3,19,725/-*
3	*Government of Karnataka, Dept of Commercial Taxes*	*Rs.29,19,989/-*	*Rs.14,57,354/-*
4	*Government of Maharashtra, GST*	*Rs.56,05,754/-*	*Rs.56,05,754/-*
5	*Vivaash Enterprises*	*Rs.40,40,666.50*	*-*
6	*Frigorifico Allana Private Limited*	*Rs.9,57,085/-*	*Rs.5,93,000/-*
	Total	*Rs.16,616,860.50*	*Rs.10,749,474.00*

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19. As against that Valuation of the Machinery and Equipment valued by Delta Valuers is at ₹7,22,000/- and by another Valuer V.K. & Associates, valuation of the Machinery is at ₹8.03 Lakhs.

20. The Learned Resolution Professional informed the members of Committee of Creditors that **he shall not continue as the Liquidator** due to various baseless allegations made by Mr. Ratish Shete to malign his name and reputation. The Committee of Creditors members said that they will consider about recommending a new liquidator, therefore, placed on record Form No.2 dated 01.11.2018, i.e. Acceptance of appointment as Liquidator by Mr. Mahesh Surekha, Address: M.R. Surekha & Co., 173, Udyog Bhavan, Sonawala Road, Goregaon (E), Mumbai – 400 063, Registration No. IBBI/IPA-001/IP-P00413/2017-18/10736.

21. Considering the recommendation of the CoC and the background of the case as discussed hereinabove, this Bench is of the view that this is a fit case to proceed for Liquidation due to the reason that after lapse of so many months and also after several attempts no proposal for revival of the Debtor Company had been received. It is also worth to mention that although the Debt amount is much higher than the Liquidated value as assessed by the Valuer, but considering the view expressed by the CoC that in their wisdom the Liquidation is only remedy left to them, this Bench hereby approve the majority decision of the CoC.

22. The above said Mr. Mahesh Surekha is hereby appointed as Liquidator. Mr. Rajeev Mannadiar, outgoing Resolution Professional, is directed to hand over all the documents collected/ prepared by him in connection with this case to the Liquidator Mr. Mahesh Surekha immediately. Similarly, Mr. Mahesh Surekha, the Liquidator, is directed to collect all the above said documents from the outgoing Resolution Professional and complete the Liquidation process as directed below:-

i) The Process of Liquidation shall be commenced as per the Chapter III of The Code, from the date of this Order.
ii) The Liquidator is hereby directed to complete the process within Two months from date of this Order.
iii) The Liquidator shall advertise in Newspaper about the Liquidation of the Debtor as per the provisions of The Code.
iv) Copy of this Order shall be forwarded to the Concerned Authority with which the Debtor is registered.
v) The Liquidator is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.

23. Ordered Accordingly. Application for U/s. 33 (2) is Allowed. To report the progress of Liquidation, matter is now listed for hearing on **29.03.2019.**

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 28.01.2019
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