NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 22nd MARCH, 2024, 10:45 A.M.

IA (IBC)/126/GB/2023
In
CP (IB)/2/GB/2022

Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad

Name of the Company	Mukesh Gupta, RP In (Dr. N. Sahewalla and Company Pvt. Ltd. Vs Kuber Khanij Pvt. Ltd.)
Under Section	U/s 33 (1) of IBC, 2016.

For Petitioner (s) :

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

IA (IBC)/126/GB/2023
in CP (IB)/2/GB/2022

In the Matter of:

An Application under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for an order of Liquidation of the Corporate Debtor;

-And-

In the Matter of:

Dr. N. Sahewalla and Company Private Limited (CIN: U85110AS1993PTC00387), having Registered Office at Bordoloi Avenue, Jalannagar, Dibrugarh- 786005

... Financial Creditor

-Versus-

Kuber Khanij Private Limited (CIN: U14200ML2008PTC008341), having Registered Office at Mrs. Slowlylian Mawroh, Near Bausara Eye Clinic, Veronica Lane, Laitumkarh Main Road, Shillong-793003 **... Corporate Debtor**

-And-

In the Matter of:

Mr Mukesh Gupta, Resolution Professional of Kuber Khanij Private Limited, having address at F1, Milap Nagar, Uttam Nagar, New Delhi. **... Applicant**

Coram:

Shri H. V. Subba Rao	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing):

For Petitioner/Applicant	:	Mr. Kunal Godhwani, Adv.

ORDER

1. IA (IBC)/126/GB/2023 has been filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of CD- Kuber Khanij Private Limited, praying the following:
    a) *Pass an order under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 to liquidate the Corporate Debtor;*

b) *Appoint a Liquidator from the panel of the Insolvency and Bankruptcy Board of India;*
c) *Permit the Liquidator to take steps under sec 230 of the Companies Act, 2013 read with Regulation 28 of Liquidation Regulations for exploring the possibility of Compromise or Arrangement by members/creditors for first 90 days from the order of liquidation for compromise or arrangement upon the liquidation by this Hon'ble Adjudicating Authority as recommend by the Committee of Creditors; and*
d) *Permit the Liquidator to sell the Corporate Debtor as a going concern in accordance with the provisions of Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as resolved by the Committee of Creditor.*

2. The brief facts are that the main application CP (IB)/2/GB/2022 filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted by this Adjudicating Authority on 09th September 2022 and Mr. Mukesh Gupta was appointed as Interim Resolution Professional (IRP).

3. The IRP made Public Announcement on 17.09.2022 in prescribed format "FORM A" which was published in Meghalaya Times and U Petnigor (English & Regional Language). The Public Announcement inviting claims from the creditors of Corporate Debtor was also published on the website of IBBI. The last date of submission of claim was fixed as 29.09.2022. The Applicant received only one claim from the Financial Creditor itself and accordingly constituted the Committee of Creditors of the Corporate Debtor. The Committee of the Creditors in the First CoC meeting held on 15.10.2022 with 100 % voting confirmed Mr. Mukesh Gupta as Resolution Professional (RP).

4. It is stated that the RP in the 3rd CoC meeting held on 08.02.2023 put forth the agenda for publication of 'FORM G' inviting expression of interest ("EOI") and the same was approved in the meeting. After the approval of the CoC on the Form G, the Applicant on 13.02.2023 published Form G inviting expression of interest from the prospective Resolution Applicants for the purpose of submitting a Resolution Plan in the CIRP the Corporate Debtor. The last date of submission of expression of interest for the purpose of submitting a Resolution Plan was 28.02.2023.

5. The CoC of the Corporate Debtor during its third meeting duly took into account the timelines under the Code. 180 days in the CIRP of the Corporate Debtor were

ending on 07.03.2023 and considering the timelines as prescribed under Form G, the CoC approved the Resolution for seeking an extension of CIRP period by 90 days and authorized the Applicant to file the said application before this Tribunal and accordingly, the Applicant filed an application bearing IA(IBC) 23/12(2)/GB/2023, seeking an extension of 90 days in the CIRP of the Corporate Debtor, This Tribunal *vide* its order dated 31.03.2023 allowed IA(IBC) 23/12(2)/GB/2023 and extended the CIRP period by 90 days.

6. The last date of submission of Resolution Plan was 14.04.2023, however, prospective Resolution Applicant requested for an extension for submitting Resolution Plan in the CIRP of the Corporate Debtor till 31.05.2023. The CoC after taking into account the fact that prospective Resolution Applicant has requested for an extension of time till 31.05.2023 for submitting Resolution Plan, passed a resolution authorizing the Applicant to seek an extension of 60 days from this Tribunal beyond the period of 05.06.2023 and accordingly, the Applicant filed an application bearing IA(IBC)/63/12(2)/GB/2023, seeking an extension of 60 days in the CIRP of the Corporate Debtor. This Tribunal *vide* its order dated 03.10.2023 extended the CIRP period by 30 days.

7. During the 7th meeting of the CoC held on 30.10.2023, the RP apprised the CoC that after the circulation of the Expression of Interest, the Prospective Resolution Applicants failed to their Resolution Plan. Hence, the CoC was of the opinion that in the absence of the Resolution Plan and to save further cost of CIRP, the Corporate Debtor should be liquidated in terms of the provision of the Code. The Committee of Creditors after discussion and deliberation passed the Resolution with 100% voting to liquidate the corporate debtor M/s Kuber Khani Private Limited, under the provisions of section 33 of IBC 2016.

8. Further, it was decided that Liquidator will explore the possibilities of compromise or arrangement under Section 230 of the Companies Act, 2013. The CoC recommended for sale of the Corporate Debtor as a going concern as per the provisions of law. Relevant documents in this regard have been enclosed with the application.

9. It was further decided that in the absence of liquid assets it is the duty of COC member to contribute liquidation expenses which estimated to Rs. 13.93 Lakhs without liquidator fee in ratio of voting share. The amount shall be deposited into an escrow account which shall be opened by liquidator. Copy of minutes of meeting of CoC dated 30.10.2023 has been annexed.

10. Therefore, the Resolution Professional filed the present application u/s 33(1) on 11.12.2023 for liquidation of the Corporate Debtor.

11. In this respect, it is relevant to reproduce section 33(1) of the Insolvency and Bankruptcy Code, which is as under:

> *33. (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...**"*

After no resolution plan was approved by the Committee of Creditors within the statutory period and no plan were presented before this Tribunal for approval, the Resolution Professional has moved an application for an order of liquidation under

12. From a reading of the above provision, it is clear that when no resolution plan was approved by the Committee of Creditors within the statutory period and no plan were presented before this Tribunal for approval, the Resolution Professional has moved an application for an order of liquidation, the Adjudicating Authority shall pass a liquation order. In this case the CoC with 100% voting right approved the resolution for liquidation of the Corporate Debtor. Hence, this is a fit case to order liquidation under Section 33(1) of the IBC, 2016.

13. **For the aforesaid reasons, IA (IBC)/126/GB/2023 is ALLOWED with the following directions:**

i. The Corporate Debtor, Kuber Khanij Private Limited is ordered to be liquidated with immediate effect under Section 33(1) of IBC, 2016.

ii. The Insolvency Professional Mr. Manish Agarwalla having Registration No. IBBI/IPA-001/IP-P-02082/2020-2021/13198 and address at Room No 9, 5th Floor, Parmeshwari Building, Chatribari Road, Guwahati, Assam- 781001, is hereby appointed as Liquidator of the Corporate Debtor. This appointment is subject to him possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator's fee is to be decided as per Regulation 4 (2) (b) of IBBI (Liquidation Process) Regulations, 2016.

iii. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The liquidator is directed to adhere to it.

iv. Public Notice as contemplated under section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.

v. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.

vi. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.

vii. 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 a 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.

viii. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.

ix. In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.

x. The application bearing IA (IBC)/126/GB/2023 shall stand disposed of in accordance with the above directions.

14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

16. File be consigned to records.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

Signed this on 22nd day of March 2024

FREE OF COST COPY
CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL
27/3/24
DY. REGISTRAR/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
COPY NO. 98/NCLT/GB
27/3/24