

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**M. A. No. 2679/2019
In
C. P. No. 2100/I&B/2018**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of

Ingram Micro India Pvt. Ltd.

... Operational Creditor

V/s.

Sakri IT Solution Pvt. Ltd.

... Corporate Debtor

M.A. No. 2679/2019

Mr. Subodh Balkrishna Gokhale

... Applicant/

Resolution Professional

Order delivered on 30.09.2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)

For the Applicant: Mr. Subodh B. Gokhale, RP-in -person

Per Shri Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor namely Sakri IT Solution Pvt. Ltd. The Adjudicating Authority vide its order dated 07.08.2018 on a Petition filed by the Operational Creditor under Section 9 of the Code, wherein Mr. Subodh Balkrishna Gokhale, was appointed as Interim Resolution Professional (IRP). Thereafter on 07.09.2018 in the 1st Committee of Creditors (CoC) meeting Mr. Subodh Balkrishna Gokhale, was resolved to be appointed as Resolution Professional (RP) and the same was approved by this Bench.

2. The RP submits that the public announcement was made on 17.08.2018, one in "Times of India" (Pune edition) in English and "Maharashtra Times" (Pune edition) in Marathi, fixing 27.08.2018 as the last date for submitting the claim. Subsequently, the RP constituted the CoC. The Axis Bank Ltd. is the sole financial creditor.
3. The RP submits that the 1st CoC held on 07.09.2018 wherein it was decided to appoint a Valuer, accordingly, RP had appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation. It is further submitted that in the 3rd & 4th meeting of CoC held consequently on 31.01.2019, 05.03.2019 an advertisement was issued, inviting Expression of Interest in Form G on 22.10.2018 and further extended on 27.04.2019 fixing 10.11.2018, 11.05.2019 as last date for submission of Expression of Interest by the Prospective Resolution Applicants.
4. The Resolution Professional submits that only one expression of interest was received from Prospective Resolution Applicant i.e. from original Promoter and Director of the Corporate Debtor (suspended under IBC 2016) as per section 29A and Section 240A of the code.
5. The RP submits that a draft resolution plan was received from promoters in response to expression of interest received by RP. The said the original Promoter and Director of the Corporate Debtor submitted that since the Corporate Debtor is a coming under micro, small and medium enterprises and not declared as wilful defaulter, he is eligible to present the resolution plan pursuant to Section 240A of the Code, which provides that the provisions of classes (c) and (h) of Section 29A shall not apply to the corporate insolvency resolution process of any micro, small and medium enterprises.
6. It is submitted that the CIRP period was extended by 90 days w.e.f. 27.06.2019 and the CIRP extended came to an end on 25.07.2019. However, no resolution plan was received.
7. The Resolution Professional submits that in the 10th CoC meeting held on 25.07.2019, the CoC having 100% voting rights passed a resolution for liquidating the company in view of the fact that no Resolution Plan was received.

Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

8. The Applicant/ Resolution Professional Mr. Subrata Maity, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.

9. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, the RP has complied with the procedure laid down under, the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), for the valuation report filed by the valuer has not been disputed by the CoC, on verification of the papers/ documents placed before this Bench, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been approved by the Adjudicating Authority and accordingly, this Bench orders;

- a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- b. that the Mr. Subrata Maity, Registration No. IBBI/IPA-001/IP-P00884/2017-18/11481, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- d. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- e. that the liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

- f. that on having liquidation process initiated, 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 suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.
- g. 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.
10. Consequently, as stated supra, Resolution Professional is appointed as the Liquidator as provided under section 34(1) of the Code. All 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 effect and shall be vested with the liquidator;
11. Accordingly, this Misc. Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**