

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

6. I.A. 42/2023

IN

C.P.(IB)-38(MB)/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **05.01.2023**

NAME OF THE PARTIES: Raghuleela Estates Private Limited

V/s.

Kambala Hospitality Private Limited.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

CS Shraddha Shah appearing for the RP - S. Gopalakrishnan and Mr. Arjun Sathees i/b India law LLP, counsel for the Applicant/ Resolution Professional are present through virtual hearing.

I.A. 42/2023

Heard the counsel appearing for the Applicant/Resolution Professional and the above Interlocutory Application **is allowed. Detail order would follow:**

Sd/-
MADHU SINHA
Member (Technical)
//SGP//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,
COURT-III**

IA. No. 42 of 2023

IN

C.P.No.(IB) 38/ (MB) of 2022

Under Section 33(3), r/w 14 of Insolvency
& Bankruptcy Code, 2016

In the matter of

Kambala Hospitality Pvt. Ltd.

.... CORPORATE DEBTOR

I. A. No. 42 of 2023

Mr. S. Gopalakrishnan

.... Applicant

Order delivered on 05.01.2023

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Ms. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Arjun Sathees (Advocate) i/b India
Law LLP, Mr. S. Gopalakrishnan (RP)

1. The above application I.A. No. 42/2023 is filed by Resolution Professional, Mr. S. Gopalakrishnan (hereinafter referred to as the "Applicant") seeking liquidation of Kambala Hospitality Private Limited. (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for the following reliefs:

- a. *This Hon'ble Tribunal be pleased to pass order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for commencement of liquidation process of the Corporate Debtor;*
- b. *This Hon'ble Tribunal be pleased to appoint Mr. Rajeev Mannadiar, having Registration No. IBBI/IPA-001/IP-P00212/2017-2018/10412 as Liquidator to conduct Liquidation process of the Corporate Debtor;*
- c. *That this Hon'ble Tribunal pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper in the interest of justice.*

2. The brief facts of the application are as follows:

- A. The present Application has been filed by, Mr. S. Gopalakrishnan the Resolution Professional of Kambala Hospitality Private Limited. ("Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy code, 2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the financial creditor, has resolved to liquidate the Corporate Debtor.
- B. On 13.10.2022, in the first meeting of the Committee of Creditors (hereinafter referred to as the "CoC") the Applicant was appointed as the Resolution Professional which was unanimously approved by CoC in favour of the same.
- C. The Applicant states that pursuant to the receipt of claim of the Financial Creditor, Raghuleela Estates Private Limited, the CoC meeting was held on 05.11.2022 through video

conferencing wherein the CoC with 100% majority votes resolved to appoint the Applicant as the Resolution professional for the remaining period of the CIRP of the Corporate Debtor. The Applicant further stated that the CoC that the complete and detailed information pertaining to the Corporate Debtor sought from the suspended director Mr. Bassi was not provided citing that the documents were at the office of the Corporate Debtor at 5th floor at Raghuleelea Mega Mall. However, even after a visit to the said premises, the Applicant came across only certain invoices, broken CCTV cameras and some agreement files. The Applicant further apprised the CoC that only one asset was available which is a car and that it was hypothecated to ICICI Bank.

- D. The Applicant further informed this Bench in the 3rd CoC meeting held on 05.12.2022, the Applicant apprised the CoC members that Mr. Bassi was yet to provide complete and detailed information of the Corporate Debtor. The Applicant also discussed the sale of the car for which NOC had been obtained from ICICI Bank. However, the CoC sought to defer the sale of the car to the liquidator. The Applicant further apprised the CoC that despite making best efforts no major assets of the Corporate Debtor could be traced. Accordingly, the CoC unanimously agreed and decided in their commercial wisdom to go for early Liquidation of the Corporate Debtor. Accordingly, the Applicant placed following resolution for liquidation of the Corporate Debtor before CoC, which was passed with 100%
- E. The Applicant informed that the following resolutions to that effect as per Regulation 39B, Regulation 39BA, Regulation 39C and Regulation 39D of Insolvency and Bankruptcy Board

of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, (CIRP Regulations) read with Regulation 2 (ea), Regulation 2A, Regulation 2A, Regulation 4, Regulation 32, of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and other applicable provisions, if any, were placed before the CoC members for their consideration:

- i. To consider and approve the plan for meeting liquidation costs
- ii. To assess sale of corporate debtor as a going concern under liquidation process
- iii. To consider exploring compromise or arrangement
- iv. To ratify and approve the expense incurred by the interim/ resolution professional

F. The Applicant further stated that in 3rd CoC meeting, the CoC members have decided to file application before this Bench for liquidation of the Corporate Debtor under Section 33 of Code and the Rules Regulation made thereunder. It is further submitted that the CoC has ratified the expenses incurred by the RP, decided the fees payable to the Liquidator as per Regulation 4 of the Liquidation Regulations, and has approved the plan for meeting the estimated liquidation costs as per Regulation 39B of the CIRP Regulations. Further, the CoC has resolved and recommended that the liquidator shall explore sale of the Corporate Debtor as a going concern under clause (e) of Regulation 32 of the Liquidation Regulations or sale of the business of the Corporate Debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under Section 33 of the Code. Also, the CoC has rejected the proposal of exploring compromise or arrangement

under Regulation 39BA of the CIRP Regulations owing to lack of assets in the Corporate Debtor.

- G. The Applicant pursuant to 3rd CoC meeting held that Corporate Debtor under regulation 33 of the Insolvency and Bankruptcy Code, 2016 and appointment of Liquidator of the Corporate Debtor and that the chairperson informed the members that in the previous meeting the members have requested the chairperson to put forth the resolution for liquidation of Corporate Debtor for discussion as there are no assets available in the Corporate Debtor and liquidation will be preferred option over Corporate Insolvency Resolution Process.
- H. In the 3rd CoC Meeting the members, held on 05.12.2022 decided to unanimously opt for Liquidation. The relevant extract of the resolution is reproduced herein below for ready reference:-

“RESOLVED THAT, the consent of the members of CoC be and is approves the Liquidation of the Corporate Debtor u/s 33 (2) of the Insolvency and Bankruptcy Code, 2016 and any other applicable provisions.”

“RESOLVED FURTHER THAT the Committee of Creditors be and is hereby authorized to apply and intimate the Hon’ble Adjudicating Authority decision of the Committee of Creditors to liquidated the Corporate Debtor and obtain the order of Liquidation.”

The above resolution was put to vote and passed with 100% majority of the CoC members as prescribed under Section 33(2) of the Code.

- I. Further in the 3rd CoC meeting, the CoC members have decided unanimously and resolved to appoint Liquidator. The relevant extract of the resolution is reproduced herein below for ready reference:-

“RESOLVED THAT, pursuant to continuation to continuation to the resolution passed for the liquidation of Kambala Hospitality Limited and the provisions of Section 34(1) of the Insolvency and Bankruptcy code, 2016 and any other applicable provisions, consent of the members of the Committee of Creditors be and hereby accorded to appoint proposed IP Shri Rajeev Mannadiar having registration number IBBI/IPA-001/IP-P00212/2017-2018/10412 (AFA valid till 21.12.2022) to act as Liquidator of the Corporate Debtor for an monthly remuneration of INR 1,00,000/- (Rupees One Lakh Only) plus applicable taxes.”

The said resolution was passed with 100% majority of the CoC members. The Applicant has also provided his Written Consent dated 28.11.2022 to act as a Liquidator of the Corporate Debtor.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 3rd CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor. This bench, therefore allows the above Interlocutory Application Number 42 of 2023 and passed the following:

ORDER

1. The above I.A. No. 42/2023 is **Allowed**, and the Corporate Debtor Kambala Hospitality Pvt. Ltd. is ordered to be **liquidated as going concern**.

- a. **Mr. Rajeev Mannadiar** (IP Registration No. IBBI/IPA-001/IP-P00212/2017-2018/10412 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration according to Liquidation fees (B) As per Regulation 4 of the IBBI (Liquidation Process) Regulation 2016.
- c. 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.
- d. The Liquidator appointed under section 34(1) of the Code. Will have 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.
- e. 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.
- f. 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.

- g. 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.
- h. 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.
- i. 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.
- j. Registry is directed to communicate this order to the Liquidator.

With the above directions, this application i.e. I.A. No. 42 of 2023 is hereby allowed and disposed of.

Sd/-
Madhu Sinha
MEMBER (TECHNICAL)

Sd/-
H.V. Subba Rao
MEMBER (JUDICIAL)