



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-(Court-I)
KOLKATA**

IA (IB) No. 896/KB/2023
in
CP (IB) No. 105/KB/2022

*An application under section 33 (1) (a) of the Insolvency and Bankruptcy
Code, 2016*

In the matter of:

Penguin Hospitality Private Limited

...Corporate Debtor

-And-

In the matter of:

**Kamal Nayan Jain, Resolution Professional of Penguin Hospitality
Private Limited**

...Applicant

Date of pronouncing the order: 12/09/2023

Appearances (through hybrid mode):

For the Resolution Professional : Mr. Shaunak Mitra, Advocate

Coram:


Rohit Kapoor : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

ORDER

Per Balraj Joshi, Member (Technical)


1. This Court convened through hybrid mode.
2. **I.A.(I.B.C) No. 896/KB/2023** is an application filed under Section 33 (1) (a) of the Insolvency Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Penguin Hospitality Private**



Limited, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Kamal Nayan Jain, the RP.

3. The Adjudicating Authority, on a petition filed u/s 10 of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 by Penguin Hospitality Private Limited, the Corporate Applicant, *vide* order dated 02.11.2022 in C.P.(I.B.) No. 105/KB/2022, had ordered initiation of CIRP against the Corporate Applicant. Mr. Kamal Nayan Jain was appointed as the Interim Resolution Professional (“**IRP**”).
4. It is stated in the application in terms of regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements in **Form A** was published on 05.11.2022 inviting claims from the creditors in two newspapers, viz., “*Business Standard*” (English) and “*Ekdin*” (Bengali) mentioning the last date of submission of claims as 16.11.2022. Committee of Creditors (“**CoC**”) was duly formed on 24.11.2022. At first CoC meeting held on 30.11.2022, the IRP was appointed as Resolution Professional (“**RP**”).
5. It is also stated in the application that the IRP/RP has altogether held six CoC meetings on 30.11.2022, 28.12.2022, 28.02.2023, 17.03.2023, 06.04.2023 and 26.04.2023 respectively and also submitted two Progress Reports on 29.11.2022 and 14.03.2023 respectively.
6. It is stated in the application that in terms of regulations 36A(1) of the CIRP Regulations, Expression of Interest (“**EoI**”) was published in **Form G** on 30.12.2022 in leading newspapers namely “*Business Standard*” (Kolkata) English Edition, “*Ekdin*” (Bengali). The last date

¹ Pages 16 to 18 of the Application



for the submission of EoI expired on 14.01.2023 wherein no EoI was received hence revised Form G was issued on 01.03.2023 wherein the last date for submission of EoI expired on 16.03.2023, however no EoI was received.

7. It is stated in the application that in the 6th CoC meeting it was decided by the CoC, since no EoI was received before the CoC which could be considered within the maximum permissible CIRP period, there is no other option but to liquidate the company under Section 33(1) (a) of the IBC, 2016. However, the CoC has further decided to sell the company as per regulations 32E and 32F of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
8. It is also stated in the application that the following resolutions were taken and recorded in the 6th CoC meeting² held on 26.04.2023 which are as follows:

Item No 5, Resolution No. 1;


"RESOLVED THAT, the COC were of the opinion that since no EOI was received even after issue of 2nd Form-G and the CIRP period is expiring on 01.05.2023, there is no other option left but to liquidate the CD and requisite application to be filed with Hon'ble NCLT in terms of the provisions of the section 33 of the IBC,2016."

"The COC have approved the resolution by 100% of votes in favor the agenda."

Item No 6; Resolution No. 2;

"RESOLVED THAT, the COC recommends the Corporate Debtor to be sold as a going concern at least within a period of 90 days as per Regulation 32 (e) of the Insolvency and Bankruptcy Board of India

² Annexure-F at Pages 30-55 of the Application



(Liquidation Process) Regulations, 2016 or as a sale of the business of the corporate debtor as a going concern for atleast within a period of 90 days as per Regulation 32(f) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, during the liquidation period."

"The COC have approved the resolution by 100% of votes in favor the agenda."

Item No 7: Resolution No. 3;

"RESOLVED THAT, the Committee hereby recommends and approves the appointment of Mr. Kamal Nayan Jain (Registration No. IBBI/IPA-001/IP-PO0029/2016-17/10065) as the Liquidator of the CD if the COC members has decided the company to be referred into Liquidation under section 33 of the code."

"The COC have approved the resolution by 100% of votes in favor the agenda."


Item No 8: Resolution No. 4;

"RESOLVED THAT remuneration of the liquidator to be Rs. 50,000/- per month (plus applicable taxes), from the date of the NCLT Order for liquidation till the period of three month."

"RESOLVED FURTHER THAT, liquidator fees for further period of time of liquidation after three months from the date of order of liquidation shall be decided during the first stakeholder consultation committee meeting."

"The COC have approved the resolution by 100% of votes in favor the agenda."

Item No 9: Resolution No. 5;



"RESOLVED THAT, liquidation cost as would accrues from time to time, and at actuals shall be borne by the stakeholders proportionately as per the voting percentage."

"The COC have approved the resolution by 100% of votes in favor the agenda."

Item No 10: Resolution No. 6;

"RESOLVED THAT, the COC recommends to explore compromise or arrangement as referred to under sub-regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the Resolution Professional shall submit the COC recommendation to the Adjudicating Authority while filing application under Section 33."

"FURTHER RESOLVED THAT, where a recommendation has been made under sub-regulation (1), the resolution professional and the committee shall keep exploring the possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority."

"The COC have not approved the resolution."

9. The applicant has submitted his consent³ under the provisions of Section 34(1) of the Insolvency and Bankruptcy Code, 2016 to act as the liquidator of the Corporate Debtor.
10. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall passan order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority topasstheliquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the

³ Annexure E at Page 29 of the Application

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Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.


11. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.

12. This Bench, therefore, hereby orders as follows: -

- a. IA(IBC)/896(KB)2023 filed by **Mr. Kamal Nayan Jain, RP** of **Penguin Hospitality Private Limited**, the Corporate Debtor, is **allowed**. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
- b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of direction of the IBBI Circular dated 18/07/2023 vide no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code we are appointing Mr. Sudipta Ghosh, (Reg No. IBBI/IPA-001/IP-P00484/2017-18/10872) having e-mail id sudipta_ghosh08@yahoo.com, mobile no. 7003384289 as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

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- 
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India(Liquidation Process) Regulations, 2016.
 - d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.
 - e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
 - f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - g. 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 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.
 - h. 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.
 - i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the **Registrar of Companies, West Bengal**, within whose jurisdiction the Corporate Debtor is registered.

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Additionally, the Registry shall also forward a copy of this Order
to the **Registrar of Companies, West Bengal.**

13. The application bearing **I.A.(I.B.C) No. 896/KB/2023** shall stand disposed of in accordance with the above directions.
14. **CP(IB)/105(KB)2022** is to come up for filing of Periodical Progress Report on **10.10.2023**.
15. 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.
16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on the 12th day of September, 2023

FA_LRA