

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

**IA (IB) No. 90/CB/2022
IN
TP No. 198/CTB/2019
(CP(IB)No.4686/MB/2018 on the file of NCLT- Mumbai Bench)**

In the Matter of:

Application Under Section 33(3) ,74(3) of the Insolvency and Bankruptcy Code, 2016 for an order of liquidation against the corporate debtor.

-And-

In the Matter of:

Union Bank of India.

...Financial Creditor

-Versus-

M/s Tayal Foods Limited.

...Corporate Debtor

-And-

In the Matter of:

Mr. Jagdish Kumar Parulkar, Resolution Professional/Chairman Monitoring committee, in respect of **M/s Tayal Foods Limited**, having his office at No. B-56, wall fort city, Bhatagaon, Ring Road-1, Raipur

...Applicant

-Versus-

Surendra Mittal, Successful Resolution applicant Partner, Mahamaya Food Products Padampur Road, Bansula, Basna.

... Respondent

Appearances (through video conferencing)

For the Applicant : Ms. Mrinali Prasad, Advocate.

For the Respondent : -Nil-

Order reserved on: 17.06.2022
Order pronounced on: 21.06.2022

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. The present Application has been filed by Mr. Jagdish Kumar Parulkar, Resolution Professional/Chairman, Monitoring committee, in respect of **M/s Tayal Foods Limited**. Notice sent to the respondent /the successful resolution applicant by registry by speed post was served for a hearing date 17.06.2022 but none appeared for the respondent, hence the respondent was set exparte and heard the submission of petitioner counsel.

2. The corporate insolvency Resolution process (CIRP) against the corporate debtor was admitted by this Adjudicating Authority on 03.10.2019. The applicant was appointed as interim resolution professional, subsequently, he was confirmed as Resolution professional in the 3rd COC meeting held on 20.12.2019. During the CIRP of the corporate debtor a resolution plan submitted by the respondent M/s.Mahamaya Food Product was approved by COC with 100% e-

voting on 23.11.2020. The resolution plan was approved by this Authority on 02.03.2022 in I.A.No. 338 of 2021.

3. The applicant convened the first monitoring committee meeting on 22.03.2022 to discuss about the implementation of approved resolution plan. In the said meeting on the Respondent/successful resolution applicant side expressly denied to implement the plan and wants to withdraw the resolution plan. The applicant apprised the successful applicant of resolution plan that in the event of failure to implement the approved plan the Performance Guarantee shall be forfeited. The extended period of CIRP expired with 25.11.2020, in this scenario the applicant filed this petition for liquidation of corporate debtor. The NCLAT in Company Appeal (AT) (Insolvency) No. 219 of 2019, Committee of Creditors of Amtek Auto Ltd. Through Corporation Bank Vs. Mr. Dinkar T. Venkatasubramanian & Ors, held that if the approved resolution plan is contravened by the corporate debtor and any application is preferred under section 33(3) of IBC 2016 for liquidation, that the Adjudicating Authority shall pass an order of liquidation. In this case on the applicant side filed the minutes of the first meeting of monitoring committee. In the meeting Surendra Mittal attended for Successful resolution applicant and expressly denied to implement the approved resolution plan, thus it is proved and determined that the successful resolution applicant contravened the approved resolution plan consequently it is fit and appropriate case to order liquidation

4. On the applicant side prayed to pass an order under section 74(3) of IBC, the said provision deals with awarding punishment for contravention of approved resolution plan. As far as penal provision is concern under Section 236 (1) of IBC 2016 the special court alone has exclusive jurisdiction. Under section 236(2) IBC cognizance of an offence can be taken only on the complaint made by the Board or central Government. So, this Authority cannot inflict any punishment against any person who contravened the approved resolution plan. Further on the petitioner side prayed to direct the IBIB to take steps against the respondent, here IBBI is not a party, it is to the IBBI to decide whether the contravention of resolution plan is wilful and this is fit case to proceed under section 74(3) of IBC. No direction can be passed in this regard however liberty is granted to the applicant to make appropriate complaint with the Insolvency and Bankruptcy Board of India or the Central Government in this regard for the appropriate remedy. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulation 2016.

5. In the result the **M/s Tayal Foods Limited**, corporate debtor is ordered to be liquidated and the performance Guarantee amount of Rs.78.5 Lakhs deposited by the Respondent/successful resolution applicant is ordered to be forfeited as provided under Regulation 36B(4A) of CIRP Regulation 2016.

6. The applicant erstwhile Resolution Professional/Chairman, Monitoring committee Mr. Jagdish Kumar Parulkar, given a written consent to appoint him as

a Liquidator as required under section 34(1) of IBC 2016. Hence Mr. Jagdish Kumar Parulkar with registration No. IBBI/IPA-001/IP-P00671/2017-18/11143, having office No. B-56, Wall fort City, Bhatagaon, Ring Road, Raipur is appointed as liquidator of corporate debtor **M/s Tayal Foods Limited**.

7. The Liquidator is directed to forthwith take into his custody all the assets, Properties, sophisticated equipment tools implement, machineries, effects and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

8. 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.

9. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.

10. 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. 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.

11. 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.

12. 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 work men of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.

13. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Chhattisgarh, Raipur, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Odisha, Cuttack.

14. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

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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.

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj.
Member (Judicial)

Signed on this 21st day of June, 2022.

Supriya-p.s-