

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH (COURT-II)

IA-1570/ND/2021
IN
Company Petition No. (IB)-2144 (ND) 2019

IN THE MATTER OF:

GAC Shipping (India) Private Limited

...Operational Creditor

Versus

Classic Bottle Caps Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF:

**Subhash Kumar Kundra
Resolution Professional
Classic Bottle Caps Pvt. Ltd.**

...Applicant

Order Delivered on: 20.04.2022

Under Section: 33(1) of the IBC, 2016.

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : **Mr. Gautam Singhal, Mr. Rajat
Chaudhary, Advocate**

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ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This IA has been filed by Mr. Subhash Kumar Kundra, the Resolution Professional of Classic Bottle Caps Pvt. Ltd. (**“the Applicant”**) under Section 33(1) of the Insolvency and Bankruptcy Code, 2016, for seeking the following main reliefs:

- “a) Allow the present application.*
- b) Pass an order for initiation of the corporate Debtor under Section 33(1) of the Insolvency and Bankruptcy Code, 2016.*
- c) Pass an order to appoint, the Applicant as the liquidator of the Corporate Debtor during the Liquidation Proceedings...”*

2. Facts of the case in brief are that the Operational Creditor, M/s GAC Shipping (India) Pvt. Ltd. had filed an Application bearing No. (IB)-2144/(ND)/2019 under Section 9 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP) against M/s Classic Bottle Caps Private Limited. The said Application was admitted by this Tribunal vide Order dated 13.02.2020 and Mr. Ratan Chaudhary, IP was appointed as the Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in the Form-A, which was published in the newspapers namely, the Financial Express (English Edition, Delhi NCR) and Jansatta (Hindi Edition, Delhi NCR) on 02.03.2020. It has been

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submitted by the applicant that the said public announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. It has been submitted that the IRP constituted the Committee of Creditors (CoC) comprising of the sole Financial Creditor i.e., The City Union Bank in terms of Regulation 16 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is added by him that no other claims were received by the Applicant.

5. It is further stated by the Applicant that in the First Meeting of CoC held on 27.03.2020, the CoC resolved to replace the IRP and appoint a new Resolution Professional in terms of Section 22(3)(b) of the Code.

6. That the Applicant Mr. Subhash Kumar Kundra was confirmed as Resolution Professional (RP) of the Corporate Debtor vide Order dated 11.06.2020 passed by this Tribunal.

7. It is stated by the Applicant that it had published the Form G on 19.06.2020 and 10.07.2020. It is added by the Applicant that altogether 04 entities made to the list of Prospective Resolution Applicants (PRAs), namely :

- a) ASC Consulting Pvt. Ltd.
- b) SOPAN Properties Pvt. Ltd.
- c) Flexi World Logistics Pvt. Ltd.
- d) Adwitya Trade India Limited

8. It is stated by the Applicant that subsequently, he received an email from M/s ASC Consulting Pvt. Ltd. and SOPAN Properties Pvt. Ltd.

stating that they are no longer interested in participating in the process and accordingly, their participating fee was returned. It is further added that the Applicant had received the Resolution Plan from the PRA M/s Adwitya Trade India Limited but they also withdrew their Resolution Plan on 17.11.2020.

9. It is further stated by the Applicant that it had received Resolution Plan alongwith an addendum on 11.02.2021 from only one PRA namely, M/s Flexi World Logistics Pvt. Ltd

10. The Applicant has submitted that the following resolutions were put before the COC for consideration in 9th meeting held on 12.02.2021. The scanned copy of the relevant resolutions as recorded in the Minutes of the 9th CoC meeting are reproduced below :

“RESOLVED THAT the Resolution Plan submitted by Flexi World Logistics Private Limited be and is hereby is approved as per Section 30(4) of Insolvency and Bankruptcy Code, 2016.

XXXXX

XXXXX

XXXXX

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The following resolution was put before the CoC to consider and if deem fit, pass with or without modification through postal ballot:

“RESOLVED THAT pursuant to the provisions of Section 33, sub section (2) and Section 35 (1) (e) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made thereunder, approval of Committee of Creditors be and is hereby accorded to initiate liquidation proceedings in the matter of Classic Bottle Caps Private Limited (Corporate Debtor)”.

“RESOLVED THAT the approval of the CoC be and is hereby accorded to appoint Mr. Subhash Kumar Kundra, Resolution Professional (IBBI Registration No.- IBBI/IPA-002/IP-N00399/2017-2018/11174) as the Liquidator of the Corporate Debtor.

“RESOLVED FURTHER THAT the consent of the Committee of Creditor be and is hereby accorded to fix the liquidator fees as Rs 400,000/- for the entire liquidation process.

XXXXX

XXXXX



XXXXX



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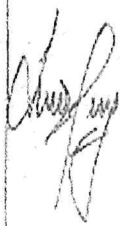


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11. That the Applicant has also annexed the Voting Sheet for the aforesaid Resolutions, which is reproduced below :

**RESOLUTION TO BE VOTED UPON ON THE AGENDA ITEMS FOR THE
9TH MEETING OF THE COMMITTEE OF CREDITORS OF CLASSIC BOTTLE CAPS PRIVATE LIMITED
(UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS)
HELD ON FEBRUARY 12, 2021**

Sl. No.	RESOLUTION	MEMBER NAME	VOTE YES/NO/ABSTAIN	SIGNATURE	NAME & DESIGNATION OF SIGNATORY
5	To place the revised resolution plan received by the resolution professional from the resolution applicant i.e., Flexi World Logistics Private Limited, before the committee of creditors for voting, if found compliant in terms of the provisions of the code and the regulations.	City Union Bank ("CUB")			Narendra Tiwary Branch Manager
	"RESOLVED THAT the Resolution Plan submitted by Flexi World Logistics Private Limited be and is hereby is approved as per Section 30(4) of Insolvency and Bankruptcy Code, 2016.		NO		- ds -
9	To recommend the sale of Corporate Debtor or business of Corporate Debtor as a going concern under Regulation 32 (e) or (f) Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2019	City Union Bank ("CUB")			
	"RESOLVED THAT pursuant to Regulation 39C (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the consent of the members of the Committee of Creditors be and		NO		- ds -

	is hereby accorded that liquidator may first explore the sale of corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) on the passing of the liquidation order by the Hon'ble NCLT.				
10	To consider the Scheme of Compromise under Section 230 of the Companies Act, 2013	City Union Bank ("CUB")			
	"RESOLVED THAT, the approval of the members be and is hereby accorded for inviting the scheme under section 230 of the Companies Act, 2013 by the liquidator.		NO		NARENDRA TINSAY SEAL M MANAGER
	RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary and incidental thereto."		NO		- do -
6.	To approve filing of Application under Section 33 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble Adjudicating Authority seeking liquidation of the Corporate Debtor and to fix the fee of the liquidator	City Union Bank ("CUB")			

	"RESOLVED THAT pursuant to the provisions of Section 33, sub section (2) and Section 35 (1) (e) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made thereunder, approval of Committee of Creditors be and is hereby accorded to initiate liquidation proceedings in the matter of Classic Bottle Caps Private Limited (Corporate Debtor)".		Yes		NARENDRAN TINAKY BRANCH MANAGER
	"RESOLVED THAT the approval of the CoC be and is hereby accorded to appoint Mr. Subhash Kumar Kundra, Resolution Professional (IBBI Registration No.- IBBI/IPA-002/IP-N00399/2017-2018/11174) as the Liquidator of the Corporate Debtor.		Yes		- do -
	"RESOLVED FURTHER THAT the consent of the Committee of Creditor be and is hereby accorded to fix the liquidator fees as Rs. 4,00,000/-		Yes		- do -
8.	To assess the estimated value of liquid assets of the Corporate Debtor available to meet out the liquidation cost and approve the plan providing for contribution for meeting out the difference between estimated liquidation cost and estimated value of liquid asset as per Regulation 39B(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)	City Union Bank ("CUB")			

12. That from perusal of the voting sheet, it is observed that the Resolution Plan submitted by M/s Flexi World Logistics Pvt. Ltd. was rejected by the CoC with 100% votes of the CoC. Further, the Resolution for initiating Liquidation Proceedings of the Corporate Debtor was passed by 100% votes of the CoC.

13. The Applicant has filed an additional affidavit dated 06.09.2021 and stated that the Average Liquidation value of the Corporate Debtor is Rs.2.29 Crore and the Average Fair Market value of the Corporate Debtor is Rs.3.27 Crore.

14. That the applicant has also filed his 'written communication' / consent to act as Liquidator of the Corporate Debtor as required under Section 34(1) of the IBC, 2016.

15. In the circumstances and there being no other alternative, this Bench is inclined to accept the Resolution of the COC and order Liquidation of the Corporate Debtor.

16. In sequel to the above, **the IA is allowed, ordering Liquidation of the Corporate Debtor, M/s. Classic Bottle Caps Private Limited** in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a. **Mr. Subhash Kumar Kundra, having IBBI Registration No. IBBI registration Number (IBBI/IPA-002/IP-N00399/ 2017-18/11174, is appointed as Liquidator,**

who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;

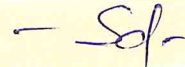
- b. The Liquidator, is directed to issue public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. **Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.**
- f. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

- g. **The Registry is directed to communicate a copy of this Order by email to the Operational Creditor, the Corporate Debtor and Liquidator Mr. Subhash Kumar Kundra at the earliest but not later than seven days from today.**
- h. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;
- i. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board (IBBI) of India for their record.

17. IA-1570/ND/2021 filed in IB-2144(ND)/2019 is allowed in the aforesaid terms.



**(L. N. Gupta)
Member (T)**



**(Bachu Venkat Balaram Das)
Member (J)**