IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-5

I.A. 870 OF 2021

IN

C.P.(IB) 2788 OF 2019

Under Section 33 (2) of the Insolvency & Bankruptcy Code, 2016

Filed by

Mr. Ankur Kumar

Resolution Professional for:

Raunak Mercantile & Trading Pvt. Ltd.

..... Applicant

In the matter of

Katyayan Mercantile and Trading Private Limited

..... Financial Creditor

Versus

Raunak Mercantile & Trading Pvt. Ltd.

..... Corporate Debtor

Order Delivered on: 08.12.2022

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Videoconferencing)

For the Applicant: Mr.Ankur Kumar. (Resolution Professional)

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above application I.A. No. 870/2021 is filled by the Resolution Professional, Mr. Ankur Kumar (hereinafter referred as the "**Applicant**") seeking liquidation of Raunak Mercantile & Trading Pvt. Ltd. (herein after referred as the "**Corporate Debtor**") under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "**the Code**"), praying the following reliefs:

   a. *"Be pleased to pass an order for liquidation of the Corporate Debtor;*
   b. *Be pleased to appoint Mr. Ankur Kumar as a liquidator of the Corporate Debtor;*
   c. *Such other relief as this Hon'ble Bench may deem fit and necessary"*

Facts leading to the present Application

2. The Applicant mentions that this Tribunal, vide its order dated 14.10.2019, in Company Petition No. (IB) 2788/MB/2019, admitted the petition, under Section 9, of the Code, filed by Katyayan Mercantile and Trading Private Limited (hereinafter referred to as the "**Operational Creditor**") and Corporate Insolvency Resolution Process (hereinafter referred to as the "**CIRP**") was initiated against the Corporate Debtor. vide the same Order, this Tribunal appointed the Applicant as IRP of the Corporate Debtor.

3. The Applicant thereafter published, a Public Announcement Form- A, dated 17.10.2019, inviting the claims from the creditors of the Corporate Debtor, in two newspapers namely, Global Times (Marathi Newspaper) and Financial Express (English Newspaper). In the said Public Announcement, the last date of submission of claim was mentioned as 29.10.2019. Subsequently, the Applicant received the claims from the

creditors of the Corporate Debtor. Thereafter the Applicant, constituted the Committee of Creditors ("**COC**").

4. The Applicant submits that in the 1st meeting of the Committee of Creditors (herein after referred as "**CoC**"), convened on 25.11.2019, resolved to appoint the Applicant as the Resolution Professional of Corporate Debtor.

5. The Applicant submits that in the 2nd Meeting of the CoC, convened on 24.12.2019, the members of the CoC resolved to authorize the Applicant to publish Form-G inviting Expression of Interest ("**EoI**"). Accordingly, the Applicant published Form-G on 28.12.2019 in two newspapers namely, Pudhari (Marathi Edition) and Asian Age (English Edition) wherein last date to submit EoI was mentioned as 13.01.2020. The Applicant further submits that the CoC also appointed Mr. Ram Gupta and Mr. Kiran Rege as Registered Valuers for valuing the Securities or Financial Assets of the Corporate Debtor.

6. The Applicant submits that in the 3rd meeting of the CoC, convened on 19.01.2020, the applicant appraised the members of the CoC that although the last date of submission of EoI was 13.01.2020, however, no EoI were received till the said date. The Applicant further submits that the members of the CoC resolved to appoint M/s. Shah Rajan & Associates as the Transaction Auditor of the Corporate Debtor.

7. The Applicant submits that the 4th meeting of the CoC was convened on 19.02.2020. In the said meeting, the Applicant appraised the members of the CoC that in the absence of EoI from any PRA, the members of the CoC should either consider the extension of CIRP period for the purpose of reissuance of Form-G or initiate liquidation proceeding against the Corporate Debtor.

8. The Applicant submits that the 8th Meeting of the CoC convened on 20.12.202. In the said meeting the Applicant appraised the members of the CoC that the Registered Valuers have submitted their valuation report. Further, the transaction auditor in its report have reported no preferential transaction, undervalued transactions, extortionate credit transaction and fraudulent transactions in respect of the Corporate Debtor, during the two years preceding the CIRP commencement date. The Members of the CoC, in the same meeting also discussed the possibility of liquidation of the Corporate Debtor.

9. The 9th meeting of the COC was convened on 15.03.2021, wherein the members of the COC unanimously agreed and resolved to initiate the Liquidation process of the Corporate Debtor in view of not receiving any Resolution Plan. In the same meeting, the members of the COC also resolved to appoint the Applicant as the Liquidator of the Corporate Debtor and also fixed the fees of the Liquidator as mutually decided between CoC and the Resolution Professional. The Applicant has also provided the consent to act as the liquidator of the Corporate Debtor.

10. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, the Counsel for the Applicant submits that no Resolution Plan has been received and there is no option to except to put the Corporate Debtor Company into Liquidation as per the Code, as well as also to protect the asset of the Corporate Debtor from further deterioration since it is observed from the minutes of the 9th COC meeting that the COC with required mandate of 100% voting approved to liquidate the Corporate Debtor in view of not getting any Resolution Plans. Under these circumstances, this Tribunal has very limited judicial review in such matters of commercial wisdom. Therefore, there is no option except to allow the above Liquidation Application. The COC thereby has appointed **Mr. Ankur Kumar** (IBBI Registration No. IBBI/IPA-002/IP-N00113/2017-18/10283) as Liquidator to carry on the process of

Liquidation of the Corporate Debtor. The proposed Liquidator has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as the Liquidator. This Bench, therefore feels this is a fit case for ordering Liquidation of the Corporate Debtor. Accordingly, the above Interlocutory Application Number 870 of 2021 is allowed directing the Liquidation of the Corporate Debtor.

Accordingly, we pass the following:

ORDER

a. The above I.A. No. 870/2021 is allowed and the Corporate Debtor **Raunak Mercantile & Trading Private Limited** is ordered to be liquidated.

b. Mr. Ankur Kumar, having Registration No. IBBI/IPA-002/IP-N00113/2017-18/10283, having office at: 18,10TH floor Pinnacle Corporate Park, G-block, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra 400 051, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees Liquidator Fee as decided between the Resolution Professional and the Committee of Creditors.

d. 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.

e. The Liquidator appointed 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.

f. 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.

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.

With the above directions, this application i.e. I.A. No. 870 of 2021 is hereby allowed and disposed of.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)