

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT – IV**

**Item No. 108**

**IA/6335/ND/2022 in IB/2553/ND/2019**

**IN THE MATTER OF:**

Umbrella Infocare Pvt Ltd	...	Applicant
Versus		
Superkisan E-Commerce Pvt Ltd	...	Respondent

**Order under Section 9 of IBC, 2016.**

**Order pronounced on 10.11.2023**

**CORAM:**

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,**  
**HON'BLE MEMBER (JUDICIAL)**  
**MR. RAHUL BHATNAGAR,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant                 :  
For the Respondent                :

**ORDER**

Order pronounced in open Court vide separate sheets.

IA/6335/ND/2022 stands allowed.

**Sd/-**

**Sd/-**

**RAHUL BHATNAGAR**  
**MEMBER (TECHNICAL)**

**MANNI SANKARIAH SHANMUGA SUNDARAM**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI SPECIAL BENCH  
COURT-IV  
I.A.(IBC)/6335/2022  
IN  
C.P.(IB) No.2553/ND/2019**

**Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions**

**IN THE MATTER OF:**

**Umbrella Infocare Private Limited**

**...Applicant/Operational Creditor**

**Versus**

**Superkisan E-Commerce Private Limited**

**...Corporate Debtor**

**AND IN THE MATTER OF:**

**Apoorv Sarvaria  
Resolution Professional of  
Superkisan E-Commerce Private Limited**

**...Applicant**

**Order Pronounced on: 10.11.2023**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER  
(JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Respondent : Mr. Ajay Raj Purohit, As Ex-Director  
For the RP : Mr. Apoorv Sarvaria along with Ms. Anvesha Jain  
Adv.

## **ORDER**

### **PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. The instant application i.e., I.A./6335/ND/2022 is filed by Mr. Apoorv Sarvaria ('Applicant') Resolution Professional of M/s Superkisan E-Commerce Private Limited seeking liquidation of M/s Superkisan E-Commerce Private Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') praying for the following relief(s): -
  - a. Allow the present application and pass the order to initiate Liquidation Process of the Corporate Debtor under Section 33(2) of the IBC, 2016.
  - b. Appoint a Liquidator for the Liquidation Process of the Corporate Debtor.
  - c. Pass any such other order/directions as may be deemed fit and proper by this Hon'ble Tribunal in the matter.

### **SUBMISSIONS OF THE APPLICANT**

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:
  - a. The Corporate Insolvency Resolution Process against M/s Superkisan E-Commerce Private Limited ('Corporate Debtor') was initiated vide this Adjudicating Authority order dated 23.07.2021 in C.P. (IB) 2553/2019 on an application filed under section 9 of the Code, 2016.

- b. The Interim Resolution Professional (IRP) made public announcement under form A as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 28.07.2021.
- c. The COC in its 1<sup>st</sup> CoC meeting held on 23.08.2021, the IRP was confirmed as the RP by the COC and the same was allowed by the Adjudicating Authority vide order dated 08.09.2021.
- d. The applicant submitted that the original applicant i.e., M/s Umbrella Infocare Private Limited in the section 9 application (C.P.(IB) No. 2553/ND/2019) had never filed its claim before the applicant in the CIRP of the Corporate Debtor. Moreover, it was submitted that the applicant had filed an IA no. 3978 of 2021 against the M/s Umbrella Infocare Private Limited seeking disbursement of amount of Rs. 2,00,000/- to meet the CIRP expenses as directed in this Adjudicating Authority admission order dated 23.07.2021. It is further submitted that the COC had fixed the fee of the Applicant acting as RP at Rs. 1,00,000/- per month but the same has not been paid till date.
- e. It is stated that application bearing IA No. 4076/2021 was filed against the Directors of the Corporate Debtor for their lack of assistance, co-operation and not giving all the information, documents and necessary data required by the Resolution Professional. Vide order dated 30.05.2022, this Adjudicating Authority directed the Directors of the

Corporate Debtor to provide full cooperation and provide all the documents as required by the Resolution Professional.

- f. It is stated that another application bearing IA No. 2839/2021 was filed seeking exclusion of period 23.07.2021 to 17.05.2022 from the total period of Corporate Insolvency Resolution Process. Vide order dated 29.09.2022, the said application was allowed by this Adjudicating Authority.
- g. It is stated that even after the directions issued by this AA, the Directors of the Corporate Debtor provided information on a piecemeal basis after many follow-ups and requests by the RP. In the meanwhile, the RP appointed registered valuers who filed their valuation reports with the applicant.
- h. That based on the information received from the Directors, the Resolution Professional updated the list of creditors as on 15.07.2022 annexed to the application.
- i. In the 3<sup>rd</sup> CoC meeting held on 03.11.2022, the RP informed the CoC members that an information memorandum had been prepared by him which the members can have access to after giving an undertaking of confidentiality. Further, as per Regulation 36A of the CIRP Regulations, the RP has to publish invitation for expression of interest in Form G for which an eligibility criterion for the Prospective Resolution Applicants should be approved by the CoC. The CoC members present in the meeting stated that there is no need for discussion on the said issue

and all the CoC members are aware that the Corporate Debtor has no immovable properties or any substantial assets in its name which would invite any prospective Resolution Applicant to submit any Resolution Plan. It was further stated that even the software used by the Corporate Debtor was completely outdated and would not fetch interest of anyone to show case anything substantial for the Corporate Debtor's resolution. Thus, the CoC members present in the meeting suggested that it would be better to liquidate the Corporate Debtor at the earliest and a resolution to that effect was put for e-voting.

- j. It is submitted that by 89.40% of the voting the CoC has passed the resolution for initiation of liquidation proceedings under section 33 of the IB Code, 2016. The relevant extract of the resolution passed by the CoC members is reproduced below:

“RESOLVED THAT pursuant to Section 33(2) of the Insolvency and Bankruptcy Code, 2016, the Corporate Debtor may be liquidated and the RP should place an application before the Hon'ble Adjudicating Authority for the above said purpose and for appointment of a liquidator of the Corporate Debtor.”

“Further Resolved that pursuant to Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, the expenses to be borne by the Resolution Professional for filing the application under Section 33(2) of the I&B Code for the said purpose along with Court Fee to the tune of Rs. 6,000/- are approved. The amount may be disbursed from the bank account of the Corporate Debtor.”

k. In the 4<sup>th</sup> CoC meeting held on 27.11.2022, the CoC members representing 62.23% of voting share were present in the meeting. On the Agenda to approve the best estimate of the liquidation cost and the value of the liquid assets available to meet the liquidation cost and to approve a plan providing the contribution for meeting the difference between the two, the RP pointed out that the unpaid CIRP costs is more than the current bank balance of the Corporate Debtor. The Resolution Professional had already expressed his unwillingness to be appointed as Liquidator of the Corporate Debtor. Therefore, the liquidation cost to be incurred during the liquidation of the assets will be more than the value of the Liquid Assets of the Corporate Debtor. The RP asked the members to approve a plan for providing for contribution for meeting the difference between the estimated liquidation costs and the estimated value of the liquid assets of the Corporate Debtor. All the members of the Committee of Creditors present in the meeting informed the RP that they are not willing to approve any plan providing for contribution for meeting the difference between the estimated liquidation costs and the estimated value of the liquid assets of the Corporate Debtor.

1. That in the 4<sup>th</sup> CoC meeting wherein the discussion on the assessment of sale as a going concern, the members of the CoC stated that the Corporate Debtor cannot be sold as a going concern as there have been no commercial operations of the Corporate Debtor since the year 2019.

Also, there are no substantial assets and even the software used by the Corporate Debtor is completely outdated. The resolution to recommend the sale of Corporate Debtor as a going concern has not been approved by the CoC through e-voting.

m. Further, the CoC members also stated in the meeting that they will not fix the fee of the Liquidation and they will not be contributing to the fee of the Liquidator.

3. There has been no objection by the Corporate Debtor who was present in the 3<sup>rd</sup> CoC meeting held on 03.11.2022 wherein CoC took the decision in its commercial wisdom that in the absence of any resolution plan, it approved initiation of liquidation of the Corporate Debtor u/s 33 of the IBC, 2016. It also observed from the submissions that the Corporate Debtor was present in all the meetings of the CoC convened by the RP on various dates.

4. Heard the learned counsel for the applicant in IA 6335 of 2022. The provisions of Section 33(2) of the Code are reproduced below:

*“(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”.*

5. Considering the documents and submission made, since the COC in its commercial wisdom has decided to take the Corporate Debtor in liquidation, we are of the opinion that the decision of the COC should not be interfered with. The present application seeking liquidation of the Corporate Debtor M/s Superkisan E-Commerce Private Limited, in the manner laid down in Chapter III of Part II of the Code, is deserved to be allowed.
6. In terms of the above, we hereby order for liquidation of the M/s Superkisan E-Commerce Private Limited ('Corporate Debtor') with the following directions:
  - a. Mr. Ankit Goel, having registration no. IBBI/IPA-001/IP-P-02671/2022-2023/14088, is hereby appointed as per the panel suggested by IBBI for this Bench for the period of 1<sup>st</sup> July, 2023 to 31<sup>st</sup> December, 2023. Mr. Ankit Goel shall file a valid AFA, consent form and disclosure about non-initiation of any disciplinary proceedings against him, within five (5) days of pronouncement of this order.
  - b. 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.
  - 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. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter cease to exist. All these powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.
- e. 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.
- f. 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.
- g. 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
- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement

date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

- j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator, IBBI and RoC, NCT of Delhi & Haryana for taking necessary steps.

With the above directions, this application i.e., **I.A./6335/ND/2022 in Company Petition No. (IB)-2553/ND/2019** is hereby allowed and disposed of.

**Sd/-**

**RAHUL BHATNAGAR  
MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM  
MEMBER (JUDICIAL)**