

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA-5340/2023

In

CP (IB) –1085(PB)/2020

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF IB –1085(PB)/2022:

FDS MANAGEMENT SERVICES PRIVATE LIMITED

..... CORPORATE APPLICANT

AND IN THE MATTER OF IA-5340/2023:

MR. MANOJ KUMAR ANAND

RESOLUTION PROFESSIONAL

FDS MANAGEMENT SERVICES PRIVATE LIMITED

..... APPLICANT

Order Pronounced On: 03.01.2024

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar :

Hon'ble President

Shri Avinash K. Srivastava:

Hon'ble Member (Technical)

Appearances:

For the RP : Mr. SK Sharma, Advocate

ORDER

1. This is an Application filed on 06.10.2023 by Mr. Manoj Kumar Anand, the Resolution Professional of FDS Management Services Private Limited, the Corporate Debtor (CIN: on U74140DL2007PTC157502) before this Adjudicating Authority under Section 33(1)(a) of the Insolvency and Bankruptcy Code,

2016 (“**IBC**” or “**Code**”) seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor (“**CoC**”) in its 8th Meeting held on 12.09.2023. Prayers made in the Application read as below:

- a) *Allow the present Application;*
- b) *Pass an Order under Section 33(1)(a) of the IBC, 2016 to liquidate the Corporate Debtor and consequently appoint the Applicant to act as liquidator of the Corporate Debtor; and*
- c) *The CoC be directed to make contribution towards the outstanding CIRP Cost as on date of liquidation and further estimated liquidation cost in terms of Regulation 39B of IBBI (Insolvency Process Corporate persons) Regulations.*
- d) *Pass such order or further order as may be deemed fit and proper in the facts and circumstance of the instant case.*

“Brief Background of the Case

2. An Application was filed by FDS Management Services Private Limited ("Corporate Applicant") to initiate Corporate Insolvency Resolution Process ("**CIRP**") for the Corporate Applicant under Section 10 of the Code read along with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. This Adjudicating Authority vide order dated 09.01.2023 ("Admission Order") was pleased to admit the application and a moratorium was declared including approval of the appointment of Mr. Manoj Kumar Anand as an Interim Resolution Professional ("**IRP**").
3. The IRP made a public announcement for the invitation of claims in Form-A dated 15.01.2023, inviting claims to be filed on or before 29.01.2023. Accordingly, claims were received and the Committee of Creditors was constituted with sole member/ financial creditor i.e., Mr. Mahesh Singh.
4. It is submitted that the list of creditors under Regulation 13(2)(d) of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 (the CIRP Regulations) along with the Report on

constitution of COC under Section 21 of IBC read with regulation 17(1) of the CIRP Regulations, was filed by the Applicant on 31.01.2023. (Annexure-3)

5. The IRP convened 1st Meeting of the Committee of Creditors (“**CoC**”) on 07.02.2023, wherein List of Creditors and the Constitution of COC was approved. Further IRP, Mr. Manoj Kumar Anand was confirmed as Resolution Professional (“**RP**”).
6. It is submitted that the RP convened 2nd Meeting of the COC on 06.03.2023, wherein eligibility criteria for Prospective Resolution Applicant was approved and Four Valuers were appointed.
7. The Applicant/RP published Form G on 07.03.2023 for inviting Expression of Interest under Regulation 36A(1) of the CIRP Regulations, however, no plan was received.
8. The Applicant/RP convened 3rd Meeting of the COC on 24.04.2023, wherein Information Memorandum, Request for Resolution Plan and Evaluation Matrix was approved with 100% voting by CoC.
9. The Applicant/RP convened 4th Meeting of the COC on 02.06.2023, wherein resolution was passed by COC for extension of CIRP for 90 days. Further it was resolved to not liquidate the Corporate Debtor and to explore more alternatives or prospective Resolution Applicants for the revival of the Corporate Debtor and passed a resolution with 100 % voting in favour thereof. Pursuant thereto, the Applicant moved an Application bearing IA No.-3533 of 2023 under Section 12 (2) of the Code seeking extension of the CIRP period beyond 180 days by 90 days and the same was allowed by this Adjudicating Authority vide order dated 31.07.2023.
10. It is submitted that the Applicant/RP convened 5th Meeting of the COC on 01.08.2023, wherein resolution was placed for providing the finance of Rs 17 lakh for the proposed expenses till 08.10.2023 and also apprised the CoC members regarding the non-recovery of dues from debtors/Income Tax Authority despite best efforts.
11. It is submitted that the RP convened 6th Meeting of the COC on 12.08.2023 wherein the agenda was placed for passing the

resolution for publication of Form G as per Regulation 36A(2)(iv) which was rejected by the CoC due to shortage of funds. The 7th CoC meeting was convened on 23.08.2023 wherein resolution was placed to provide for an interim finance which was not voted to. Further the RP apprised the CoC about non-recovery of Rs 23,37,765 plus interest from National Centre for Medium Range Weather Forecasting, Ministry of Earth Sciences, non-recovery of Rs. 14,97,209 plus interest from Ministry of Earth Sciences, Prithvi Bhawan and also recovery of refunds of Rs 23,86,247 plus interest from Income Tax Department. Also the resolution for publication of Form G was placed again before CoC which was rejected by 100% voting due to shortage of funds.

12. The RP convened 8th Meeting of the COC on 12.09.2023, wherein *inter alia*, the following resolution for initiation of Liquidation as per Section 30(2) of the Code was passed with 100% vote share in favour:

6. Agenda no 6: - TO CONSIDER AND, AND IF THOUGHT FIT, TO PASS WITH OR WITHOUT MODIFICATIONS INITIATION OF LIQUIDATION PROCESS AS PER SEC 30 (2) OF IBC 2016 BY INTIMATING TO HONOURABLE ADJUDICATING AUTHORITY

6.1.RP brings to the Notice of COC members that he issued Form G being Invitation to Expression of Interest (EOI) as on 7th March 2023 against which no Prospective Resolution Applicant (PRA) applied.

6.2.RP requested COC in the 6th COC meeting dated 12th Aug 2023 for new issue of Form G being Invitation to Expression of Interest (EOI) which was rejected by them.

6.3.RP again requested COC in the 7th COC meeting dated 23rd Aug 2023 for new issue of Form G being Invitation to Expression of Interest (EOI) which was also rejected by them.

6.4. Even after waiting for approx. 1 month, no PRA showed any interest in the corporate debtor, hence liquidation is the only available option.

6.5. Honourable Adjudicating Authority be applied for liquidation.

The COC with 100 % voting after discussion recommended for Liquidation process as per sec 30(2) of IBC 2016 and asked RP to file a liquidation application before Adjudicating Authority.

13. Further, in its 8th meeting, the COC authorized the RP to file Application seeking commencement of Liquidation for the Corporate Debtor. It was further resolved in the same meeting in following terms that the Corporate Debtor be dissolved early as there are no material assets:

9. TO CONSIDER AND, AND IF THOUGHT FIT, TO PASS WITH OR WITHOUT MODIFICATIONS FOR EARLY DISSOLUTION AS PRACTICALLY POSSIBLE AS PER SECTION 54 OF THE IBC 2016 AS THERE IS NO MATERIAL ASSET & THE CORPORATE DEBTOR IS NOT DOING ANY BUSINESS SINCE LAST 2 YEARS AND THERE IS NO EXPECTATION OF DOING ANY BUSINESS IN THE FUTURE ALSO. FURTHER WITH EACH PASSING DAY ADDITIONAL COST IS INCURRED.

9.1. The early dissolution of the CD is recommended on the following reasons:-

9.1.1. CD isn't doing any business

9.1.2. There is no expectation of any business in the near future also due to huge GST liability of Rs 17.69 Crores

9.1.3. Additional cost to maintain CD is being incurred on a daily basis.

9.2. Sole COC member is also not interested in attending COC meetings.

9.3. To avoid all the above, early dissolution is the only viable alternative and hence recommended.

9.4. However, CD is having following assets: -

Details of Unsold Assets as on 18.09.2023			
Particulars	Book Value	Amount	Remarks
Office Equipment	4,78,648	38,975	Too small & consist of mainly fixed furniture
Ministry of Earth Sciences	14,97,209	14,97,209	More than 30 letters/Visits made by RP
National Centre for Medium Range	23,37,765	23,37,765	Refused to pay vide letter dated 24.03.2023
Income tax refundable	22,36,612	3,39,336	More than 30 letters/Visits made by RP but not issued due to lack of supporting documents
Total	<u>65,50,234</u>	<u>42,13,285</u>	

9.5. The matter is placed before COC for granting approval to sell above mentioned unencumbered assets of the Corporate Debtor, other than used in the ordinary course of business as per CIRP Regulation 29 (2).

9.6. Since the Total Claim admitted is Rs 18,10,67,263 & these can be sold as per proviso to CIRP Regulation 29 (1) being less than 10% of total admitted claim.

The COC with 100% voting after discussion approved the early dissolution of the CD and also asked RP to sell all these assets at the best available price at the earliest.

14. In this 8th meeting, the CoC further resolved to not explore opportunities for sale of the Corporate Debtor as a going concern in liquidation, in following terms:

10. TO CONSIDER AND, AND IF THOUGHT FIT, TO PASS WITH OR WITHOUT MODIFICATIONS FOR NOT EXPLORING SALE OF CORPORATE DEBTOR AS GOING CONCERN AS PER LIQUIDATION REGULATION 32 (e) AS THERE IS NO MATERIAL ASSET & THE CORPORATE DEBTOR IS NOT DOING ANY BUSINESS SINCE LAST 2 YEARS AND THERE IS NO EXPECTATION OF DOING ANY BUSINESS IN THE FUTURE ALSO. FURTHER WITH EACH PASSING DAY ADDITIONAL COST IS INCURRED.

10.1. CD has no assets as stated in detailed in point no 7.4 above.

10.2. CD isn't doing any business

10.3. There is no expectation of any business in the near future also due to huge GST liability of Rs 17.69 Crores

10.4 Hence CD cannot be expected to be sold as 'Going Concern'.

10.5 Hence it is not recommended

THE COC with 100% voting after discussion approved for not exploring sale of the Corporate Debtor as going concern as per Liquidation Regulation 32(e).

15. It is submitted that the present Application, therefore, is being filed by the RP in the interest of justice.
16. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
17. Further, in view that there is no chance of resolution for the Corporate Debtor, we are of the opinion that the Corporate Debtor be Liquidated.
18. On perusal of the pleadings placed on record by the Applicant/RP, we are of the considered view that this application ought to have been filed u/s 33(2) r/w sub clauses (i), (ii) & (iii) of Section 33(1)(b).

It is Section 33(2) which is applicable in facts of the case & Applicant/RP made an inadvertent clerical error while filing an application under Section 33(1)(a) of the Code. However, this type of inadvertency shall not prevent this Adjudicating Authority from granting proper relief.

19. In the light of above facts and circumstances, it is hereby ordered as follows:

- i. IA-5340/2023** filed by Mr. Manoj Kumar Anand, the Resolution Professional of FDS Management Services Private Limited, the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clauses (i), (ii) and (iii) of clause (b) of Section 31(1) thereof;
- ii.** The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code has recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.
- iii.** Therefore, this Adjudicating Authority appoints **Mr. Deepak Arora** as the Liquidator of the Corporate Debtor from the available panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is **IBBI/IPA-003/ICAI-N-00418/2022-2023/14120**, the address of the Liquidator is 17 Basement Defence Enclave, Vikas Marg, Near Preet Vihar Metro station, National Capital Territory of Delhi ,110092 and the e-mail id of the Liquidator is **ipdeepakarora@gmail.com** and the contact no. of the Liquidator is **9971436858**.

The Liquidator is directed to file Written Consent in Form-2 within 3 days of the pronouncement of this order.

- iv.** Mr. Manoj Kumar Anand, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith. CoC will ensure payment of outgoing RP's fees.
- v.** We observe that Vide Agenda No. 8 in the 8th CoC meeting dated 21.09.2023 a resolution was passed approving the name of RP Mr. Manoj Kumar Anand as Liquidator on fees of Rs. 2,00,000 and applicable GST per month, the relevant portion of which is extracted below:

Vide Agenda No-8 the resolution was passed approving the name of RP Mr Manoj Kumar Anand as Liquidator on fees of Rs 2,00,000 lakh and applicable GST per month

The Newly appointed Liquidator will also be paid the same fee of Rs. 2,00,000 and applicable GST per month for the conduct of the liquidation proceedings.

- vi.** The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in Liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that

the authorities concerned are informed timely of the Liquidation order.

- viii.** All the powers of the Board of Directors, and of key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- ix.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- x.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. 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 the 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.
- xi.** 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.
- xii.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- xiii.** The Liquidator shall also follow up the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

- xiv.** 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;
- xv.** The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- xvi.** 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.
- xvii.** The Registry is further directed to send a copy of this order to the IBBI for their record.
- xviii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

20. The Application bearing I.A. No. 5340 of 2023 filed in IB-1085(PB)/2020 stands disposed of in accordance with the above directions.

Sd/-

**RAMALINGAM SUDHAKAR
PRESIDENT**

Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**