NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

26. I.A. 512/2021
M.A. 3009/2019
M.A. 1803/2019
IN
C.P.(IB)-3643(MB)/2018

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **25.02.2022**

NAME OF THE PARTIES: Fairmate Chemicals Pvt Ltd

V/s

SAPS Infrastructure Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Resolution Professional Mr. Kairav Triwedi is present through virtual hearing.

I.A. 512/2021

The above Interlocutory Application is filed by Resolution Professional for liquidation of the Corporate Debtor Company. Mr. Kairav Triwedi, Resolution Professional submits that more than 330 days has completed as a result of no Resolution Plan has come.

Heard the Resolution Professional in the above Interlocutory Application bearing No. 512/2021 is allowed. Detailed order would follow:

List this matter on 28.03.2022.

Sd/-	Sd/-
CHANDRA BHAN SINGH	H.V.SUBBA RAO
Member (Technical)	Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 512 OF 2021

IN

CP (IB) - 3643/I&BP/2018

Under Section 33 of the Insolvency & Bankruptcy Code, 2016

Filed by
Mr. Kairav Anil Trivedi
Resolution Professional for:
SAPS Infrastructure Private Limited
...Applicant

In the matter of
Fairmate Chemicals Private Limited
8/1, Sai Sudha, Arunodaya Society, Alkapuri, Vadodarea-3990007
...Operational Creditor

Versus

SAPS Infrastructure Private Limited
401-B, 4th Floor, B-wing, Durvankur CHS Ltd, Dadoji Kanddeo Cross Road, Opp Sussex Industrial Estate, Byculla (E), Mumbai-400027
...Corporate Debtor

Order delivered on: 25.02.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance: For the Applicant: Mr. Kairav Anil Trivedi, Resolution Professional

1. The above application I.A. No. 512/2021 is filed by Resolution Professional, Mr. Kairav Anil Trivedi (hereinafter referred to as the "Applicant") seeking liquidation of SAPS Infrastructure Private Limited (hereinafter referred to as the "Corporate Debtor") under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

    a. *Since the maximum period permitted for completion of Corporate Insolvency Resolution Process under Section 12 of IBC of 330 days being over on 3rd March 2020. This application is filed by the RP after the things have improved from the nationwide Lockdown being imposed for COVID19 from 20th March 2020. The Hon'ble Bench may pass order for liquidation under Section 33(1) for SAPS Infrastructure Pvt Ltd under CIRP vide order CP(IP) No. 3643/NCLT/MB/2018 of IBC.*
    b. *To appoint Kairav Anil Trivedi having registeration No. IBBI/IPA-001/IP-N00728/2018-19/12332 having Residence Address as 23, A 5th Floor, Jyoti Bldg., Barquatali Dargha Margh, Wadala East, Mumbai – 400037, and Office address at 413-414 Sharmj, Opp Lodha New Cuffe Parade, Wada East, Mumbai – 400037 as the liquidator of SAPS Infrastructure Pvt Ltd or any other Insolvency Professional as may deem fit and proper.*
    c. *Pass such other order/directions as this Hon'ble Bench may deem fir and proper in the facts and circumstances of the case.*

2. The brief facts of the application are as follows:

A. The Applicant mentions that this Tribunal vide its order dated 07.03.2019 in Company Petition No. 3643/I&BP/2018 admitted the petition under Section 8 and 9 of the Code, filed by Fairmate Chemicals Private Limited (hereinafter referred to as the "Operational Creditor") and Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") was initiated against SAPS Infrastructure Private Limited. Mr. Kairav Trivedi was appointed as the Interim Resolution Professional (hereinafter referred to as the "IRP") of the Corporate Debtor by this Tribunal vide Order dated 07.03.2019.

B. It is further stated by the Applicant that on 09.04.2019 a public announcement was made inviting claims from the Creditors of the Corporate Debtor in two newspapers namely The Free Press Journal (English) and Navashakti (Marathi).

C. The COVID 19 Pandemic and Lockdown was imposed from 20.03.2020.

D. The Applicant further states that, as per the amendment inserted by the Insolvency and Bankruptcy Code Amendment Act 2019 with effect from 16.08.2019 provides further that the CIRP shall mandatory be completed within a period of 330 days from the Insolvency Commencement Date, including any extension of the period of CIRP process granted under this section enter time taken in degree proceedings in relation to such resolution process of Corporate Debtor.

E. Accordingly, as per the above mentioned amendment the CIRP process shall mandatory be completed within 330 days from Insolvency Commencement Date which is 3rd March 2020.

F. Further the Applicant states that on 28.01.2021 the Applicant was directed by the Hon'ble NCLT to examine and assess the feasibility for filing Liquidation application since the Maximum Mandatory Period of CIRP 330 days has been completed.

G. The Applicant attached the necessary form of consent to be appointed as liquidator with this application, along with the approval of for assignment from ICSI IIP.

3. After hearing the arguments of the Applicant and upon perusing the records, this bench notes that more than 330 days has been lapsed without any resolution in this case. The Applicant having no other remedy other than to seek Liquidation of the Corporate Debtor as per the provisions of the Section 33 (1) (a) of the Code filed the above I.A. for liquidation. Relying on the settled principle of law regarding the Commercial Wisdom of the Applicant, we hereby allow this Interlocutory Application Number 512 of 2021 and passed the following:

ORDER

1. The above I.A. No. 512/2021 is allowed and the Corporate Debtor SAPS Infrastructure Private Limited is ordered to be liquidated.

    a. **Mr. Kairav Anil Trivedi**, having Registration No. IBBI/IPA-002/IP-N00728/2018-19/12332 and having office at: 413-414 Sharmj, Opp Lodha New Cuffe Parade, Wada East, Mumbai – 400037 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
    b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

c. 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.
d. The Liquidator appointed under section 34(1) of the Code. Will have 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.
e. 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.
f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
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. 512 of 2021 is hereby allowed and disposed of.

Sd/-	Sd/-
Chandra Bhan Singh	**H.V. Subba Rao**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**