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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: SH. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

SH. RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Sr. No. 40/2021

IA No. 306/JPR/2020
In
CP No. 11/7/JPR/2019

**UNDER SECTION 33 and 34 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

IN THE MATTER OF

United Bank of India

...Financial Creditor

VERSUS

M/s Prithvi Multipurpose Cold Storage Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF

IA No. 306/JPR/2020

Kamal Kumar Jain,
Resolution Professional for
M/s Prithvi Multipurpose Cold Storage Pvt. Ltd.
315-A, Road No.2, Shanti Nagar, Gopalpura Bypass,
Durgapura, Jaipur-302018 (Rajasthan)

...Applicant

For the Applicant: Karan Pratap Singh, Adv.

Order Pronounced On: 16.03.2021

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ORDER

Per: Shri Raghu Nayyar, Technical Member

1. The instant Application IA No. 306/JPR/2020 is filed by the Resolution Professional for M/s Prithvi Multipurpose Cold Storage Pvt. Ltd. ('Applicant' / 'RP') under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') for initiation of liquidation proceedings against M/s Prithvi Multipurpose Cold Storage Pvt. Ltd. ('Corporate Debtor').
2. The Adjudicating Authority vide order dated 28.08.2019 had admitted the application filed by United Bank of India under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof appointed Mr. Kamal Kumar Jain as Interim Resolution Professional ('IRP').
3. In compliance with provisions of the Code, the IRP constituted the CoC. The first meeting of the CoC was held on 23.09.2019, wherein the CoC unanimously appointed the IRP i.e. Mr. Kamal Kumar Jain as Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority vide its order dated 10.10.2019. It is also seen that the RP had appointed two registered valuers to determine fair and liquidation values in accordance with Regulation 35 of the CIRP Regulations.

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4. In view of the discussion of the CoC in the 2nd meeting held on 05.11.2019, the RP proceeded with for publication of Form G on 07.11.2019 and invited Expression of Interest ('EOI') for submission of resolution plan for the Corporate Debtor. Since no resolution plan was received, the RP again effected publication on 28.11.2019 and the last date for receipt of EOI was 18.12.2019 and the last date for submission of resolution plan was 07.02.2020. The fact of another publication was noted by the CoC in its 3rd meeting held on 11.12.2019. In the 4th meeting of the CoC, held on 09.01.2020, the RP informed the CoC that three emails had been received from persons showing interest in submission of resolution plan for the Corporate Debtor.
5. It is submitted that in the 5th meeting held on 05.02.2020, the CoC noted that no resolution plan had been received and all 3 prospective resolution applicants had refused to submit the resolution plan. Thus, the CoC informed the RP to again publish Form-G. Accordingly, the RP had published Form G on 08.02.2020 and the last date for submission of EOI was 28.02.2020. In the 6th meeting held on 03.03.2020, the RP informed the CoC that two EOI had been received. In the 7th meeting held on 25.06.2020, the RP informed that one resolution plan had been received.
6. It is submitted that the RP convened various meetings of the CoC to discuss the plan in detail. In the 11th CoC meeting held on 15.09.2020, the COC

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rejected the resolution plan and resolved to liquidate the Corporate Debtor.

Copy of minutes of the 11th meeting of CoC is annexed as Annexure 3 of the Application.

7. We have carefully heard and considered the arguments of the learned counsel for the RP; and have also perused the records and taken into consideration the above facts in relation to the affairs of the Corporate Debtor. The provisions of Section 33 of IBC, 2016 are as follows: -

“33. Initiation of liquidation. –

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30;

or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation;

and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(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 creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the

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Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1) ”

8. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review.”

However, it is to be seen whether the relevant application is filed within stipulated time lines and as per applicable procedure.

9. **Prescribed period for filing application** - In the present case, the application under Section 7 of Code was admitted on 28.08.2019 and the period of 180 days was ending on 24.02.2020. The Adjudicating Authority vide order dated 31.08.2020, extended the period of CIRP by 90 days more beyond the period of 180 days, after deducting the lockdown period from 25.03.2020 to 31.07.2020. Thus, the said extended CIRP period was ending on 29.09.2020. It is be noted that during the CIRP, the CoC, by 100% vote-share, resolved to liquidate the Corporate Debtor on 15.09.2020 and the present application is filed by the Resolution Professional on 05.10.2020.

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10. It is seen that there is no prayer for further extension or exclusion in the instant or any other application(s). In view thereof the Application under consideration is taken up under Section 33(1). Irrespective of the applicable sub-section under Section 33, this leads to liquidation of the Corporate Debtor.
11. **Appointment of Liquidator and fee to be paid**– Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority.
12. The present RP Mr. Kamal Kumar Jain is eligible to be appointed as Liquidator. The CoC had resolved to appoint the RP as the Liquidator. However, it is noted that liquidation proceedings herein, albeit with the approval of the CoC, were automatically initiated under prescription of statute due to expiry of CIR period. We do not find any reason to replace the existing RP. Mr. Kamal Kumar Jain, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P00092/2017-18/10192 has filed his written consent in format / Form-AA dated 26.09.2020 (Annexure-4). The credentials of the proposed Liquidator have been checked from IBBI

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website (www.ibbi.gov.in) and nothing adverse is found on record. Thus, Mr. Kamal Kumar Jain is appointed as the Liquidator.

13. It is also seen that Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.
14. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – The COC in its 11th meeting held on 29.02.2020 has not decided the estimated liquidation cost. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.
15. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** - The CoC in its 11th meeting has unanimously resolved to sell the Corporate Debtor as a going concern and in the event of not being able to sell it as a going concern within a period of 60 days from the liquidation commencement date, steps are to be taken for sale of the assets of Corporate Debtor in the mode stipulated under clause (a) to (d) of Regulation 32.
16. **Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016)** – In the 11th meeting of the CoC while passing a resolution for the fees of the Liquidator as per Regulation 39D of CIRP Regulations, the CoC informed the RP that the fee payable to the Liquidator will be in

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accordance with the negotiated fees which has already been fixed after mutual discussions with the RP through electronic means via e-mail. However, it is noted that no copy of such e-mail is annexed with the Application or with the minutes of the 11th CoC meeting. The Liquidator is directed to ensure clarity in this regard.

17. **Pending Applications, if any, and its effect-** An affidavit vide diary No. 957/2020 has been filed, stating that there are no pending applications which have any bearing on the order of liquidation.
18. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, M/s Prithivi Multipurpose Cold Storage Pvt. Ltd. is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -
- (i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor,
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority; and
 - (ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as

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may be notified by the Central Government in consultation with any financial sector regulator; and

- (iii) This order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and
- (iv) All the 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 in the Liquidator; and
- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Liquidator for references to the Interim Resolution Professional; and
- (vi) The Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to

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submit their claims as on the liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date; and

(vii) In accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and shall file regular progress reports as per Regulation 15.

19. In view of the foregoing, IA No. 306/JPR/2020 is disposed of. The Liquidator is directed to file a copy of email with respect to Liquidator's fees along with the preliminary report. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd

Sd

**SH. RAGHU NAYYAR,
TECHNICAL MEMBER**

**SH. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER**

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