IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

M. A. No. 642 of 2020
In
C.P. No. 4134/IB/2018

Under Section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of
The Cosmos Co-operative Bank Ltd.
... Financial Creditor

V/s.
Brainer Impex Ltd.
... Corporate Debtor

M.A. No. 642/2020

Mr. Vishram Narayan Panchpor

... Applicant/
Resolution Professional

Order delivered on 23.09.2021

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

Appearance (through video conferencing):

For the Applicant: Mr. Vishram Panchpor, Applicant/Resolution Professional-in-person

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (M/s. Brainer Impex Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

a. *"To pass an order directing the Corporate Debtor to go under liquidation as per Section 33(2) of the Insolvency & Bankruptcy Code, 2016;*

b. *To appoint Vishram Panchpor, Insolvency Professional as a Liquidator who has given his consent to as the Liquidator of the Corporate Debtor."*

2. The Adjudicating Authority vide its order dated 24.06.2019 on a Petition filed by the Financial Creditor under Section 7 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Brainer Impex Ltd., wherein Mr. Vishram Narayan Panchpor, was appointed as Interim Resolution Professional (IRP). Thereafter, in the 1st Committee of Creditors (CoC) meeting held on 25.07.2019, CoC decided to appoint Mr. Vishram Narayan Panchpor as Resolution Professional. The decision taken by CoC was communicated to the Tribunal by submitting report.

3. It is submitted that the public announcement of the initiation of the CIRP was issued in Form A on 29.06.2019 in "Free Press Journal" in English and "Navshakti" in marathi. The last date for submission of claims by creditors is 11.07.2019.

4. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was not published. It is submitted by the RP that the exact particulars of all the assets, their location could not be ascertained as the corporate debtor had no employees and the former members of the board were also not available as a result, the assets of the Corporate Debtor were not available for the verification and valuation.

5. The CoC in its 2nd meeting held on 29.08.2019 decided to appoint a Valuer. Based on the audited financial statements for the financial year ended 31 March 2015, proposals from registered valuers for carrying out valuation of assets were invited and copies of the proposal were circulated with the agenda. However, as the assets was not traceable and complete and updated information about all the assets of the corporate Debtor was necessary to carry out valuation. The CoC unanimously decided not to appoint the valuers as the assets of the corporate debtor was not available for the verification and valuation.

6. The RP submits that till the date of fourth CoC meeting, no information memorandum was prepared, no Registered Valuers were appointed, no EoI was issued and no Resolution Plan had been invited from any person and further the CIRP period was not extended.

7. The CoC in the 4th CoC meeting held on 21.12.2019 was informed in the meeting that there are no chances of revival of the Corporate debtor Company and therefore the CoC in its wisdom passed the following Resolution;

> *"Resolved that: pursuant to the provision of Section 33(2) OF THE Insolvency and Bankruptcy Code, 2016 and the Regulations made thereunder, approval of the Committee of Creditors of Brainer Impex Limited ("Corporate Debtor") be and is hereby granted to liquidate the Corporate debtor and Resolution Professional be and hereby instructed to intimate tis decision of the CoC to National Company Law Tribunal, Mumbai Bench.*
>
> *Pursuant to the provisions of Section 34(1) of the Code, Mr. Vishram Narayan Panchpor, having Registration No. IBBI/IPA-002/IP-N00269/2017-2018/10782 who has given his consent to act as the Liquidator be and is hereby appointed as the Liquidator and the professional fees of Rs. 25,000/- (Rupees Twenty-Five Thousand only) per month plus Good and service tax, as applicable, and reimbursement of out of pocket expenses,*

at actuals, to be paid to mr. Vishram Narayan Panchpor, be and is hereby approved and the same shall form part of the liquidation cost."

8. Hence, the CoC in its 4th meeting held on 21.12.2019, passed a resolution with unanimous vote in favour of Resolution for liquidating the company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

9. The Applicant/ Resolution Professional Mr. Vishram Narayan Panchpor, has agreed to act as liquidator and given consent to carry on the process of liquidation.

10. Upon hearing the submissions of the Applicant and on the perusal of the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code; Regulations made thereunder. The reasons assigned in the petition with regards to taking the decision of liquidation of Corporate Debtor by CoC appears to be genuine in the present market scenario and convincing. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Accordingly, we pass the following:

ORDER

a. The M. A. No. 642 of 2020 is hereby allowed.

b. **Mr. Vishram Narayan Panchpor**, Registration No. IBBI/IPA-002/IP-N00269/2017-2018/10782, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.

c. 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.

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. 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.

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. 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.

h. 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.

i. 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.

j. 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.

k. The M. A. No. 642 of 2020 is hereby allowed and disposed of.

Sd/-	Sd/-
CHANDRA BHAN SINGH	**H. V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**