

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 3914 OF 2023

IN

COMPANY PETITION (IB) NO. 1842/MB/2018

*Application u/s 33 of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

Mr. Jitendra Kumar Yadav

Resolution Professional of Oracle Home Textiles
Ltd.

11, Singh House, 02nd Floor, 23, Ambalal Doshi
Marg, Near BSE, Fort, Mumbai-400 001.

...Applicant

In the matter of

ANDHRA BANK LTD.

...Operational Creditor

v/s.

ORACLE HOME TEXTILES LIMITED

...Corporate Debtor

Order pronounced on 30.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearance (in Virtual Mode)

For the Applicant: Counsel Naveen R. for the RP and Counsel
Ms. Smriti Shahani for the CoC.

ORDER

Per: Shri. Kuldip Kumar Kareer, Member Judicial.

1. This is an application filed by the Applicant, who is the Resolution Professional of the Corporate Debtor, for liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016.
2. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process ('CIRP') vide Order dated 09th August, 2018 passed u/s 7 of the Code in the above-captioned Company Petition and the Applicant herein was appointed as the Interim Resolution Professional ('IRP') and thereafter confirmed as the Resolution Professional ('RP') by the Committee of Creditors ('CoC').
3. Pursuant to the Public Announcement for invitation of Expression of Interest ('EoI') dated 23.10.2018, the following EOIs were received by the Applicant:
 - i. M/s. ASG Business (India) Pvt Ltd;
 - ii. M/s. Nagreeka Exports Ltd;
 - iii. M/s. Suraksha Asset Reconstruction Pvt Ltd;
 - iv. M/s. Faze Three Ltd;

- v. M/s. Phoenix ARC Pvt Ltd;
 - vi. M/s. Ganak Conglomerate Pvt Ltd.
4. The Applicant states that out of above 6 EoIs, only 1 Resolution Applicant submitted the Resolution Plan i.e. M/s. Faze Three Ltd. In the 17th CoC Meeting held on 11th February, 2020, the Resolution Plan submitted by Faze Three Ltd was rejected by CoC with 100% voting share and a resolution for liquidation of the Corporate Debtor was approved by 99.61% voting share. However, on an application filed by a suspended director before this Hon'ble Tribunal in MA No. 608/2020, this Tribunal vide Order dated 18th February, 2020 directed that the suspended director be permitted to submit his resolution plan to the CoC within 2 weeks from the date of the Order and upon receipt of the plan, the CoC to consider the same. It is pertinent to note that one of the key ingredients of Request for Resolution Plan ('RfRP') was that an Earnest Money Deposit ('EMD') of Rs. 1 crore was to be furnished by a Prospective Resolution Applicant ('PRA') while submitting the resolution plan.
5. In and around July 2020, the Suspended Director filed an IA No. 1070/2020, *inter alia*, seeking exemption from depositing EMD with his resolution plan. However, vide Order dated 21.08.2020, this Tribunal did not accede to the request and directed the Suspended Director to submit his Resolution Plan and EMD within 3 weeks and further directed the CoC to take a decision on the same. Pursuant to the above order, the Suspended Director submitted his

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Resolution Plan along with EMD. The Resolution Plan submitted by the Suspended Director on 31.12.2020 along with its Addendum dated 05.05.2021 was voted upon and approved by the CoC on 10th May, 2021 with 99.90% votes in favour. In the meantime, on 21.01.2021, the IAs in the above-captioned Company Petition came up for hearing before this Tribunal wherein other interested parties were keen to participating in the CIRP by submitting their resolution plans. After hearing the parties, the Tribunal indicated that it would pass a detailed order in respect of the same. In the 28th CoC Meeting held on 21st May, 2021 the Applicant informed all present in the meeting that the voting results approving the plan were subject to the orders which may be passed by the Adjudicating Authority subsequent to the hearing held on 21.01.2021.

6. On 24th May 2021, the Applicant circulated the draft Letter of Intent ('LoI') to the Suspended Director for his perusal and acceptance. Vide his Advocate's Letter dated 29.05.2021, the Suspended Director replied to the said email raising primary objection to the LoI being conditional subject to the outcome of hearing dated 21.01.2021 and the additional conditions being sought to be imposed in the LoI. Being aggrieved by the conditional LoI, the Suspended Director filed I.A No. 1205/2021. At the 29th CoC Meeting held on 11.06.2021, the Suspended Director was requested to provide the duly corrected/modified Resolution Plan as per the discussions at the earlier CoC meetings. At 30th CoC

Meeting held on 22.06.2021, it was discussed that despite repeated reminders, the Suspended Director had not submitted the final Resolution Plan with Addendums as requested. Pursuant to the decision taken at 30th CoC Meeting, the Applicant vide email dated 23.06.2021 circulated a fresh LoI to the Suspended Director. The Suspended Director disputed the aforesaid LoI for not being in conformity with the RfRP document.

7. At the 31st CoC meetings held on 19th July 2021, 23rd July 2021 and 26th July 2021, the Suspended Director was asked, over the course of three days, by the CoC to give his final stand on the unconditional acceptance of LoI. However, the Suspended Director continued to maintain his allegations that the LoI purported to impose additional conditions and that he cannot accept the LoI. Thereafter, the CoC expressing its displeasure at the conduct of the Suspended Director towards prolonging of CIRP, rejected the Resolution Plan submitted by the Suspended Director and also resolved to forfeit the EMD paid by the Suspended Director of Rs. 1 crore at the time of submitting the resolution plan. Being aggrieved by such forfeiture, the Suspended Director filed another IA No. 2029 of 2021. It is also pertinent to note that IA No. 1355 of 2021 has been filed by Faze Three Ltd seeking directions to quash and set aside the Minutes of the CoC held on 10th May, 2021 rejecting its resolution plan.

8. The CoC has resolved in its 33rd Meeting held on June 05, 2023 to liquidate the Corporate Debtor in the event requisite majority of 66% is not achieved to approve the resolution plan proposed by the Suspended Director. It is pertinent to note that the CoC has voted in favour of liquidation of the Corporate Debtor with voting result by a majority of 99.61%. The Applicant also states that the initial 180-day period of CIRP ended on 12.02.2019. Thereafter, the CIRP period was extended by the Tribunal from time to time. However, the Applicant submits that there is no point in extending the CIRP any further in view of the resolution for liquidation passed by the CoC with thumping majority.
9. In the aforesaid circumstances, the Applicant is filing the present IA for liquidation of the Corporate Debtor.
10. We have heard the learned Counsel for the Applicant and perused the material available on record.
11. The extract of the relevant resolution by the CoC in its 33rd Meeting held on 05th June, 2023 is reproduced hereinbelow:

Resolution No.01:

"RESOLVED THAT the following requests of Mr. Sanjay Dave, the Suspended member of the board and contesting resolution applicant, made on 2nd June, 2023 vide email and also circulated during the 33rd CoC Meeting, be approved by consent of the majority of the members of the Committee of Creditors of the Corporate Debtor:

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1. *That an Application for MSME certification under UDA YAM be filed by the Resolution Professional*
2. *That a fresh unconditional LOI be issued without any overbearing clauses or such clauses which may not be in consonance with the approved resolution plan.*
3. *That the LOI to clearly mention:*
 - a. *Amount of Performance Bank Guarantee (PBG) required;*
 - b. *Time period within which LOI to be accepted and the time to provide the Performance Bank Guarantee;*
 - c. *Tenure of "Performance Bank Guarantee validity period" to be communicated in LOI as per RFRP;*
 - d. *Removal / omit the sentence" and also the decisions taken after discussions in the COC Meetings having binding effect." from the fresh LOI to be issued;*
 - e. *That the forfeited Earnest Money Deposit (EMD) be restored.*

"RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to take steps as may be necessary, in relation to the above if required to do all acts arising out of and incidental thereto and sign and execute all applications, documents and writings that may be required and in general do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid Resolution."

Resolution No.02:

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"RESOLVED THAT in the event the requisite majority of 66% voting of the CoC is not achieved to approve Resolution No. 1 as above, then the Corporate Debtor i.e "ORACLE HOME TEXTILE LIMITED" be sold under Liquidation under IBC, 2016 by approval of the majority of the members of the CoC in its commercial wisdom, for which the Resolution Professional may file appropriate Interlocutory Application under Section 33(1)(a) before the Hon'ble NCLT, Bench-II, Mumbai seeking Liquidation of the Corporate Debtor.

"RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to take steps as may be necessary, in relation to the above if required including but not limited to giving consent to act as the Liquidator or obtaining consent from any proposed Liquidator as informed by the members of the CoC, and to do all acts arising out of and incidental thereto and sign and execute all applications, documents and writings that may be required and in general do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid Resolution."

12. On perusal of records and keeping in mind the facts and circumstances of the case, it is evident that since the successful resolution applicant failed to accept the Letter of Intent, no resolution plan as approved by the CoC could be submitted by the Applicant to the Adjudicating Authority u/s 30(6) of the Code. As the Adjudicating Authority has not received a resolution plan u/s 30(6) of

the Code before the expiry of maximum period (i.e. 330 days from the insolvency commencement date) permitted for completion of CIRP, therefore, in view of Section 33(1)(a) of the Code, it is fit case to order liquidation of the Corporate Debtor.

13. Further, since the CoC in its commercial wisdom has resolved in the 33rd Meeting held on 05th June, 2023 to put the Corporate Debtor under liquidation by a majority of 99.61% voting, there is no point in prolonging the CIRP of the Corporate Debtor any further. The Hon'ble NCLAT in **Gulab Chand Jain v/s. Resolution Professional of Vijay Timber Industries** (vide Order dated 02.03.2021 in Company Appeal (AT) (Insolvency) No. 142 of 2021) has observed as follows:

"2. ... That apart, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read together with explanation inserted by Act 26 of 2019 enforced w.e.f. 16th August, 2019, the COC is empowered to take a decision in regard to liquidation of the Corporate Debtor even after an application has been filed by the Resolution Professional placing the Resolution Plan approved by the COC before the Adjudicating Authority for approval. Of course, the withdrawal of the Resolution Plan can be done before its approval by the Adjudicating Authority. **This implies that even after approval of the Resolution Plan by the COC and laying it before the Adjudicating Authority, the COC can change its mind and pass a Resolution liquidating the Corporate Debtor subject to only exception that such course cannot be adopted after its confirmation i.e. after approval of the Resolution Plan by the Adjudicating Authority.**"

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We also wish to observe that the aforesaid ruling of the Hon'ble NCLAT has been upheld by the Hon'ble Supreme Court of India in Civil Appeal No. 5640 of 2021 vide Order dated September 17, 2021. In the present case, the Resolution Professional could not submit the approved resolution plan before the Adjudicating Authority u/s 30(6) of the Code for the reasons discussed hereinbefore, therefore, having regard to the provisions of Section 33(2) and considering the ruling of the Hon'ble NCLAT in Gulab Chand Jain v/s. Resolution Professional of Vijay Timber Industries (supra), we are of the considered view that the CoC is not only empowered to pass a resolution for liquidation u/s 33(2) of the Code before the confirmation of resolution plan, but is also fully justified in passing such a resolution in the factual matrix of the instant case. Thus, this is also a fit case to order liquidation u/s 33(2) of the Code. The Applicant has prayed for appointing Mr. Mahesh Chand Gupta, a Resolution Professional to act as the Liquidator and has also annexed the written consent of the aforementioned Resolution Professional to act as a Liquidator of the Corporate Debtor.

14. One cannot brush aside an important fact that longer the delay, more likely it is that the 'Liquidation' will only be the sensible answer. No doubt, the 'Liquidation Value' tends to go down with an efflux of time as many 'Assets' suffer from high economic depreciation. The Corporate Debtor was admitted

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into Corporate Insolvency Resolution Process ('CIRP') vide Order dated 09th August, 2018 passed u/s 7 of the Code in the above-captioned Company Petition and a long time has elapsed since the insolvency commencement date. Hence, we are of the firm view that the Corporate Debtor should go into the process of liquidation forthwith without any further delay in the interests of all stakeholders.

15. The Hon'ble Supreme Court in the matter of *K. Sashidhar Versus Indian Overseas Bank & Ors* (Neutral Citation: 2019 INSC 148, Vide Judgment dated February 05, 2019 in Civil Appeal No. 10673 of 2018) has held that the decisions of CoC based on its commercial wisdom are non-justiciable. The CoC with requisite voting as given under Section 33(2) has approved the resolution for liquidation of the Corporate Debtor in view of not being able to approve and submit any resolution plan u/s 30(6) of the Code for the reasons discussed hereinbefore. This Tribunal has very limited powers of judicial review in such matters of commercial wisdom.

16. In view of the above discussions and findings, this Bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down under the Insolvency & Bankruptcy Code, 2016. Hence, we pass the following orders:

ORDER

- i. **I.A. No. 3914 of 2023 is allowed;**
- ii. The Corporate Debtor “**ORACLE HOME TEXTILES LTD.**” is **ordered to be liquidated** in terms of Section 33(2) of the Code read with the Regulations made thereunder;
- iii. This Bench hereby appoints **Mr. Mahesh Chand Gupta** having **Registration No. IBBI/IPA-001/IP-P01489/2018-2019/12304** (having Email: mcgupta90@gmail.com and Mobile: 9831046652/798044128) as the Liquidator of the Corporate Debtor. The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016. 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.
- iv. The Liquidation of Corporate Debtor is effective from the date of this order and the Moratorium u/s 14 of the Code declared vide Order dated 09.08.2018 in CP(IB) No.1842/NCLT/MB/2018, henceforth ceases to exist from the date of the order of liquidation;

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- v. 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;
- vi. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator. 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.
- vii. The Liquidator is directed to first explore the sale of Corporate Debtor as going concern under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Regulation 39C of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 or sale of business of the Corporate Debtor as a going concern under clause (f).
- viii. The CoC is directed to contribute to the liquidation cost if any short fall occurs from the liquidation value of the Corporate Debtor.

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- ix. The Liquidator shall make a public announcement stating that the Corporate Debtor is in liquidation, in the manner laid down under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. This Adjudicating Authority also directs the Liquidator to 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 of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations, if any, of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- x. This liquidation order u/s 33(7) 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.
- xi. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

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- xii. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- xiii. The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the Resolution Professional, and the Liquidator by speed post as well as by e-mail within one week from the date of this order, after completion of all the formalities.

17. With the above directions, this **I.A. No. 3914 of 2023** filed u/s 33 of the Code is hereby **allowed** and stands disposed of.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)