

**Before the National Company Law Tribunal,  
Chandigarh Bench  
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,  
Chandigarh.**

No: NCLT/CHD/Reg/CC/1049

Date: 30-1-2020

CA No. 34/2020

In

CP(IB) No. 267/Chd/Pb/2018

In the matter of:

Modi Distillery

...Petitioner-Operational Creditor

Vs

Jai Bhole Nath Enterprises Pvt Ltd

.... Respondent-Corporate Debtor

And In the matter of CA No. 34/2020:

Kuljit Singh, Resolution professional

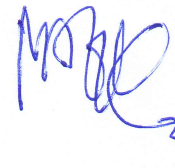
For M/s Jai Bhole Nath Enterprises Pvt Ltd

...Resolution Professional-Applicant

To

Mr. Vikas Rai Berry, Liquidator  
M/s Jai Bhole Nath Enterprises Pvt Ltd  
206, 2<sup>nd</sup> Floor, BRM Towers,  
Loha Market, Millar Ganj, Ludhiana

Please find enclosed herewith a certified copy of order dated 27.01.2020,  
for your information and necessary action. .

  
30.1.2020

Designated Registrar  
for Registrar  
NCLT, Chandigarh Bench

**NATIONAL COMPANY LAW TRIBUNAL**  
**"CHANDIGARH BENCH, CHANDIGARH"**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**

CA No.34/2020 & 24/2020  
 IN  
 CP (IB) No.267/Chd/Pb/2018  
 (Admitted matter)

**Under Sections 33 (1) & 60 (5) of**  
**the Insolvency and Bankruptcy**  
**Code, 2016.**

**In the matter of:**

Modi Distillery.

....Petitioner-Operational Creditor.

Versus

Jai Bhole Nath Enterprises Pvt. Ltd.

....Respondent-Corporate Debtor.

And in the matter of:

**CA No.34 of 2020:**

Kuljeet Singh,  
 Resolution Professional,  
 for M/s Jai Bhole Nath Enterprises Pvt. Ltd.  
 (Corporate Debtor).

....Resolution Professional-Applicant.

And in the matter of:

**CA No.24 of 2020:**

Beam Global Spirits & Wine (India) Private Limited.

....Applicant-Operational Creditor.

Versus

Shri Kuljeet Singh.

....Respondent/Resolution Professional.

**Order delivered on: 27.01.2020.**

**CORAM: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)**  
**HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Resolution Professional:

- 1) Mr.Harsh Garg, Advocate
- 2) Mr.Pulkit Goyal, Advocate

For the Operational Creditor:

Mr.V.K.Mahajan, Advocate



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*V. S. Mahajan*

**Per: Pradeep R.Sethi, Member (Technical)**

**ORDER**

**CA No.34 of 2020:**

The instant application is filed under Section 33 (1) & (2) of the Insolvency and Bankruptcy Code, 2016 (**Code**) for passing an order requiring M/s Jai Bholenath Enterprises Private Limited (**Corporate Debtor**) to be liquidated in the manner as laid down in the Code.

2. CIRP proceedings were initiated in the case of the Corporate Debtor vide order dated 12.04.2019 and Shri Sandeep Chandna was appointed as Interim Resolution Professional (**IRP**). The IRP constituted the Committee of Creditors (**CoC**) consisting of one financial creditor namely Punjab National Bank having 100% voting share and in the first meeting of the CoC dated 10.05.2019, the IRP was resolved to be replaced by Shri Kuljeet Singh as the Resolution Professional (RP). The Adjudicating Authority (**AA**) passed the order on 30.07.2019 for the replacement.

3. It is submitted that after informing the CoC in the second meeting held on 29.06.2019 that the Corporate Debtor and its key managerial persons are not cooperating and providing required information to prepare information memorandum, application under Section 19 (2) of the Code was moved before the AA.

4. It is submitted that advertisement for EOI was published and carried out in two newspapers on 18.07.2019, although till then the information memorandum was not prepared by the IRP. However, no EOI is stated to be



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*Pradeep R. Sethi*

received. Extension of period of CIRP by 90 days more beyond 08.10.2019 i.e. date on which 180 days were expiring, is stated to be given by the AA by order dated 07.10.2019.

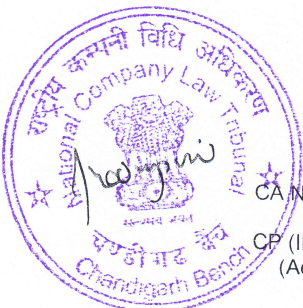
5. It is submitted that there is no stock, plant and machinery, immovable property as per the Balance Sheet of the Corporate Debtor as on 31.03.2019 and 12.04.2019 and that thereafter, in the 7<sup>th</sup> meeting of the CoC conducted on 13.12.2019, the financial position of the Corporate Debtor and status of CIRP were discussed in detail. It is submitted that as the Corporate Debtor had no stock, plant and machinery, immovable property as per balance sheet as on 31.03.2019 and 12.04.2019 and for the reasons that no resolution applicant had come forward and nor was there any expectation of any resolution plan coming forward in the matter of the Corporate Debtor, the CoC unanimously resolved to liquidate the Corporate Debtor. It has been prayed that order of liquidation be passed; public announcement issued stating that the Corporate Debtor is in liquidation; order be passed requiring to send liquidation order to the authority with whom, the Corporate Debtor is registered.

6. We have carefully heard and considered the arguments of the learned counsel for the applicant and have also perused the records.

7. The provisions of Section 33 (1) and (2) of the Code are as under:-

*“33. Initiation of liquidation. –*

*(1) Where the Adjudicating Authority, -*



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*V. S. Arora*

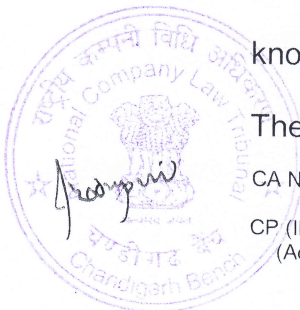
- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution 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 creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

8. In the instant case, it was discussed in the 7<sup>th</sup> meeting of the CoC held on 13.12.2019 that Form G was published in newspapers – Financial Express and Jan Satta – on 18.07.2019 calling for EOI from interested parties, but no one expressed expression of interest. It was discussed that the Corporate Debtor did not get liquor licence for the years 2017-18 onwards, so could not continue business activities; there was no stock as per books on 31.03.2018, 31.03.2019 and 12.04.2019; outstanding trade debtors are amounting to Rs.10.6 crores out of which, most belong to its group entities/individuals, where no recovery has been made; there is no known immovable property in the name of the Corporate Debtor as on date.

The CoC thereupon passed resolution with 100% voting share resolving that



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pursuant to Section 33 (2) of the Code, the RP shall make application to AA for liquidation of the Corporate Debtor.

9. The minutes of the 7<sup>th</sup> meeting of CoC held on 13.12.2019 state that the last date of CIRP is 06.01.2020. The instant application is filed on 07.01.2020. The application is, therefore, not filed during the CIRP and the conditions provided for in Section 33 (2) of the Code are not satisfied.

10. The application for liquidation is, therefore, being considered under Section 33 (1) (a) of the Code. The conditions provided therein are satisfied since before the expiry of the CIRP, no resolution plan under Section 30 (6) of the Code is received. Order is therefore, passed requiring M/s Jai Bholenath Enterprises Private Limited – Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Code. Directions for public announcement stating that the Corporate Debtor is in liquidation and requiring the order of liquidation to be sent to the authority with which the Corporate Debtor is registered, are given below.

11. Section 34 provides for appointment of the Liquidator. Section 34 (4) (c) of the Code states that if the RP fails to submit written consent under Section 34 (1) of the Code, the AA shall by order replace the RP. In the present case, it is stated in the application that the RP shows his unwillingness to continue as Liquidator and thus did not submit his consent to act as the Liquidator. The CoC has proposed the name of Shri Suresh Kumar Bansal to act as Liquidator and provided his written consent to act as such. However,



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*S. Kumar*

the replacement of the RP is to be made as per the procedure provided for in Section 34 (5) to (7) of the Code.

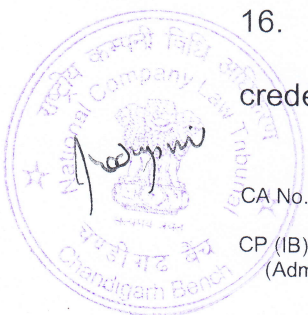
12. Under sub-section (5) of Section 34 of the Code, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as liquidator.

13. Sub-section (6) of Section 34 says that the Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form within ten days of the direction issued by the Adjudicating Authority under sub-section (5) of Section 34 of the Code.

14. Sub-section (7) of Section 34 of the Code says that the Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as liquidator.

15. In this regard a letter bearing **File No.25/02/2020-NCLT dated 07.01.2020** has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of **letter No. IBBI/IP/EMP/2019/01 dated 31.12.2019** along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2020 to 30.06.2020. **We select Mr. Vikas Rai Berry appearing at Serial No.29 of the panel to be appointed as Liquidator.**

16. The Law Research Associate of this Tribunal has checked the credentials of **Mr. Vikas Rai Berry** and there is nothing adverse against him.



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V. Kumar

In view of the above, we appoint **Mr. Vikas Rai Berry**, Registration No. **IBBI/IPA-002/IP-N00558/2017-2018/11694**, **206, 2<sup>nd</sup> Floor, BRM Towers, Loha Market, Millar Ganj, Ludhiana, Punjab**, E-mail: **npl339@rediffmail.com**, as the Liquidator.

17. The fees of the Liquidator will be paid as per Section 34 (8) and 34 (9) of the Code read with Regulation 4 (2) and (3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation process Regulations, 2016**).

18. Regulation 39B and C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons Regulations, 2016 (CIRP Regulations, 2016) are as under:

**39B. Meeting liquidation cost.**

- (1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.
- (2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).
- (3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.
- (4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

**Explanation.-** For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (ea) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

**39C. Assessment of sale as a going concern.**

- (1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern



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*V. Vikas Rai Berry*

under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”.

19. In the instant case, the CoC has estimated the liquidation cost at Rs.9,50,000/- (refer minutes of 7<sup>th</sup> CoC meeting dated 13.12.2019). However, the CoC has not estimated the value of the liquid assets under Regulation 39B (2) of the CIRP Regulations, 2016 and has not approved a plan providing for contribution for meeting the difference between the estimated value of the liquid assets and estimated liquidation costs. The Liquidator will, therefore, take necessary action under Regulation 2A of the Liquidation Process Regulations 2016.

20. The CoC has not made any assessment of sale as a going concern under Regulation 39 C of the CIRP Regulations, 2016. The Liquidator will, therefore, take necessary action under Regulation 32A (3) of the Liquidation Process Regulations, 2016.

21. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 shall be strictly complied with. Some of the directions are as under:-



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- i) That 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 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;

- ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- iii) That 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;
- iv) That 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) That 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 voluntary liquidation process as they apply in relation to



*V. Lawrence*

liquidation process with the substitution of references to the Liquidator for references to the Interim Resolution Professional.

22. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 2016 Regulations and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

23. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

- “(a) *In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*
- (b) *on the website, if any, of the corporate debtor; and*
- (c) *on the website, if any, designated by the Board for this purpose.”*

24. In accordance with Regulation 13 of the 2016 Regulations, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the 2016 Regulations every fortnightly thereafter.

25. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

26. The Liquidator shall take into his possession the assets of the Corporate Debtor.



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(Admitted matter)

*V. S. Arora*

27. Thus, CA No.34/2020 stands disposed of.

Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, Punjab and Chandigarh. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

**CA No.24 of 2020:**

This application has been filed by Beam Global Spirits & Wine (India) Private Limited challenging the decision of the RP in rejecting its claim on the ground of delay. We have given directions above that liquidation proceedings be initiated in the case of the Corporate Debtor-M/s Jai Bholenath Enterprises Private Limited. The present CA No.24 of 2020, therefore, becomes infructuous. However, liberty is given to the applicant to furnish its claim before the Liquidator.

2. CA No.24 of 2020 stands disposed of accordingly.

Copy of this order be supplied to the Applicant-Operational Creditor. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

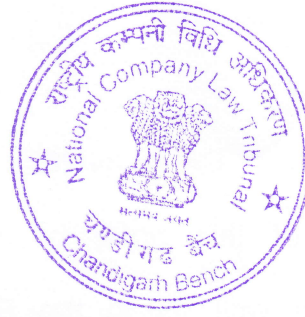
—sd—  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Pronounced in  
open court  
27.1.2020

—sd—  
(Pradeep R.Sethi)  
Member (Technical)

January 27, 2020  
Ashwani





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OF THE ORIGINAL

No —

Date of Presentation As per NCLT Rule 50  
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No of Pages 11

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Chandigarh Bench, Chandigarh