



THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- V)

I.A. 4437/2023

IN

COMPANY PETITION No. (IB)-3383/ND/2019

An application under Regulation 2B of IBBI (Liquidation Process) Regulation, 2016 read with section 230 and other applicable provisions of the Companies Act, 2013.

MEMO OF PARTIES

IN THE MATTER OF:

ASHOK KUMAR GUPTA LIQUIDATOR

FOR SAINOV SPIRITS PRIVATE LIMITED

Reg. No. IBBI/IPA-003/IP-NO0010/2016-2017
/10072.

Address: LD-46, PITAMPURA, DELHI-110034,

... APPLICANT/LIQUIDATOR

VERSUS

SANJAY LAMBA

Address: D-27, Sarita Vihar,
New Delhi - 110076

...RESPONDENT

AND IN THE MATTER OF:

UNION BANK OF INDIA

(Erstwhile Corporation Bank)

..FINANCIAL CREDITOR

VERSUS

M/s SAINOV SPIRITS PRIVATE LIMITED

...CORPORATE DEBTOR

Order Pronounced on: 01.12.2023

I.A. 4437/2023

IN

C.P. No. (IB)-3383/ND/2019

Order Pronounced on: 01.12.2023



CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Mr. Sunil Fernandez, Rishi Singhal, Adv.

For The Respondent : Milan Negi & Nikhil Jha, Adv.

For the Liquidator : Anuj Kr. Pandey

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This application is filed by liquidator i.e Ashok Kumar Gupta for convening meeting of shareholders and creditors for approval of scheme of arrangement of M/s Sainov Spirits Pvt. Ltd. (Company under Liquidation) with its creditors and members under Section 230 of the Companies Act, 2013 (for brevity "the Act") read with Regulation 2B of IBBI Liquidation Process) Regulation, 2016.
2. Sainov Spirits Private Limited (i.e. Corporate Debtor) having CIN: U15520DL2008PTC176272 incorporated on 02.04.2008 under the provision of Companies Act, 1956 and has its registered office situated at 107, Bharat Chamber, 70 Scindia House, New Delhi- 110001. The authorized share capital of the Corporate Debtor constitutes of equity share capital of Rs.30,00,00,000/- consisting of 3,00,00,000 equity shares of Rs. 10/- each and the paid-up share capital of Corporate Debtor constitutes of equity share capital of Rs. 29,76,17,020 /- consisting of 2,97,61,702 equity shares of Rs. 10/- each.
3. The Learned Counsel for the Applicant Companies submits that That Corporate Insolvency Resolution Process of Sainov Spirits Private Limited (i.e. Corporate Debtor) was commenced by this Hon'ble Adjudicating Authority vide its order dated 05.02.2020 & Mr. Pawan Trivedi was appointed as Interim Resolution Professional (IRP) & subsequently COC vide resolution dated 24.03.2021 decided to appoint Mr. Ashok Kumar Gupta as Resolution Professional (RP) to carry out CIRP which was taken on record by this Hon'ble Adjudicating Authority on
I.A. 4437/2023
IN
C.P. No. (IB)-3383/ND/2019
Order Pronounced on: 01.12.2023



03.05.2021. However, meanwhile CoC has approved resolution to liquidate Corporate Debtor in its 11th Meeting held on 22.04.2021 and further also approved resolution that liquidator shall first explore for compromise or scheme arrangement under section 230 of Companies Act read with regulation 2B of LP regulations.

4. Applicant submitted that the Resolution Professional (“RP”) has filed application under section 33(2) of the code, for passing an Order of Liquidation of the Corporate Debtor as referred to in Section 33(1) of IBC, 2016 & Hon'ble Adjudicating Authority vide order dated 18.05.2023 passed liquidation order of Corporate Debtor and appointed applicant as liquidator of the Corporate Debtor. Copy of the orders 18.05.2023 are annexed as ANNEXURE-1 with the present Application.
5. As per Regulation 31A (6) of the Liquidation Regulation, 2016, the Applicant/ Liquidator held first meeting of the Stakeholders Consultation Committee (SCC) constituted as per Liquidation Regulation 31A(1A) on 09.06.2023 of the SCC constituted under section 21 of the IBC Code, 2016.
6. It is further submitted by the Applicant that in compliance to regulation 31 of liquidation process Regulation the Liquidator has made public announcement on Financial Express (English) and Jansatta (Hindi) and Hindustan Time (West UP) (Hindi Language on 04.06.2023. Copy of the public announcement is annexed as ANNEXURE-2 with the present Application.
7. Applicant submitted that an Invitation for proposing a scheme of compromise or arrangement under Section 230 of the Companies Act 2013 with the Creditors and/or Members of the Corporate Debtor (hereinafter referred to as the Process Document") was issued by the Liquidator on 14.06.2023 under Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 calling for interested bidders who fulfil the eligibility criteria provided therein. A Copy of the Invitation is annexed as ANNEXURE-3 with the present Application.
8. Applicant submitted that Liquidator received the initial proposal under Section 230 of the Companies Act, 2013 on 29.06.2023 from Mr. Sanjay Lamba, Ex- director of the Corporate

I.A. 4437/2023

IN

C.P. No. (IB)-3383/ND/2019

Order Pronounced on: 01.12.2023



Debtor (Proposer of Scheme) along-with EMD of Rs. 10,00,000/-. Applicant further submitted that in the 2nd Stakeholders Consultation Committee meeting was conducted on 29.06.2023 wherein Financial Creditor members advice liquidator to submit the scheme which shall be considered subject to further negotiations. Applicant further submitted that the proposer i.e Mr Sanjay Lamba has submitted revised plan, after due compliance/due diligence on 24.07.2023 and the required performance guarantee of 10% amounting to Rs. 6,55,90,000/- on 10th August 2023 vide guarantee no. OCTO909200045237 dated 10th August, 2023 issued by Indusind Bank. A copy of the Performance Guarantee is annexed as annexure A-5 with the present Application.

9. Further the Applicant submitted that the Scheme submitted by the Scheme Proponent under the Liquidation Process in accordance with Section 230 of the Companies Act, 2013 and in consonance with Insolvency and Bankruptcy Code 2016 & Regulations made thereunder and is in due compliance of the Order of the Hon'ble NCLAT in *Y Shivram Prasad Vs S. Dhanapal & Ors, Company Appeal (AT) (Insolvency) No. 224 of 2018*, wherein the Hon'ble Appellate Tribunal clearly observed that the Proposal is akin to a Resolution Plan submitted under CIR Process and it should be considered as such. The Applicant submitted and requests that the Hon'ble Bench consider and confirm that the benefits available to a Resolution Plan and the provisions of Section 31 of the Insolvency and Bankruptcy Code 2016, shall apply mutatis mutandis to this Scheme.
10. The Applicant/ Liquidator submitted that the full and final Payment made to the all the stakeholders, in the manner set out in the Scheme, the Scheme Proponent shall be given the control of the Corporate Debtor. A Copy of the Compliance Certificate (Form-H) is annexed as ANNEXURE-4 (COLLY) with the present Application.
11. It is submitted that in terms of Section 230(1) of the Companies Act 2013 read with IBC 2016, the Applicant/Liquidator is required to convene a meeting of both creditors/ stakeholders, in order to ascertain their consent to the sanction of the composite scheme of compromise and arrangement. Accordingly, the Applicant is preferred the present

I.A. 4437/2023

IN

C.P. No. (IB)-3383/ND/2019

Order Pronounced on: 01.12.2023



Application seeking directions for convening the meeting of Creditors/ Stakeholders of the Company in liquidation.

- 12.** Taking into consideration the submissions and the documents filed therewith, We direct to the Applicant for holding and convening the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Corporate Debtor.
- 13.** The meeting of the equity shareholders, secured creditors & un-secured creditors of the Corporate Debtor shall be convened on the day, date and place decide by the chairperson, through video conferencing or other audio visual means as requested for the purpose of considering and, if thought fit, approving the abovesaid Scheme with or without modification(s).
- 14.** At least one month before the date of aforesaid meetings, a notice in Form CAA 2 conveying the aforesaid meetings indicating the day, date, place and the time as aforesaid; containing the instructions pertaining to the postal ballot together with a copy of the Scheme , a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Section 230 to 232 of the Act and Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules 2016 and prescribed form of proxy shall be sent to equity shareholders, secured creditors & un-secured creditors of the Corporate Debtor at their respective registered or last known addresses/ E-mail Addresses either by Registered Post/Speed Post or by Courier or by E-mail or by Hand Delivery.
- 15.** At least one month before the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in English and vernacular language in Delhi & UP Edition Newspapers. The publication shall indicate the time within which copies of scheme shall be made available to the concerned persons free of charge from the registered office of the respective Applicant. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the

I.A. 4437/2023

IN

C.P. No. (IB)-3383/ND/2019

Order Pronounced on: 01.12.2023



Applicant in accordance with second proviso to subsection (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

- 16.** Mr. Vinod Kumar Chaurasia (Advocate), Mob-9953587496, Mail- advocatevinodchaurasia@gmail.com is appointed as a Chairperson of the aforesaid meetings of the Applicant.
- 17.** Mr. Ravi Sharma (Practicing Company Secretary), Mob-9911919008, Mail- ravi@csrsm.com is appointed as a Scrutinizer for the said meeting. The Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to the above. The Chairperson is free to avail the services of the Applicant or any agency for carrying out the aforesaid directions.
- 18.** The Chairperson shall have all powers under the Articles of Association of the Corporate Debtor and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings to the aforesaid scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the meetings of the equity shareholders, secured creditors & un-secured creditors of the Corporate Debtor by polling paper/ballot.
- 19.** The Quorum of the meeting of Equity Shareholders, Secured and Unsecured Creditors of the Corporate Debtor shall be as per the rules and in compliance of Section 230(6) of the Companies Act, 2013. The meetings shall be conducted as per applicable provisions of law.
- 20.** It is, however, clarified that in view of para A (x) of the MCA Circular No. 14/2020 dated 8th April 2020, in case of meetings through video conference or other audio visual means, the voting through Proxy shall not be permitted. However, voting through Authorized Representative is permitted.
- 21.** The Chairperson shall file affidavit not less than 7(seven) days before the date fixed for the holding of the aforesaid meetings and to report to this Tribunal that the directions

I.A. 4437/2023

IN

C.P. No. (IB)-3383/ND/2019

Order Pronounced on: 01.12.2023



regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.

22. It is further ordered that the Chairperson shall report to this Tribunal on the result of the meeting in Form No. CAA 4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within 7 (Seven) days of the meeting.
23. We direct the applicant to pay the Chairperson a sum of Rs. 50,000/- and to the Scrutinizer a sum of Rs. 25,000/- as their fees.
24. The application stands allowed on the aforesaid terms and hence, disposed of.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHADELWAL)
MEMBER (JUDICIAL)