

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
PRINCIPAL BENCH

C.A. No. 1233/2019 In (IB) 397 (PB)/2018

In the matter of:

Bank of India

...Financial Creditor

Vs.

Basic India Limited

....Corporate Debtor

In the matter of C.A. No. 1233/2019:

Under Section 33(1) of IBC, 2016 r/w IBBI (Liquidation Process)
Regulations 2016

Mr. Anup Sood

Resolution Professional of Corporate Debtor

.... Applicant

Order delivered on: 21 .02.2022

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SH. BHASKARA PANTULA MOHAN

MEMBER (JUDICIAL)

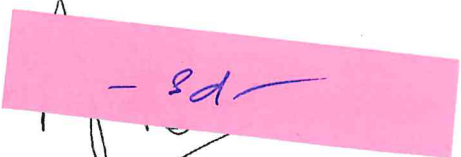
SH. HEMANT KUMAR SARANGI

MEMBER (TECHNICAL)

PRESENT

For the Applicant: Mr. S. K Gandhi, Ms. Medha Tondon,
Advocates

For the Ex-Managing Director: Mr. Rishi Kapoor,
Mr. Abhay Kaushik, Advocates.


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ORDER

Per- BhaskaraPantula Mohan, Member (Judicial)

1. This is an application filed by the Resolution Professional viz., Mr. Anup Sood (Resolution Professional/Applicant), under section 33(1) of Insolvency and Bankruptcy Code, 2016 (IBC), r/w Insolvency Bankruptcy Board of India (Liquidation Process) Regulations 2016 (Liquidation Regulations, 2016) and the Applicant has prayed to initiate the Liquidation process against the Corporate Debtor viz., *Basic India limited*.

2. Originally an application was filed by the Financial Creditor viz., Bank of India, under Section 7 of IBC, for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor, which was admitted by this Authority, vide order dated 12.10.2018 and the Applicant was appointed as Interim Resolution professional (IRP).

3. It is averred that the Applicant took over the management of the Corporate Debtor on 18.10.2018. The Committee of Creditors (CoC) was constituted on 30.10.2018 and the 1st CoC Meeting was held on 06.11.2018. The Expression of Interest (EoI) was called on 20.12.2018 in compliance with Sections 13 and 15 of IBC r/w Regulation 6 of Liquidation Regulations, 2016, from the interested parties for submission of Resolution Plan by 20.02.2019.

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4. It is submitted that the Applicant received seven EoIs, out of which two were not considered and five did not submit Resolution Plans. One of the parties viz., M/s. Jwaladevi Enterprises Pvt. Ltd. informed about submission of the Resolution Plan however, failed to do so. This Authority vide Order dated 18.03.2019 extended CIRP period by 90 days and the Applicant published EoI for the second time on 08.03.2019 and the last date of submission of Resolution Plans was 22.05.2019. The 7th CoC Meeting was held on 16.04.2019 the applicant informed that EoIs were received from four Prospective Resolution Applicants (PRAs). The CoC approved only one of the PRAs Viz., M/s.Jatalia Global Ventures, to be in the provisional list, as it qualified the minimum net worth of Rs 5 crore criteria. The Applicant shared Information Memorandum, Request for Resolution Plans and Evaluation Matrix, withthe PRA viz., M/s. Jatalia Global Ventures, for submission of the Resolution Plan in compliance with Section 30 of IBC; however,the Applicant did not receive Resolution Plan from the PRA in the prescribed time limit.

5. It is averred that the Applicant appraised the CoC in the 8th CoC Meeting, held on 29.05.2019 and a resolution was passed with 100% vote to initiate Liquidation process against the Corporate Debtor which is follows:

“The CoC after deliberations decided with 100% vote to go for liquidation of Corporate Debtor under Section 33 of IBC and authorize RP to file an application before NCLT to liquidate the Corporate Debtor. It I further approved the name Mr. Anup Sood

for appointment of as Liquidator as well as to pay Liquidator's remuneration as per IBBI (Liquidation) Regulations, 2016."

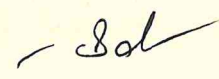
6. It is submitted that the Item No. 1 of the Minutes of the 8th CoC Meeting, discusses that the Corporate Debtor had appointed Statutory Auditor in the year 2014, for a period of five years and an amount of Rs. 3, 45,000 was paid for the audit of the books of accounts for the year ended 31.03.2017, however, the Applicant got it reduced to Rs. 1, 80,000, for the audit of the books for the period ended 31.03.2018. In the Item No. 2, it was discussed that the claim of HDFC of Rs 11.91 Lakh was rejected and hence, it filed a petition/application against such rejection before this Authority. The claims of M/s Haryana Warehousing Corporation for Rs 1371.63 lakhs and of M/s Punjab Agro Industries Corporation for Rs. 12.86, were rejected as they filed beyond the permissible limit of 90 days from the date of commencement of CIRP.

Reply/Objections on behalf of Respondents:

7. The Respondent viz., Mr. Athar Zia, Ex-managing Director of the Corporate Debtor, has filed its reply to the application and submitted that the Applicant was empanelled ex-employee of the Financial Creditor and from the time of commencement of the CIRP, acted against the interest of the Corporate Debtor and has shown intentional disinterest towards reviving the Corporate Debtor. The Financial Creditor viz., Bank of India is the sole CoC Member and in connivance with the Respondent has deliberately pushed the Corporate Debtor into liquidation despite various

Resolution Applications pending considerations, including the Expression of Interest of the Ex-Management Director Mr. Athar Zia. The intentions of the Respondent and the CoC to push the Corporate Debtor into liquidation is amply clear from the fact that the said Liquidation Resolution has been passed in the 8th CoC Meeting held on 29.05.2019, where the resolution is passed in complete and absolute voluntary connivance with the Applicant, without making any effort for revival of the Corporate Debtor. The Applicant and CoC, despite having opportunity and time to take necessary and positive steps, chose to enable the corporate death which in no way is in the interest of justice.

8. It is averred that the resolution for Liquidation has been passed much prior to the expiry of 270 days, which expired on 08.07.2019. The Respondent viz., Mr. Athar Zia was wrongly declared as willful defaulter vide order dated 10.9.2018 of the Identification Committee, which was communicated on 18.09.2018, in order to exclude him from being a Resolution Applicant and being aggrieved by such Order, Mr. Athar Zia approached the Hon'ble High Court of Delhi by virtue of a WP (C) No. 3404/2019 titled as Athar Zia Vs Bank of India. The Hon'ble High Court of Delhi vide its Order dated 08.07.2019 has set aside the said communication dated 18.09.2018 as being untenable in the eyes of law. Thus, the time period from 11.02.2019 i.e., the date of communication by the Applicant, stating that Mr. Athar Zia to be ineligible as Resolution Applicant till 08.07.2019, may be excluded from the CIRP period, as the said time period was consumed in litigation. The Applicant has to take into



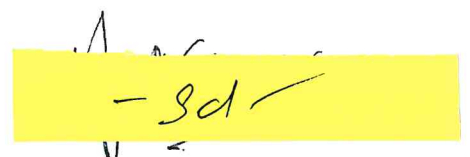
consideration the Resolution Plan of the Ex-Managing Director, as he is eligible to be a Resolution Applicant.

9. As seen from Order dated 20.01.2020, the Respondent Mr. Athar Zia was granted liberty to make representation before CoC to decide the status of the Respondent afresh, in relation to the issue of being a defaulter and to make representation within three days thereafter the CoC to dispose of the same within two weeks under intimation to the Respondent in the light of the directions of the Hon'ble High Court of Delhi.

ORDER

10. In view of the facts and circumstances recorded by the Resolution professional in C.A. No. 1233/2019 In (IB) 397 (PB)/2018 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section 1 of Section 33 of the IBC, this Authority proceeds to pass Liquidation Order and **rejects** the objections raised by the Respondent Ex-Managing Director viz., Mr. Athar Zia, as at this stage they are not maintainable.

- I. This Authority hereby Orders for liquidation of the Corporate Debtor viz., *Basic India limited* which shall be conducted in the manner as laid down in Chapter III of Part II of the IBC.
- II. This Authority hereby appoints Mr. Anup Sood as Liquidator, as has been proposed by the CoC, who shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

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- III. The moratorium declared under Section 14 of IBC shall cease to have effect from the date of the Order of Liquidation;
- IV. Subject to Section 52 of IBC, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of this Authority.
- V. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector Regulator.
- VI. This Order 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.
- VII. 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 with the Liquidator viz., Mr. Anup Sood. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in the Sections 35 to 50, 52 to 54 of IBC r/w Liquidation Regulations, 2016.
- VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be

required by him in managing the affairs of the Corporate Debtor.

IX. The Company Liquidator shall be entitled to charge such fees for the conduct of the Liquidation proceedings as in such a proportion to the value of the Liquidation Estate as specified under Regulation 4(2) of Liquidation Regulations, 2016.

11. In the terms of the above, C.A. No. 1233/2019 In (IB) 397 (PB)/2018 by the Applicant under Section 33 (1) of the IBC for initiation of Liquidation proceedings against the Corporate Debtor viz., M/s. *Basic India limited* is **allowed**.

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HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)

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BHASKAR PANTULA MOHAN
MEMBER (JUDICIAL)