

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH - I, CHENNAI**

IA/1251/2020 in CP/1418/IB/2018

(Filed Under Section 33 of the Insolvency and Bankruptcy Code, 2016)

In the matter of **Gokula Kannan Benefits Fund Limited**

Revathi S Raghunathan

Resolution Professional of
Gokula Kannan Benefits Fund Limited
25, Baroda Street, West Mambalam,
Chennai – 600 033

... Applicant

Order pronounced on 23rd December 2021

CORAM:

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : V. Manivannan, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

The IA/1251/2020 is an Application which is filed by the Resolution Professional of Gokula Kanna Benefit Fund Limited under Section 33 of Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

- a. *Issue necessary orders for liquidate the Corporate Debtor M/s. Gokula Kannan Benefit Fund Limited*
- b. *To pass such other orders as it deems fit in the above circumstances of the case and thus render justice.*

2. In an Application filed by an Applicant under Section 7 of IBC, 2016, this Adjudicating Authority vide its order dated 25.01.2019 initiated Corporate Insolvency Resolution Process as against the Corporate Debtor viz. Gokula Kannan Benefit Fund Limited and appointed the Applicant herein as the Interim Resolution Professional. Thereafter, the Applicant made a Public announcement on 27.01.2019 in "Trinity Mirror" (English) and "Makkal Kural" (Tamil).

3. The IRP formed the Committee of Creditors and the first meeting of the CoC was conducted on 02.03.2019, wherein the Applicant herein was confirmed to act as RP in respect of the Corporate Debtor. It is stated in the Application that based on the particulars obtained from the Corporate Debtor, the Information Memorandum was prepared by the Applicant and it is averred that the Applicant has not appointed any valuer for valuation of the Corporate Debtor since there was no tangible fixed assets and the Corporate Debtor is engaged only in the business of lending and accepting deposits. It was submitted that the Applicant has filed an Application against the suspended Directors of the Corporate Debtor under Section 66 of IBC, 2016 to remit a sum of Rs.12,86,800/- that has been unauthorizedly withdrawn by them.

4. Further, it was submitted that at the 2nd CoC meeting held on 13.03.2019, it was observed by the CoC that issue of Expression of Interest inviting bids from interest investors to take over the operation of the Corporate Debtor would be a futile exercise as there are no tangible assets of the Corporate Debtor and would only add to the insolvency process costs as no positive outcome / resolution plan is expected to be received out of the same. Further, in the 3rd CoC meeting which was held on 23.07.2019, it was observed by the CoC that continuing the business of the Corporate Debtor as a going concern was not possible and no positive resolution was expected.

5. The Learned Counsel for the Applicant submitted that the 4th CoC was held on 18.10.2019, however out of a total of 32 Depositors to whom notices were issued, only 2 of them were present and those members who were present have given their consent for recommending liquidation of the Corporate Debtor. It was submitted that on 21.10.2019, the Authorized representative has sent a copy of the 4th CoC meeting minutes with voting sheet and self addressed envelope to all the 32 depositors and requested them to submit their voting sheet duly endorsed within seven day on the receipt of the letter, however it was submitted that only 11 of them have submitted their voting sheets duly endorsed through post. Among those 11 depositors, it was submitted that 9

depositors have voted in favour of Resolution of Corporate Debtor and 2 Depositors have voted in favour of Resolution for extension of CIRP for a period of 90 days.

6. The Learned Counsel for the Applicant submitted that since there has been a dead lock in functioning of the CoC and no decision could be taken as number of members attending the meeting were very poor and also there was no proper response to the Postal ballot sent to them, the present Application has been moved by the RP on 27.11.2019 to liquidate the Corporate Debtor since the 180 days period of CIRP in relation to the Corporate Debtor has already expired on 25.07.2019.

7. We have heard the submissions made by the Learned Counsel for the Applicant. At this juncture, it is relevant to refer to Section 33(1)(a) of IBC, 2016, which is extracted hereunder;

33 (1) Where the Adjudicating Authority, -

- (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.

8. Section 33(1) of IBC, 2016 contemplates that if before expiry of the Insolvency Resolution process no Resolution Plan was received, the this Tribunal can pass an order of Liquidation of the Corporate Debtor. Admittedly, in the present case, it is seen that at the first place no Expression of Interest was issued since there was no tangible assets in the Corporate Debtor and also there was a deadlock in the CoC since the CoC comprised of Depositors and they are unable to arrive at a consensus in relation taking forward of the CIRP of the Corporate Debtor. The 180 days CIRP in relation to the Corporate Debtor came to an end on 25.07.2019 and the RP has not filed any Application seeking extension of CIRP period in respect of the Corporate Debtor. Under such circumstances, this Tribunal, by operation of Section 33(1)(a) of IBC, 2016, is necessarily required to pass an order of liquidation of the Corporate Debtor.

9. Thus, in view of the facts and circumstances of the case, this Tribunal hereby order, liquidation of the Corporate Debtor by

appointing **REVATHI S RAGHUNATHAN**, IBBI Reg. No. IBBI/IPA-001/IP-P00832/2017-18/11417 as the Liquidator of the Corporate Debtor to carryout the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the

relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

- j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

10. The application IA/1251/2020 stands **disposed of** with the aforesaid terms.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond