

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, DELHI

BENCH III

IA-4304/2020 filed Under Section 33(2) r/w
34 of the Insolvency and Bankruptcy Code,
2016 in
IB-1452/ND/2019.

In the matter of **Frog Fone Private Limited**

Sonu Kumar

.... Operational Creditor

Versus

Frog Fone Private Limited

.... Corporate Debtor

In the matter of IA-4304/2020

Pankaj Kumar Singhal

...RP/Applicant

Versus

Umesh Singh & Anr.

.... Respondents

Order delivered on 20th November, 2020

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Shri NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For RP/Applicant: Mr. Vipul Talwar (Advocate)

ORDER

(Through Video Conferencing)

Per. CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is an Application IA-4304/2020 filed under Section 33(2) r/w Section 34 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') by the Applicant viz., *Mr. Pankaj Kumar Singhal* (hereinafter referred as "Resolution Professional"). The prayers made by the Applicant are as follows:

"1. Order requiring the Frog Fone Private Limited having CIN U32204DL2012PTC244253, to be liquidated in the manner as laid down in chapter III of the Insolvency and Bankruptcy Code, 2016.

2. Appoint Mr. Pankaj Kumar Singhal as the liquidator in the liquidation of Frog Fone Private Limited.

3. Direction that the personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required in managing the affairs of the Company in discharging his functions as specified under Section 35 of the code; or in the alternative;

4. Pass an Order under Section 54 of the IBC towards dissolution of the Corporate Debtor.

5. Any other or directions as the Hon'ble adjudicating authority may deem fit."

2. Originally, Operational Creditor viz., *Sonu Kumar* has filed CP (IB)-1452/ND/2019 under Section 9 of the IBC, 2016, to initiate the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor viz., *Frog Fone Private Limited*, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as "IRP"). This Authority vide Order dated 19.11.2019 had admitted the Application, initiated the CIRP against the Corporate Debtor and appointed *Mr. Pankaj Kumar Singhal* as IRP.

3. It is averred in the application that pursuant to the Order of this Authority dated 19.11.2019, the IRP had published the notice in the Newspaper on 22.11.2019, one in English and another in vernacular as per Regulation 6 (1) of the

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors. After verification of the claims received, the IRP constituted the Committee of Creditors (hereinafter referred as "CoC"). In the 1st CoC Meeting held on 18.12.2019, the Applicant viz., *Mr. Pankaj Kumar Singhal* was appointed as Resolution Professional.

4. In the 2nd CoC Meeting held on 07.01.2019, the Resolution Professional took complete custody and control of the Corporate Debtor. The 3rd COC meeting was held on 31.01.2020, wherein the suspended Board informed the COC that the company does not possess any business and there are no further orders available with the company for execution on account of the overall decline in the Telecommunications industry and increment in the marginal costs, there is no availability of business for the company and serious challenge is being faced on account of the highly competitive international market.

5. Consequently, in the 3rd meeting of the COC, the following resolutions were passed; -

***"RESOLVED THAT** since the business of the Corporate Debtor is closed before initiation of CIRP and there is no viability in continuation of the business of the Corporate Debtor in the present scenario, the CoC be and is hereby recommended liquidation of the Corporate Debtor."*

***"RESOLVED THAT** Resolution Professional, *Mr. Pankaj Kumar Singhal* be and is hereby recommended as liquidator of the Corporate Debtor subject to the approval of the Adjudicating Authority and his willingness to act as Liquidator."*

“RESOLVED THAT as per Chapter III of part II of the Insolvency and Bankruptcy Code, 2016, the business of the Corporate Debtor is hereby approved to be liquidated and authorize Resolution Professional to file the application for seeking order of liquidation with the Hon’ble Adjudicating Authority.”

“FURTHER RESOLVED THAT Hon’ble NCLT may be requested to appoint already appointed Resolution Professional as Liquidator of the Corporate Debtor, on the same term such terms & conditions as it may deem fit pursuant to the relevant provisions of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 and in accordance with the rules and regulations made thereunder.”

“RESOLVED FURTHER THAT legal cost relating to the application to be made for liquidation be and is hereby approved and to be said as professional fee payable to professional engaged/to be engaged by the Resolution Professional and the same may be treated as CIRP Cost.”

6. As per the CoC, the business of the Corporate Debtor was closed before initiation of CIRP and there is no viability in continuing the business of the Corporate Debtor in the present scenario. Therefore, it has been resolved to Liquidate the Corporate Debtor. No resolution Plan has been received by this Authority under Sub-Section (6) of Section 30 of the IBC,2016 before the expiry of the maximum period of 330 days of CIRP, the Corporate Debtor has to be Ordered for Liquidation.

ORDER

7. In view of the facts and circumstances recorded by Resolution Professional in IA-4304/2019 filed in CP (IB)/1452/ND/2019 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, 2016, this Authority proceeds to pass Liquidation Order as follows:-

- I. This Authority hereby Orders for liquidation of the Corporate Debtor viz., *Frog Fone Private Limited*, which shall be conducted in the manner as laid down in Chapter III of part II of the IBC, 2016;
- II. This Authority hereby appoints Mr. Pankaj Kumar Singhal as Liquidator, as has been proposed by the CoC, who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation.
- III. The moratorium declared under Section 14 of the IBC, 2016, shall cease to have effect from the date of the Order of liquidation.
- IV. Subject to Section 52 of the IBC, 2016, 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. Pankaj Kumar Singhal. In addition to this, the Liquidator shall exercise the powers and perform the duties as enumerated in Sections 35 to 50, 52 to 54 of the IBC, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) 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 and in such a proportion to the value of the liquidation estate assets as specified under Regulation 4 (2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- X. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. Mahalingam Suresh Kumar, for information and compliance.

8. In terms of the above, IA-4304/2019 filed in CP (IB)/1452/ND/2019 by the Resolution Professional under Section 33(2) of the IBC, 2016, for initiation of the

Liquidation Proceedings against the Corporate Debtor viz., *Frog Fone Private Limited* is **allowed**.

9. The Order is pronounced through video conferencing

-Sd-

NARENDER KUMAR BHOLA
Member (Technical)

-Sd-

CH. MOHD SHARIEF TARIQ
Member (Judicial)