

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 1594/2022

**In
CP(IB)No. 3346/MB/C-II/2019**

*Application filed under section 33 & 34 of Insolvency
and Bankruptcy Code, 2016 and Rule 11 of the
National Company Law Tribunal Rules, 2016.*

**Mr. Nitin Om Kothari, RP of
Jawaria Enterprises Private Limited.**

...Applicant

In the matter of

Anish Trading & Mercantile Pvt. Ltd.

...Operational Creditor

V/s

Jawaria Enterprises Private Limited.

...Corporate Debtor

Order Pronounced on :- 14.12.2023

Coram:

Anil Raj Chellan : Kuldip Kumar Kareer

Member Technical : Member Judicial

Appearances :-

For the Applicant : Adv. Bindu Bhatia

ORDER

Per : Coram

1. It is an application filed u/s 33(2) & 34 (1) of the Insolvency & Bankruptcy Code, 2016 (Code) by Mr. Nitin Om Kothari, Resolution Professional (RP) of Jawaria Enterprises Private Limited seeking liquidation order based on the resolution passed by the CoC **in its 4th meeting held on 06.06.2022**
2. On perusal of this application, it emerges that CP No. (IB)-3346 (MB)/2019 was admitted by this Tribunal on 30.11.2021 and Mr. Prakash Shenoy was appointed as Interim Resolution Professional (IRP). The IRP in compliance with section 13, 15 and other applicable sections of the Code, published Form A issuing public announcement inviting claims from the Creditors of the Corporate Debtor and the same was published in newspapers Financial Express (English language) and Navrahtra (Marathi language) on 03.12.2021 and the last date for submission of claims with the IRP was 14.12.2021.
3. In the first CoC meeting held on 30.12.2021, the members of the CoC resolved to appoint the Applicant herein, the Resolution Professional (RP)

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of the Corporate Debtor and vide Order dated 17.01.2022, the Applicant herein was appointed as the RP.

4. In the second CoC meeting held on 15.02.2022, the members of the CoC authorized the Applicant to publish Form G for inviting EoI from the Prospective Resolution Applicant (PRA) in two newspapers i.e. Pratakal Mumbai (Marathi Edition) and Business Line (English Edition) on 21.02.2022 for inviting EoI's from the PRA and the last date for submission of EoI was 08.03.2022.
5. In the third CoC meeting held on 20.04.2022, the Applicant informed the members of the CoC that the Registered Valuers were appointed and the valuation report had been duly submitted by them. Further, as per the transaction audit report, there were no preferential transactions, undervalued transactions, extortionate credit transactions and fraudulent transactions carried out during two preceding years.
6. The Applicant states that since no EoI was received till the last date of submission i.e. on 08.03.2022, as mentioned in Form G, the CoC members in its third CoC meeting held on 20.04.2022, decided either to issue fresh Form-G to be published for inviting EoI's from the PRA or to file an application for initiation of liquidation of the Corporate Debtor as the Corporate Insolvency Resolution Process (CIRP) period of 180 days was going to expire on 16.06.2022.

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7. Pursuant to the discussion held in the third CoC meeting, the Applicant in the fourth CoC meeting held on 06.06.2022, informed the members of the CoC about the publication of fresh Form G in the newspaper on 21.02.2022 and the IBBI website. The Applicant informed the members of the CoC the last date for submission of EoI by the PRA's was 08.03.2022. However, no EoI was received by the Applicant till the last date of submission and also the CIRP period was set to expire on 16.06.2022.
8. The Applicant in the said fourth CoC meeting apprised the members of the CoC that there was no prospect of revival of the Corporate Debtor as no EoI was received by the Applicant from PRA/investors till date and also as the business of the Corporate Debtor was affected due to Covid-19 pandemic, the chances of revival of the Corporate Debtor were bleak.
9. After detailed discussion, the members of the CoC were of the view that since there no operations were being carried by the Corporate Debtor and since no recovery had been made from the Debtors of the Corporate Debtor, there were no prospects of EoI or Resolution Plan and hence the Corporate Debtor may be liquidated. The CoC with 100% voting in favour decided to initiate the liquidation proceedings against the Corporate Debtor vide Resolution dated 06.06.2022.

10. The relevant extracts of the resolution passed in 4th CoC meeting held on 06.06.2022 is as follows:

“RESOLVED THAT Pursuant to the provision of Section 33(1) (a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and other applicable provisions, sections, rules (including any statutory modifications or re-enactment thereof for the time being in force), the consent of the Committee of Creditors of Jawaria Enterprises Private Limited (the Company) be and is hereby accorded to liquidate the Company”

Appointment of liquidator:

“RESOLVED THAT Pursuant to Section 34 of the Insolvency and bankruptcy Code, 2016 the Committee of Creditors hereby appoints Mr. Nitin Om Kothari having Registration No. IBBI/IPA-001/IP-P-02310/2020-2021/13477 to act as Liquidator of Corporate Debtor for a professional fee of Rs. 1,00,000/-.”

RESOLVED FURTHER THAT after the appointment of liquidator all the powers of board of directors, Key managerial personnel and the partner of the corporate debtor shall cease to have effect and shall be vested with the liquidator.”

11. Looking at the application and averments made therein, we are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order the liquidation of the company within the following terms:

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- a. The **Mr. Nitin Om Kothari**, holding **Registration No. IBBI/IPA-001/IP-P-02310/2020-2021/13477**, is appointed as the Liquidator in terms of Section 34 of the Code;
- b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. 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 and in accordance with the relevant rules and regulations.
- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with

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provisions of Section 35(1) of the Code.

- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

12. The **IA-1594/2022** filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)