

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

M.A. 1316/2018

Under Section 33(1)(A) of Insolvency &
Bankruptcy Code, 2016

Filed by
C S Arvind Gaudana,
Resolution Professional of Oren Kitchen
Appliances Pvt. Ltd.
307, Ashirwad Paras, Corporate Road,
Satallite, Ahmedabad 380015

...Applicant

And

M.A. 734/2019

Under Section 60(5)(C) of the Code

Filed by
M.S. Enterprise through its Proprietor, Mr.
Ram Murlidhar Verliani (Operational
Creditor)

...Applicant

Vs.

Mr. Arvind Gaudana and others.

...Respondents.

**In the matter of
C.P. No. 1673 of 2017**

M S Enterprise

...Operational Creditor

Versus

Oren Kitchen Appliances Pvt. Ltd.

Corporate Debtor

Order delivered on: 28.10.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Resolution Professional: C.S. Arvind Gaudana

For the Applicant/Objector Adv. Kunal Kanungo

Per: *Shri Chandra Bhan Singh, Member(T)*

ORDER

1. It is an application filed by Resolution Professional, CS Arvind Gaudana, Resolution Professional seeking liquidation of Oren Kitchen Appliances Pvt. Ltd. (hereinafter referred as Corporate Debtor) under Section 33(1) (a) and 34 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:
 - a. *This Hon’ble Tribunal may be pleased to allow this application and other liquidation of the Corporate Debtor under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 and pass consequential directions, in the interest of justice.*
 - b. *This Hon’ble Tribunal may be pleased to grant such other and further order as may be deemed fit;*
2. The Applicant submits that the Operational Creditor filed Company Petition No. 1673/2017 under Section 9 of the Code before this Tribunal against the Corporate Debtor. This Tribunal by an order dated 19.06.2018 was admitted the petition and directed commencement of CIRP against the Corporate Debtor. The Applicant was appointed as an Interim Resolution Professional by an order dated 19.06.2018.
3. The applicant submits that in pursuance of the order dated 19.06.2018, the 1st CoC meeting was held on 18.07.2018 where the Applicant was appointed as Resolution Professional. Further, the 2nd

CoC meeting was held on 04.09.2018 where the CoC passed resolution for publication of Expression of Interest (EOI). EOI was published as on 09.09.2018 in Free Press Journal- Mumbai edition, Navshakti- Marathi (Mumbai edition) and Gujarat Samachar (Valsad-Vapi-Gujarat edition).

4. The Applicant further submits that during the 3rd meeting of the CoC which was held on 05.10.2018 wherein the Resolution Professional asked for the opinion of CoC for further action under CIRP of Corporate Debtor. As no EOI was received from the potential resolution applicant, RP proposed for further publication of EOI or to decide about liquidation. CoC felt that as the unit of Corporate Debtor is not a going concern and suspended management are not traceable, therefore liquidation of Corporate Debtor is an available alternative. The CoC approved the liquidation and directed the Resolution Professional to file miscellaneous application and seek the further direction and order under section 33(1)(a) and 34(1) of the code from this Tribunal by passing the following resolution:

“RESOLVED THAT, approval of COC be and is hereby accorded for making application to NCLT, Mumbai bench for Liquidation of Corporate Debtor

RESOLVED FURTHER, CS Arvind Gaudana, Insolvency Professional shall act as Liquidator in the process of liquidation of Corporate Debtor and fees shall be payable as per provisions of IBC, 2016.

5. We have heard the Applicant and perused all the documents submitted by them. It is observed from the minutes of the 3rd CoC meeting that the CoC has, with requisite majority of COC, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the CoC, we hereby allow

this Misc. Application Number 1316 of 2018 with the following observations and directions:

- a. **CS Arvind Gaudana**, having Registration No. IBBI/IPA-002/IP-N00283/2017-18/10841 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. Will have all 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.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

- h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
 - i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
6. With the above directions, this application i.e. M.A. No. 1316/2018 is hereby allowed and disposed of.

M.A. 734/2019

The above Application is filed by M.S. Enterprise through its Proprietor Mr. Ram Murlidhar Verliani (Operational Creditor) under Section 60(5)(c) read with Sections 25, 28 and 29 of the Code praying that his application may be heard before the approval of the liquidation application filed by the Resolution Professional. The Bench notes that the applicant has raised, inter alia, unsubstantiated and frivolous issues relating to conduct of the Resolution Professional etc. The Bench comes to the conclusion that points raised by the Applicant are unsubstantiated and baseless and therefore the Bench rejects the M.A. 734/2019 in C.P. 1673/2017.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)