

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

I.A. 587 OF 2021

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Filed by
Mr. Ashutosh Agarwala
Resolution Professional of:
Cox & Kings Limited

...Applicant

In the matter of
C.P. No. 2640 of 2019

Rattan India Finance Private Limited
5th Floor, Tower – B, Worldmark 1,
Aerocity, New Delhi - 110037

...Petitioner

Versus

Cox & Kings Limited
1st Floor, Turner Morrison Building,
16 Bank Street,
Mumbai - 400023

...Corporate Debtor

Order delivered on: 16.12.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Applicant: Mr. Nirman Sharma, Advocate

Per: Shri Chandra Bhan Singh, Member (Technical)

1. The above application I.A. No. 587/2021 is filed by Resolution Professional, Mr. Ashutosh Agarwala seeking liquidation of Cox & Kings Limited (hereinafter referred as Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. Pass an order for liquidation of the Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016;*
- b. Pass an order for appointment of the Applicant i.e. Ashutosh Agarwala (Registration No: IBBI/IPA-001/IP-P01123/2018-19/11901) as the liquidator of the Corporate Debtor;*
- c. Pass any other order as maybe deemed fit in the facts and circumstances of the case.*

2. The brief facts of the application are as follows:

- A. The applicant mentioned that this Tribunal vide its order dated 22.10.2019 in Company Petition No. 2640 of 2019 admitted the petition under Section 7 of the Code, filed by Rattan India Finance Private Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against Cox & Kings Limited, (hereinafter called as the “Corporate Debtor”). Mr. Alok Kumar Agarwal was appointed as the Interim Resolution Professional (hereinafter referred to as the “IRP”) of the Corporate Debtor by this Tribunal vide this Order dated 22.10.2019.
- B. In the second meeting of the Committee of Creditors, (hereinafter called as the “CoC”) which held on 05.12.2019,

the Applicant replaced the IRP and was appointed as a Resolution Professional of the Corporate Debtor to conduct the CIRP of the Corporate Debtor.

- C. It is further submitted by the Counsel for the Applicant that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 04.01.2020 all over India in Economic Times (English) and in all vernacular languages. The CoC also authorized the RP to advertise the Form G in the following foreign countries: Hong Kong, Germany, Singapore, United Kingdom, Dubai and the United States of America and 31.01.2020 being the last date for submission of Resolution Plan which was further extended till 03.03.2020. Further, M/s GAA Advisory LLP and M/s RK Associates were appointed as the registered valuers of the Corporate Debtor. It is also stated that, the Applicant informed the CoC that till 03.03.2020, he received 3 EOIs.
- D. After publishing the Form G for multiple times and in the 13th CoC meeting held on 01.12.2020, the Applicant informed the members of the CoC that no EOIs had been received till 25.11.2020 in pursuance of publication of fresh G on 07.11.2020. Therefore, the members of the CoC requested the Applicant to put up the agenda for liquidation of the Corporate Debtor for voting in the next CoC meeting.
- E. The CoC in its 14th meeting which was held on 07.01.2021, the Applicant states that as no resolution plan is being received, the members of the CoC needs to vote on the following agenda items:

- i) **Section 33 of IBC – For Liquidation of Corporate Debtor:** Whether the Corporate Debtor should be liquidated?
 - ii) **Regulation 39C(1) of the CIRP Regulations – Assessment of sale as going concern:** Whether the sale of the Corporate Debtor as a going concern, under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Process**”) or sale of business of Corporate Debtor as a going concern under clause (f) thereof, subject to relinquishment of security interest by all the secured creditors to the liquidation estate, during the liquidation period should be explored?
 - iii) **Section 34(1) of IBC – Appointment of RP as Liquidator:** Appointment of RP as the Liquidator.
 - iv) **Regulation 39D of the CIRP Regulations – Fee payable to Liquidator:** Fixing the fees payable to the Liquidator.
- F. Further, the CoC approved the resolution to liquidate the Corporate Debtor, with a vote share of 85.2% being cast in favour. The CoC approved the resolution for sale of the Corporate Debtor as a going concern, with a vote share of 65.9%. Further, the CoC approved the resolution for appointment of the RP as the Liquidator and fee payable to Liquidator, with a vote share of 72.2% being in favour. And, the CoC also approved the fee proposed to be charged by the Liquidator.

3. After hearing the submissions made by the Counsel appearing for the Resolution Professional and upon perusing the material available on record, it is observed from the minutes of the 14th CoC meeting that the CoC has, with 85.2% majority, decided to liquidate the Corporate Debtor. Since no resolution had happened.
4. The Applicant/ Resolution Professional Mr. Ashutosh Agarwala has agreed to act as liquidator to carry on the process of Liquidation and given his consent to act as Liquidator.
5. This bench has no option except to allow the above I.A. No. 587 of 2021 and shall pass an order of liquidation of Corporate Debtor. Accordingly, we pass the following:

ORDER

The above I.A. No. 587/2021 is allowed and the Corporate Debtor Cox & Kings Limited is ordered to be liquidated.

- a. **Mr. Ashutosh Agarwala**, having Registration No. IBBI/IPA-001/IP-P01123/2018-2019/11901 and having office at: D-1005, Ashok Towers, Dr. S.S. Rao Road, Parel, Mumbai - 400012, 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.

With the above directions, this application i.e. I.A. No. 587 of 2021 is hereby allowed and disposed of.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)