



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II**

**I.A. No. 609 of 2022
IN
C.P. (I.B.) No.562/AHM/2019**

(Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

In the Matter of I.A. No. 609 of 2022:

Mr. Atul Sheth

Resolution Professional of,

M/s. Captivate Foods Private Limited,

...Applicant

Versus

Suspended Management of

M/s. Captivate Foods Pvt. Ltd.

...Respondents

AND

In the matter C.P. (I.B.) No.562/AHM/2019:

Givaudan (India) Pvt. Ltd.

...Operational Creditor

Versus

M/s. Captivate Foods Private Limited

...Corporate Debtor

Order Pronounced: 13.01.2023

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MR. AJAI DAS MEHROTRA

HON'BLE MEMBER (Technical)

I.A. No. 609 of 2022

IN C.P. (I.B.) No.562/AHM/2019



MEMO OF PARTIES

(I.A. No. 609 of 2022)

**Atul Sheth
Resolution Professional of
M/s. Captivate Foods Pvt. Ltd.
B-27, Saiyam Apartments,
Near Nehru Nagar,
Ambawadi, Ahmedabad - 380015**

...Applicant

Versus

**Suspended Management of
M/s. Captivate Foods Pvt. Ltd.**

- 1. Mr. Manish Anantray Joshi,
Vinayak Street No. 1, Block No. 34,
Dwarkesh Park, Raiya Road, Rajkot**
- 2. Mr. Anantray Jayantilal Joshi,
Vinayak Street No. 1,
Block No. 34, Dwarkesh Park,
Raiya Road, Rajkot**

...Respondents

Appearance:

For the Applicant: Mr. Kuldeep Adesara, Advocate

ORDER

1. The instant Application is filed by Mr. Atul Sheth, Resolution Professional ('Applicant') of M/s Captivate Foods Pvt. Ltd. ('Corporate Debtor'), under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ('Code') for liquidation of the Corporate Debtor.



2. This Adjudicating Authority, vide order dated 25.04.2022, admitted the application filed by Givaudan (India) Pvt. Ltd. under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and appointed Applicant herein as the Interim Resolution Professional ('IRP').
3. The applicant made the public announcement on 01.05.2022, and invited claims. In compliance of Section 21 of Code read with Rule 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "CIRP Regulation"), the Applicant constituted CoC comprising of the sole financial creditor namely Bank of India. In the 1st CoC meeting held on 25.05.2022, the IRP was confirmed as Resolution Professional('RP') of the Corporate Debtor.
4. It is submitted that in the first CoC meeting, the Applicant apprised the CoC member that there are no assets and in absence of non-availability of data and records of the Corporate Debtor and in view of the non-traceability of the suspended Directors who have absconded with all the assets of the Corporate Debtor, including Plant & Machinery (which were financed by Bank of India), it would not be worthwhile to appoint the valuers as he has no data or asset to offer for valuation. In view thereof, the CoC decided no valuers will be appointed at current stage. However, it was clarified that as and when, the Police Department is able to locate the absconding directors and possession of the assets is given back to the Company, then at that point of time the valuers shall be appointed for valuation of the re-possessed assets.



5. It is further submitted that considering the above facts and no chances of revival of the Corporate Debtor, the CoC in first meeting decided not to publish expression of interest and invite resolution plan and passed a resolution for early liquidation and dissolution of the Corporate Debtor. The extracts of resolution passed is reproduced below:

"RESOLVED THAT the approval of the members of is accorded for early liquidation and dissolution of the Corporate Debtor under sub-section 2 of section 33, of the Insolvency and Bankruptcy Code, 2016". (sic)

"FURTHER RESOLVED that an approval is accorded to the Interim Resolution Professional or the Resolution Professional, as the case may be, for filing of an application with the Hon'ble National Company Law Tribunal, for early liquidation and dissolution of the Corporate Debtor,"

6. It is noted from records of the proceeding that initially notices were issued to the suspended directors but the same was returned with an endorsement "Addressee left without instructions". Therefore, the Applicant served through paper publication. Thereafter, it is recorded in order dated 20.09.2022 that service on ex-management is complete but non appeared for the Ex-Management.
7. We have heard the arguments and also perused the records. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor it is necessary to refer to the, the provisions of Section 33 of Code are as follows:

*"33. Initiation of liquidation. –
(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.

(2) where the resolution professional at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the adjudicating authority of the decision of the committee of creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)”

8. The Hon’ble National Company Law Appellant Tribunal (‘NCLAT’), in Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under:

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review.”

9. Considering the submissions and documents on record, since the COC in its commercial wisdom has decided to take the Corporate Debtor into liquidation, we are of the opinion that the decision of COC does not require to be scrutinized with. The present application seeking



liquidation of the Corporate Debtor M/s. Captivate Foods Pvt. Ltd., in the manner laid down in Chapter III of Part II of the Code, is allowed.

10. The CoC has not passed any resolution with regard to appointment of Liquidator. However, the Resolution Professional has filed its written consent to act as liquidator of the Corporate Debtor. In view thereof, we appoint Applicant / Resolution Professional Mr. Atul Jashwantra Sheth (Registration No. IBBI/IPA-001/IP-P-02463/2021-22/13854) as a liquidator of the Corporate Debtor with following directions:

- a) The Liquidator shall make public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 within five days from receipt of this order, calling upon the stakeholders to submit their claims and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.
- b) It is noted that no resolution is passed by CoC under Regulation 39B of CIRP Regulations with respect to meeting of liquidation costs. Therefore, the liquidator is directed to take necessary action in accordance with relevant regulations of the IBBI (Liquidation Process) Regulations, 2016 and call upon the financial creditor to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, if any, in proportion to the financial debts owed to them by the corporate debtor.
- c) In view of no assets, and in absence of data and records of the Corporate Debtor, immediately after constitution of stakeholders committee, following the due process of law, an



application for early dissolution of the Corporate Debtor be filed within 3 months of this order.

- d) The liquidator to follow up and continue to investigate the financial affairs of the Corporate Debtor to determine any undervalued and preferential transactions, etc.
- e) This order is 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.
- f) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional with references to the Liquidator.

11. As a consequence of the application being admitted, the moratorium as envisaged 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.

12. A copy of the order shall be communicated to the applicant RP and the ex-management respondents herein. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and for taking steps for updating the master data of the Corporate Debtor in



MCA portal. IBBI shall send a compliance report to the Registrar, NCLT, Ahmedabad within 3 weeks.

13. Application is allowed and disposed of in terms of above order

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Mansi J./LRA