NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB)-1974/ND/2019
IA-1201/2021

IN THE MATTER OF:

MR. HARISH TANEJA,

THE RESOLUTION PROFESSIONAL **...Applicant**

AND IN THE MATTER OF:

RAJAT MITRA

....Operational Creditor

Versus

PERFACT COLOR DIGITAL PRINTS PRIVATE LIMITED

....Corporate Debtor

Section: 33(1)(a) r/w 33(2) of IBC, 2016

Order delivered on: 25.02.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)
MR. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

PRESENT: -

Harish Taneja (Resolution Professional) along with Adv. Mohd Hashim Malik

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

By filing this application, the Applicant / RP has prayed for the following reliefs.

a) Condone the delay of filing the Liquidation Application, if any;

b) Pass an order for liquidation of the Corporate Debtor as referred under sub-section (2) of section 33 of the Insolvency and Bankruptcy Code, 2016 ("Code");

c) Pass any other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The facts of the application in short are: -

i) That CIRP against the Corporate Debtor was initiated on 09.12.2019 and Mr. Shashi Bhushan Prasad was appointed as IRP.

ii) That, thereafter, the IRP in terms of Section 15, 17, 18, 19, 20 and 21 of the Code had made a public announcement and received claims from various Creditors of the Corporate Debtor and accordingly, the Committee of Creditors (CoC) was constituted consisting of Financial Creditors.

iii) That in the first meeting of CoC held on 13.01.2020, the CoC resolved to replace the IRP, Mr. Shashi Bhushan Prasad and appoint Mr. Harish Taneja as the Resolution Professional ("RP") for the Corporate Debtor. Thereafter, Mr. Harish Taneja was appointed as the RP by this Tribunal vide order dt. 15.07.2020.

iv) That the second meeting of the CoC was held on 10.08.2020 and with the approval of CoC, the RP published the Form G in Financial Express and Jansatta on 12.08.2020.

v) That the last date of submission of Expression of Interest ("EOI") was 27.08.2020 and in response, the Resolution Professional received one EOI from Mr. Ashwani Arya and Mrs. Divya Arya, who are Directors of the Corporate Debtor and they submitted EOI through their Financial Partner namely Mr. Sanjay Ahuja. However, upon the scrutiny of the same, it was observed that the Prospective Resolution Applicant is disqualified under section 29A of the Code. Accordingly, the Expression of Interest was rejected.

vi) That the Resolution Professional again published the Form G on 10.09.2020 for invitation of the Expression of Interest in Financial Express and Jansatta. Pursuant to that, the RP received EOI from the following:

a. Jams Commodities & Services Private Limited
b. Sanjay Ahuja
c. Ajay Singla, Proprietor of M/s Lajawab Caterers
d. Saroha Printing & Packaging Private Limited.

vii) That after scrutiny, the following Prospective Resolution Applicants were found eligible to submit the Resolution Plan:

a. Jams Commodities & Services Private Limited
b. Sanjay Ahuja
c. Ajay Singla, Proprietor of M/s Lajawab Caterers.

viii) That out of the three, only one Resolution applicant, i.e. Mr. Sanjay Ahuja submitted the Resolution plan till the last date of submission.

ix) That upon scrutiny of Resolution Plan, it was found that the Resolution Plan is non-compliant and accordingly, some clarifications were sought from the Resolution Applicant which was updated to the members of CoC in the 6th meeting held on 16.12.2020.

x) That in the seventh meeting of the CoC, Mr. Brijesh Kumar, Authorized Representative of the Resolution Applicant sought some time to modify and revise the Resolution Plan.

xi) That in the eight meeting of CoC held on 08.02.2021, the RP informed the Representative of the Resolution Applicant that there is a claim filed by the EPFO Department of Rs. 14,49,654/- needs to be addressed in the Resolution Plan and there is direction of removal of Personal Guarantee from the members of COC and the Representative of Resolution Applicant sought time to submit revised Resolution Plan.

xii) That in the ninth meeting of CoC held on 15.02.2021, the Resolution Professional informed, the CoC Members that the Resolution Plan submitted by the Resolution Applicant is not in compliance of section 30(2) of the Code. That the Resolution Applicant did not modify the plan despite several opportunities. Thereafter, the Resolution Applicant has submitted that no further changes will be made by him in his plan. Accordingly, the Resolution Plan cannot be presented before the CoC for discussion and voting. Some of the non-compliances are reproduced here below:

   a. Non-Compliance of Section 30(2) of IBC, 2016: No provision has been made for EPFO dues (Violation of NCLAT order in the matter of Moser Baer)

b. Inclusion of personal collateral in the Resolution Plan: The Resolution plan submitted by the RA is with respect to Corporate Debtor. But RA made a condition that RA's plan cannot be there without release of that collateral by respective financial creditor. So, it becomes a conditional plan.

c. Sources of funds are not clear as no comfort letter is attached.

xiii) That the CIRP of the Corporate Debtor expired on 18.02.2021. Accordingly, since no order for extension of the period of CIRP has been passed, therefore, in accordance with the provision of section 33(1) of the Code & Rules made thereunder, the Corporate Debtor is headed for liquidation. Further, in regard to the same, the Applicant Resolution Professional has agreed to act as Liquidator for the Corporate Debtor.

3. We have heard the learned Counsel appearing for the applicant and perused the averments made in the application as well as the minutes of the 9th meeting of the CoC held on 15th February, 2021, from page 104 to 111. The scanned copy of the same is reproduced below: - page 104 to 111

MINUTES OF THE 9TH MEETING OF THE COMMITTEE OF CREDITORS (COC) OF PERFACT COLOR DIGITAL PRINTS PRIVATE LIMITED HELD ON MONDAY 15TH DAY OF FEBRUARY, 2021 AT 03:30 PM THROUGH ZOOM APP AND CONCLUDED ON 04:30 PM

PRESENT

A. RESOLUTION PROFESSIONAL

Name	Designation	Mode of presence
Mr. Harish Taneja	Resolution Professional	Zoom App

B. FINANCIAL CREDITORS

S. No.	Name of Creditors	Designation	Mode of Presence	Voting Share
1.	Mr. Deepak Kumar [SIDBI]	DGM	Zoom App	92.71%
2.	Mr. Abhishek Hindunia Mr. Prashant Pandey [Canara Bank]	Senior Manager- Law CM, ARM-II Branch	Zoom App	03.48%
	Total presence in voting share			96.19%

C. DIRECTOR OF THE CORPORATE DEBTOR

1. Mr. Ashwani Arya, Director of the Suspended Board of Corporate Debtor was present in meeting personally through Zoom App.

AGENDA NO. 1: CHAIRMAN OF MEETING

As per Regulation 24 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP shall act as the Chairperson of the Meeting of the Committee of Creditors. Accordingly, Mr. Harish Taneja, Resolution Professional was appointed as Chairman of the meeting. The Chairman advised that the meeting has been called in accordance with the notice of meeting dated 13/02/2021.

AGENDA NO. 2: QUORUM OF MEETING

The Chairman took the roll call and after roll call, it was informed that quorum is though complete but One of the members of the COC namely, Mr. Sanjeev Mago is not present in the meeting. It was also informed that required quorum has to maintained throughout the meeting for validity of meeting. The chairman also ensured that from the commencement of the meeting till its conclusion, no person other than the participants was allowed to join the meeting through video conferencing or access to the place where meeting was held.

AGENDA NO. 3: TO TAKE NOTE OF THE REVISED MINUTES OF THE 08TH COC MEETING HELD ON 8TH FEBRUARY, 2021

The Chairman reaffirmed that the signed revised minutes of the 8th CoC meeting held on 8th February, 2021 were already circulated to all the CoC members at their respective e-mail IDs. The present CoC Member indicated their positive response to the chair.

AGENDA NO. 4: TO TAKE NOTE ON THE ACTIONS TAKEN BY THE RESOLUTION PROFESSIONAL TILL DATE

The chairman informed that as discussed in the 08th CoC, the Resolution Professional sought clarifications from the Resolution Applicant in respect of the queries/concerns raised by the CoC Member during the meeting and the response received from the Resolution Applicant was duly communicated to the CoC Members. The Resolution Professional has shared the Invoices with respective CoC Members for the Payment of Professional Fees of Resolution Professional along with CIRP expenses.

AGENDA NO. 5: TO DISCUSS THE NON-COMPLIANCE OF THE RESOLUTION PLAN SUBMITTED BY RESOLUTION APPLICANT MR. SANJAY AHUJA IN TERMS OF THE PROVISIONS OF IBC, 2016

The Chairman informed the Committee of Creditors that the Resolution plan submitted by Resolution Applicant is not in compliance of Section 30(2) of IBC, 2016. It was further apprised to the Committee of Creditors that the Resolution has received an Email from the Erstwhile Management of the Corporate Debtor raising concerns of the Corporate Insolvency Resolution Process. A copy of the said Email has been annexed herewith for the perusal of all the members. The Chairman accordingly gave a fair opportunity to Director of the Corporate Debtor namely, Mr. Ashwani Arya to present his concerns before the Committee. After due deliberation upon the same it was concluded that since the Resolution Plan is Non-Compliant to the provisions of the Insolvency and Bankruptcy Code, 2016, the same cannot be presented before the Committee. The discrepancies noted in the Resolution Plan submitted by the Resolution Applicant have been summarized hereunder for the sake of reference:

1. Non-compliance of Section 30(2) of IBC, 2016.: No provision has been made for EPFO dues (Violation of NCLAT order in the matter of Moser Baer)

2. Inclusion of personal collateral in the Resolution plan: The Resolution plan submitted by the RA is with respect to Corporate Debtor. But RA made a condition that it RA's plan can

not be there with out release of that collateral by respective financial creditor.

3. Sources of funds are not clear as no comfort letter is attached.

The Committee was further apprised that a sufficient opportunity was given to Resolution applicant to revise/modify the Resolution plan but the Resolution Applicant choose not to amend/modify the Resolution Plan. The Resolution Applicant thereafter submitted to the Resolution Professional that no further changes will be made by him in his plan. Accordingly, it was informed that the Resolution Plan being non-compliant, cannot be presented to COC for discussion and voting. The COC members took note of the same.

AGENDA NO. 6: TO DISCUSS THE FILING OF APPLICATION WITH THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL DELHI BENCH UNDER SECTION 33(1) OF IBC, 2016 FOR THE INITIATION OF LIQUIDATION OF CORPORATE DEBTOR AND TO APPOINT THE EXISTING RESOLUTION PROFESSIONAL AS THE LIQUIDATOR

As already mentioned in Agenda No. 5 above, the Resolution Plan submitted by the Resolution Applicant has become Non-compliant as per the provisions of the IBC, 2016 & rules made thereunder and hence the same cannot be put forward for voting. Therefore, as per Section 33(1) of IBC, 2016 & rules made thereunder, in case there is no resolution plan for the resolution of the Corporate Debtor, the CoC can directly move towards Liquidation of the Corporate Debtor.

As already discussed in the previous CoC Meetings, the Resolution Professional has agreed to act as Liquidator for the Liquidation of Corporate Debtor at an agreed consolidated fees of Rs. 4,00,000 (Rupees Four Lakh) exclusive of taxes and expenses subject to actuals. Therefore, the Liquidation process of the Corporate Debtor will now be initiated in terms of the provisions of IBC, 2016 & rules made thereunder.

LIST OF MATTERS TO BE VOTED UPON

AGENDA NO. 7: TO RATIFY THE FEES OF RESOLUTION PROFESSIONAL TILL DATE ALONG WITH THE EXPENSES INCURRED BY RP IN RESPECT OF THE CIRP OF THE CORPORATE DEBTOR

The chairman informed that as Resolution professional I am continuously working to run the process in smooth manner. Since day one of his appointment as RP, Mr. Harish taneja is continuously working till date to ensure smooth flow of the CIRP of the Corporate Debtor and to ensure its timely completion as per the provisions of IBC, 2016. During this period, I have done all the CIRP related activities which are necessary for the Corporate Debtor and also all the necessary compliances including all statutory filings and he has delivered his services effectively & efficiently and has also devoted his time in the present matter.

A detailed list of CIRP Expenses of Corporate Debtor from 15/07/2020 to 14/02/2021 is as follows:

S. NO.	PAYMENTS	AMOUNT [in ₹]
1	07 Month Professional Fees of RP *[1,25,000/month]* as approved by CoC in 02nd CoC Meeting held on 10th August, 2020 *[inclusive of GST@18%]*	10,32,500.00
2	Expenses for 01st EOI [Form G] Published on 12/08/2020 *[inclusive of GST]*	21,420.00
3	Expenses for 02nd EOI [Form G] Published on 10/09/2020 *[inclusive of GST]*	21,420.00

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4	Professional Fees of Registererd Valuer: [approved by CoC in 02nd CoC Meeting held on 10th August, 2020] a. Mr. Alok Kaushik *[inclusive of GST @18%]* and out-of-pocket Expenses yet to be received -- ₹ 29,500 b. Mr. Ankit Goel *[inclusive of GST @18%]* and out-of-pocket Expenses yet to be received -- ₹ 29,500	59,000.00
5	Professional Fees of Statutory Auditor *[inclusive of GST @18%]* and out-of-pocket Expenses yet to be received	41,300.00
6	Govt Fees for Application filed for Extension of CIRP & Exclusion of COVID Time from CIRP on 21/08/2020	1,000.00
7	Govt Fees for Application filed under Section 19[2] on 11/09/2020 against DHBVN for electricity disconnection of Corporate Debtor's office	1,000.00
8	Govt Fees for Application filed under Section 43 against Director of Corporate Debtor for Preferential Transaction on 25/09/2020	1,000.00
9	Govt Fees for 02nd Status Report filed on 29/09/2020	1,000.00
10	Conveyance Expenses for Visit to the Office of Corporate Debtor	5,000.00
11	Professional Fees of Advocate for Drafting of Application for (i) Extension & Exclusion of CIRP, (ii) Preferential Transactions under Section 43, (iii) Against DHBVN u/s 19[2] & (iv) Extension of CIRP for 60 days	60,000.00
12	Expenses to be paid to Applicant Mr. Rajat Mitra vide Hon'ble NCLT Order dated 08/10/2020	1,00,000.00
13	Govt Fees for 03rd Status Report filed on 12/11/2020	1,000.00

14	Govt Fees for Application filed for Extension of CIRP for 60 days on 29/12/2020	1,000.00
15	Professional Fees of Advocate for Appearance in the matter of Application u/s 19[2] filed against DHBVN	4,000.00
16	Conveyance, Dismantling, Rental and Other Incidental Expenses for Shifting of Assets of Corporate Debtor (approx)	60,000.00
	TOTAL	**14,10,640.00**

It may by further noted that the matter relating to Rent and Electricity is also pending for closure. The Committee of Creditors to discuss this matter and ratify/ approve the Fees of the Resolution professional along with other CIRP expense and pass the following resolution with or without modification:

So, after detailed discussion the members of COC decided to go for E-voting and accordingly the following Resolution is presented for E-Voting:

"**RESOLVED THAT** pursuant to Section 5(13) of IBC, 2016 read with Regulation 31 of IBBI [Insolvency resolution Process for Corporate Person] Regulations, 2016, the expenses incurred during the period of CIRP are hereby ratified/approved and it will form part of CIRP Cost."

RESOLVED FURTHER THAT the fee of Resolution professional is hereby reduced by Rs. 25,000/-per month which will become Rs. 1,00,000/- exclusive of taxes and out of pocket expenses from the date of filing an application for liquidation till the date of order of Liquidation.

AGENDA NO. 8: TO DISCUSS ANY OTHER MATTERS WITH THE PERMISSION OF THE CHAIR

There being no other business to transact, the meeting was concluded at 4:30 pm with vote of thanks by chairman to all participants for their effective participation.

Date: 16/02/2021

Place: New Delhi

(Chairman)

Harish Taneja

Resolution Professional

M/s Perfact Color Digital Prints Pvt Ltd

IBBI/IPA-002/IP-N00088/2017-18/10229

cirp.perfactcolor@gmail.com

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4. On perusal of the minutes referred to Supra, we notice that prior to taking the decision on the point of liquidation the CoC has considered the agenda no.-5, to discuss the non-compliance of the resolution plan

submitted by the Resolution Applicant, Mr. Sanjay Ahuja, in terms of the provision of the IBC and thereafter the CoC took the decision as agenda no. 6 to initiate the liquidation of the Corporate Debtor and appoint the existing RP as liquidator.

5. It was observed by the CoC that since there is no resolution plan for the resolution of the Corporate Debtor, the CoC can directly move towards the liquidation of the Corporate Debtor. It was also submitted by the Learned Counsel appearing for the applicant that the period of CIRP has expired on 18th February, 2021 but before that, on 15th February, 2021 the CoC took a decision to go for liquidation.

6. At this juncture, we would like to refer to Section 33 (1) of IBC, 2016 and the same is reproduced below: -

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.

7. A bare perusal of the provision shows that there are three circumstances, on which; the Adjudicating Authority may initiate the liquidation.

i) Before the expiry of the Insolvency Resolution Process period

ii) The maximum period permitted for completion of the CIRP under Section 12 or

iii) The first fast track CIRP under Section 56 and as the case may be, does not receive a resolution plan under Section 6 of Section 30 of the IBC, 2016

8. Here in the case in hand, as per the resolution refer to Supra, we observe that no resolution plan was pending for consideration before the CoC and the period of CIRP has expired on 18th February, 2021, so under such circumstances, we are of the considered view that in the absence of resolution plan, there is no impediments to exercise the power under Section 33 (1) clause (A) of the Code, and allow the prayer of the applicant.

9. Accordingly, by exercising power under Section 33 sub-Section (1)(a) we hereby pass the following orders: -

i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016.

ii. Since the CoC has approved the appointment of Resolution Professional, **Mr. Harish Taneja** as liquidator, who has also given his consent, hence, we approved the appointment of Resolution Professional to act as a liquidator u/s 34 (1) IBC, 2016.

iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under

Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

iv. The Provision of Section 33 sub-Section 5,6 and 7 IBC, 2016 shall have come into force with immediate effect. 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;

v. 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;

vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

vii. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and Liquidator **Mr. Harish Taneja,** immediately;

viii. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;

ix. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

10. Accordingly, in terms of aforesaid order <u>IA-1201/2021 in (IB)-1974/ND/2019 is hereby allowed</u>.

Sd/- 25/2/2022 Sd/- -2022

(AVINASH K. SRIVASTAVA)
Member (T)

(ABNI RANJAN KUMAR SINHA)
Member (J)