

**THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
AT NEW DELHI**

C.A. 783 (PB) /2019

IN

Company Petition No. (IB) – 189 (PB) /2018

In the matter of:

Mr. Akhil Goel

Applicant/Resolution Professional

AND

In the matter of:

Moods Hospitality Private Limited

Corporate Debtor

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016
for liquidation of the corporate debtor*

Judgment delivered on: 27.09.2019

CORAM:

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the RP:

Mr. Abhishek Anand &

Mr. Dheeraj Kumar, Advocates.

For the Financial Creditor:

Mr. Wasim Ashroof, Advocate.

For the Corporate Debtor:

Mr. Siddharth Yadav, Advocate.



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Moods Hospitality Private Limited.
2. The facts in brief are that the financial creditor, Mr. Deepak Seth, had filed an application under Section 7 of the Code bearing number IB-189(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 30.08.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Moods Hospitality Private Limited and there in appointed Mr. Akhil Goel, as the Interim Resolution Professional.
3. In terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Applicant



duly made a public announcement in FORM A dated 01.09.2018 in the following newspapers: -

Newspaper	Language	Edition
Financial Express	English	Delhi NCR
Jansatta	Hindi	Meerut NCR

4. It is stated that the Corporate Debtor has no business activities carried out in the past 1.5 years and all staff /employees had already left the Corporate Debtor. The Fixed Assets of the corporate debtor were stated to be Rs. 3.65 Lakhs as per the latest provisional financial statements and books records of the Corporate Debtor.
5. It is further submitted that the Resolution Professional sent notice to the franchisees of the Corporate Debtor using the trademark of the Corporate Debtor being "ICI CHINA" for payment of the amount due and payable to the Corporate Debtor for the use of the trademark of the Corporate Debtor. Needless to say, that liquidator appointed herein shall follow-up the aforesaid issue during the process of liquidation.



6. In terms of Section 18(1)(a) of the Code, the Interim Resolution Professional collated all claims submitted by the creditors pursuant to the Public Announcement and after determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors on 26.09.2018 comprising of sole petitioner financial creditor Mr. Deepak Seth with 100% voting share.
7. It is submitted that the total Financial Debts due to Financial Creditors as on the Corporate Insolvency Commencement date is as under:

S. No.	Name of Financial Creditor	Amount claimed	Amount admitted
1.	Deepak Seth	4,60,90416/-	4,60,90416/-
2.	Ashish Kapur (Related Party)	70,90,864/-	37,93,569/-
3.	Joydeep Singh (Related Party)	60,35,000/-	31,15,000/-
Total		5,92,16,280/-	5,29,98,985/-

Out of the aforesaid three financial creditors Sh. Deepak Seth has 100% voting right in the CoC, whereas the other two financial creditors have no voting right in CoC being related party to the corporate debtor.

- 8.** The first meeting of the Committee of Creditors ("CoC") was convened on 03.10.2018 and the CoC with 100% voting share confirmed the appointment of the IRP as Resolution Professional for the Corporate Debtor.
- 9.** In terms of Regulation 27 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Resolution Professional appointed two registered valuers on 01.01.2019 to ascertain the liquidation value as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulations").
- 10.** The advertisement for invitation of Resolution Plan was published in Business Standard, (English Edition) and in Business Standard, (Hindi Edition) on 28.11.2018 giving the last date for submission of Resolution Plan as 27.01.2019. In compliance of Regulation 36 A (5) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations the said advertisement was duly uploaded on



the website of the IBBI under "Invitation of Resolution Plan".

11. The third meeting of the Committee of Creditors was convened on 29.01.2019, wherein the Resolution Professional apprised the members of the CoC that that no EOI has been received from any prospective applicants including Corporate Debtor, Financial Creditor or Operational Creditor. The Applicant further apprised the CoC that due to non-availability of records and audited balance sheets the statutory compliance could not be completed.

12. The fourth meeting of the Committee of Creditors was convened on 23.02.2019 and since no resolution plan has been received and the 180 days of the CIR Process were coming to an end on 26.02.2019, the CoC decided to authorize the Resolution Professional for filing an application for liquidation of the corporate debtor and also decided to appoint the existing Resolution Professional to act as the Liquidator of the corporate debtor.



- 13.** The following resolution was put up before the CoC for voting. The sole member of the CoC with 100% voting share resolved as follows:

"In the meeting it has been resolved that as no resolution plan is received during the CIRP, COC approved for the Liquidation of Company and authorized RP to apply to Hon'ble NCLT for Liquidation."

- 14.** Accordingly, as instructed by the Committee of Creditors, the Applicant has filed the present application seeking liquidation of the Corporate Debtor under Section 33 of the Code.
- 15.** It is pertinent to refer to the statutory provisions provided in Section 33 (1) (a) of the Code which mandates that *"where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter."*



16. Therefore, upon failure of resolution process there being no resolution plan and on completion of the statutory CIRP period; Liquidation has to follow. Additionally, it is seen that CoC has unanimously recommended for liquidation of the corporate debtor. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.

17. In the factual background and in the absence of any approved resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the decision of the Committee of Creditors with 100 % voting share, *for liquidation of the corporate debtor under Section 33 of the Code.*

18. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Moods Hospitality Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:



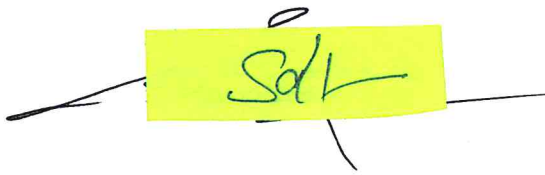
- a.** Mr. Akhil Goel with Registration No. IBBI/ IPA-001 / IP-P00666 / 2017-18 / 11134, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b.** Mr. Akhil Goel, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;



- e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f.** The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- g.** The liquidator shall also follow up the pending applications including CA 1215 (PB)/2019 for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor 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 and the Liquidator for taking necessary steps.
- j. C.A. 783 (PB) /2019 filed in IB 189 (PB)/2018 is disposed of in the aforesaid terms.



(S. K. Mohapatra)
Member (T)



(Dr. Deepti Mukesh)
Member (J)