

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

IA No.152/2021
IN
C.P. (IB) No.286//BB/2019
(Admitted Matter)

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

In the matter of:

M/s. Pridhvi Asset Reconstruction and
Securitisation Company Limited ...Applicant/Financial Creditor

VERSUS

Alpine Wineries Private Limited ... Respondent/Corporate Debtor

And in the matter of IA No.152/2021:-

Mr.Ravindranath Narayana Rao,
Resolution Professional,
Alpine Wineries Private Limited,
#522/C, 1st D Cross, 15th Main, 3
Stage, 4 Block, WCR, Basaveshwaranagar,
Bangalore-560079 ... Applicant-Resolution Professional

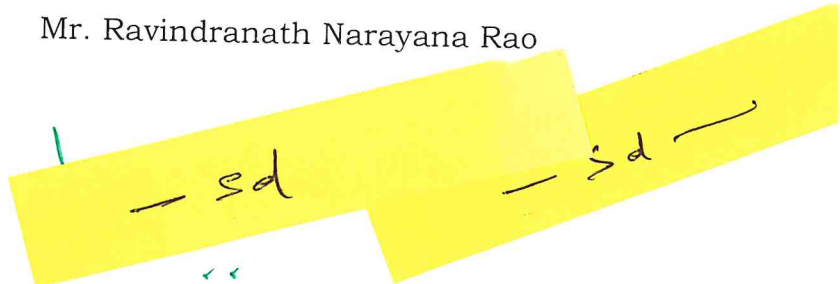
Order delivered on: 22-12-2021

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant/
Resolution Professional : Mr. Ravindranath Narayana Rao

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(Admitted Matter)



Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

I.A No.152/2021

1. This application has been filed by Mr. Ravindranath Narayana Rao, the Resolution Professional of M/s. Alpine Wineries Private Limited (Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of Alpine Wineries Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.
2. CP (IB) No.286/BB/2019 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "M/s. Pridhvi Asset Reconstruction and Securitisation Company Limited" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Alpine Wineries Private Limited was admitted on 17th December 2019 and Mr.Ravindranath.N was appointed as Interim Resolution Professional (IRP).
3. The facts of the case, briefly stated, are that, the public announcement was made in Form A on 19.12.2019 (Annexure B) in English and in Kannada newspapers and the Committee of Creditors was constituted by the IRP with Operational Creditors of the corporate Debtor.
4. The members of the Committee at the first meeting held on 10.01.2020 confirmed the appointment of Interim Resolution Professional (IRP) as Resolution Professional (RP). Subsequently, RP appointed registered valuers for the determination of liquidation value of the Corporate Debtor in accordance with provisions of the code.

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9. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar v.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”.

10. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.
11. The relevant provisions of Sections 33(1) and 33(2) of the 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.

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5. At the second meeting of CoC held on 7.02.2020, the RP invited Expression of Interest (EOI) in Form G by publishing in Financial Express (English) and Hosadiganta (Kannada) on 27.02.2020. In response to the publication of Form G, RP received two Expressions of Interest(s) till the date of submission of EOI.
6. At the fifth meeting held on 15.06.2020, the COC decided to consider extension of time for submission of plan and to ratify the Expression incurred by RP. Further, in the sixth meeting held on 11.09.2020, the COC members decided to consider extension of time for submission of plan and to ratify the Expenses incurred by RP, exclusion of time for High Court Stay 84 days and exclusion of time for Lock Down period of 77 days.
7. At the 11th meeting held on 22.12.2020, the RP updated the members of the COC, that he had received further three Expressions of Interest (EOI). Further, at the 14th meeting held on 23.02.2021, the Resolution Professional informed the COC members about taking over the possession of the plant of the Corporate Debtor in the Malavalli Taluk. At the 15th meeting held on 12.3.2021 the COC accepted the claims of VAT department and BESCO Department. Further, this Tribunal ordered additional 60 days and gave a deadline to complete the CIRP on 20.04.2021.
8. At the 16th meeting held on 20.04.2021 the members of the COC decided to liquidate the Corporate Debtor and further ratified the fee payable to Valuers and also ratified the expenses of RP. Copy of the minutes of the 16th COC meeting is attached as Annexure I to the application. Further, in the 17th meeting held on same day i.e. 20.04.2021 the COC passed a resolution to appoint the RP as Liquidator of the Corporate Debtor. Copy of the minutes of the 17th COC meeting is attached as Annexure - J to the application.

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(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 creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

12. **Prescribed period for filing application-** In the present case, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 17.12.2019 and the period of 180 days were completed on 14.06.2020. Further, from the CIRP period of the Corporate Debtor 161 days were excluded on account of stay granted by the Hon'ble High Court and on account of lockdown due to COVID-19 and also further 90 days of extension was granted by this Adjudicating Authority vide Order dated 27.11.2020 in IA. No 476/2020, therefore the time limit for completion of CIRP stood extended to 20.02.2021. The IA.NO.47/2021 filed by the Resolution Professional seeking to extend the CIRP period by 60 days more was dismissed by this Adjudicating Authority on 19.02.2021. Further, as per the order dated 19.03.2021 in IA.NO.81/2021 this Adjudicating Authority excluded the time of the CIRP in respect of the Corporate Debtor by 60 days, therefore, after excluding 60 days' time period, the CIRP has expired on 20.04.2021 and the present application is filed on 14.06.2021, i.e, after the expiry of the CIRP period. Hence, this application shall be considered under Section 33 (1), but not under Section 33 (2).
13. **Appointment of Liquidator** - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP shall, subject to submission of written consent, act as the Liquidator for the purpose of Liquidation. **Shri Ravindranath Narayana Rao, Resolution Professional with Registration No. RBI/IPA-**

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16. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Alpine Wineries Private Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

- i. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the corporate Debtor;
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
- ii. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
- iii. That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and
- iv. That all the 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 in the Liquidator; and
- v. That 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 provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of reference to the liquidator for references to the Interim Resolution Professional.

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001/2017-2018/IPA-P00645/11099 has filed the written consent dated **04.05.2021**. The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, **Shri Ravindranath Narayana Rao** is appointed as the Liquidator.

14. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder

a. **Liquidation Cost concern [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** -The liquidation cost shall be met as per Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

b. **Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** - The Liquidator shall follow the Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 while selling the assets of the Corporate Debtor, if no compromise or arrangement succeeds or sale as going concern fails.

c. **Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.** The fee payable to the Liquidator is as per Regulations 4(2) of the IBBI (Liquidation Process) Regulation,2016

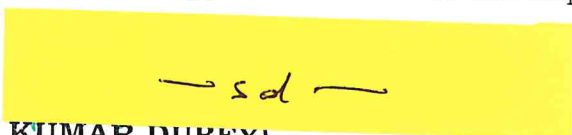
15. **Pending applications, if any, and its effects** - The Learned Counsel for the Applicant has stated that there is no pending application before any Tribunal of law or any other authority or any other Tribunal

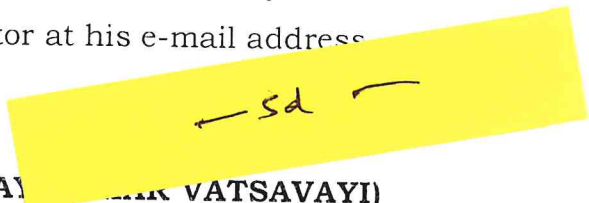
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- vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.
- vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
- viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

17. Thus **I.A No. 152 of 2021** stands disposed of.

18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address


(**MANOJ KUMAR DUBEY**)
MEMBER (TECHNICAL)


(**AJAY KUMAR VATSAVAYI**)
MEMBER (JUDICIAL)

Bhanu Priya (LRA)