

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

IA (IB) No. 504/KB/2021  
in  
CP (IB) No. 932/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

*In the matter of*

State Bank of India

... Financial Creditor

Versus

Madhusala Drinks Private Limited

... Corporate Debtor

Jitendra Lohia, Resolution Professional of Madhusala Drinks Private Limited

... Applicant

***Coram:***

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

***Appearances (through video conferencing):***

*For the Applicant*

Mr. Shaunak Mitra, Advocate

*Resolution Professional*

Mr. Jitendra Lohia,

Order reserved on: 23.07.2021

Order pronounced on: 03.08.2021

ORDER

***Per Harish Chander Suri, Member (Technical)***

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Madhusala Drinks Private Limited [CIN: U15520WB1991PTC052155], on the ground that the no resolution Plan was received.
3. This Adjudicating Authority *vide* its order dated 26.08.2019 on a Petition filed by the State Bank of India (*financial creditor*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Jitendra Lohia as the Interim Resolution Professional (IRP) and confirmed his appointment as the Resolution Professional (RP) on 04.10.2019.
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 28.08.2019, in Financial Express (English) and Ek Din (Bengali) Kolkata edition newspapers, fixing 09.09.2019 as the last date for submitting the claim.
5. The Committee of Creditors (CoC) was duly constituted with two Financial Creditors and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority on 18.09.2019.
6. The first meeting of the CoC was held on 19.09.2019 wherein resolution was passed to appoint the Applicant as the Resolution Professional (RP). The Applicant states that the publication for invitation of EOIs in Form G was done on 09.11.2019 and republished on 28.12.2019, 07.02.2020, 12.03.2020 and 23.01.2021 in Financial Express (English) and Ek Din (Bengali) Kolkata edition newspapers. The last date of submission of EOI was 05.03.2021. Three EoI's were received but no Resolution Plan and Earnest Money Deposit (EMD) was given by the prospective Resolution Applicants.

7. The Resolution Professional time and again extended the last date for submission of Resolution Plan and EMD but the prospective Resolution Applicants kept seeking for more time. Hence, in the 9<sup>th</sup> CoC meeting held on 14.05.2021, the CoC decided that since no resolution plan was available with the CoC for discussion, it was resolved that the RP would file an application under section 33(1) before the Adjudicating Authority for liquidation of the Corporate Debtor.
8. That the CoC has passed resolution by 100% voting shares that the Corporate Debtor be liquidated under the provisions of section 33(2) of the Code.
9. The Applicant/Resolution Professional, Mr. Jitendra Lohia [Reg. No. IBBI/IPA-001/IP-P00170/2017-18/10339], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code<sup>1</sup>.
10. We have considered the submission made by the Applicant/RP in person and perused the record.
11. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.
12. This Bench, therefore, hereby orders as follows: -
  - a. Prayers as sought for in IA No. 504/KB/2021 filed by Mr. Jitendra Lohia, RP of Madhusala Drinks Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

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<sup>1</sup> Annexure F at page 32 of the I.A.

- b. **Mr. Jitendra Lohia [Reg. No. IBBI/IPA-001/IP-P00170/2017-18/10339]**, is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, *Financial Express* (English) and *Ek Din* (Bengali) of Kolkata Edition, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, 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.

- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

13. The application bearing **IA (IB) No. 504/KB/2021** shall stand disposed of in accordance with the above directions.
14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
15. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
16. List the main **CP (IB) No. 932/KB/2018** for reporting progress on **29.10.2021**.

**[Harish Chander Suri]**

**Member [Technical]**

GGRB[LRA]

**[Rajasekhar V.K.]**

**Member [Judicial]**

*3<sup>rd</sup> day of August, 2021.*