S. No. 6

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **19-10-2022** AT **03:30 PM**. THROUGH VIDEO CONFERENCE.

IA (IBC) 549, 457, 413, 300 & 184/2022 & 455/2021
in CP(IB) No. 599/7/HDB/2019
U/s 7 of IBC, 2016

IN THE MATTER OF:

Punjab National Bank **…Financial Creditor**

Vs

Saptarishi Hotels Pvt Ltd **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Common Order passed in IA No.413/2022 and 457/2022 vide separate sheets.
IA No.413/2022 and 457/2022 are allowed.

IA No.549/2022: Since IA No.413/2022 is allowed, IA No.549/2022 is dismissed.

IA (IBC) 300/2022; IA (IBC) 184/2022 & IA (IBC) 455/2021: All these applications are reopened and adjourned to 11.11.2022 for hearing.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Somdutt

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH-1, HYDERABAD

IA No.413 of 2022 & IA No.457 of 2022
in
CP (IB) No.599 /7/ HDB/2019

<u>In the Matter of</u>

Punjab National Bank .. **Financial Creditor**

AND
Saptarishi Hotels Private Limited (SHPL) .. **Corporate Debtor**

In the matter of :
T.S.N. Raja
Resolution Professional of
Saptarishi Hotels Pvt Ltd.

.. **Applicant**
(Resolution Professional)

APPLICATION UNDER SECTIONS 30(6), 33 AND 60 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016.

<u>Date of order : 19.10.2022</u>

<u>Coram</u>:

HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, MEMBER (JUDICIAL)
and
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)

Parties / Counsels Present:

For applicant in IA 413/2022 : Shri TSN Raja, Resolution Professional.

PER BENCH

The applicant herein/ Resolution Professional of the Corporate Debtor/ Saptarishi Hotels Pvt Limited files this application under sections 30(6), 33 and 60 of the Insolvency & Bankruptcy Code, 2016, seeking the following reliefs:

1. *To pass an order ordering the Corporate Debtor into liquidation.*
2. *To pass suitable orders for appointment of Liquidator.*

2. Vide order dated 18.01.2021 passed in CP (IB) No.599/7/ HDB/ 2019 the Tribunal has admitted the petition, allowing the Corporate Debtor to Corporate Insolvency Resolution Process (CIRP), appointing the applicant herein as Interim Resolution Professional (IRP).

3. **Status of the Corporate Debtor / company when the CIRP was ordered:**

(i) Implementation got stalled in 2016.

(ii) National Institute of Tourism & Hospitality Management (NITHM) terminated lease.

(iii) Lenders declared the Corporate Debtor as NPA.

(iv) Several litigations were filed by the lessor, suppliers.

(v) No power at the premises.

(vi) Certain construction material is left in open.

(vii) No manpower.

4. Claims received by IRP:

(i) Two Financial Creditors, namely, Punjab National Bank and Punjab & Sind Bank submitted their respective claims.

(ii) NITHM also submitted its claim. Its claim was classified as financial debt on the grounds mentioned in para 13 of the IA.

(iii) CoC was consisted with the above three entities.

5. Claims received by IRP:

(i) Two Financial Creditors, namely, Punjab National Bank and Punjab & Sind Bank submitted their respective claims.

(ii) NITHM also submitted its claim. Its claim was classified as financial debt on the grounds mentioned in para 13 of the IA.

(iii) CoC was consisted with the above three entities.

(iv) First CoC meeting was held on 25.02.2021 and the applicant is appointed as Resolution Professional by e-voting (Annexure A-2).

6. How implementation of CIRP progressed:

(i) The Resolution Professional had issued public announcement in Form-A (Annexure A-1) for initiation of CIRP on 21.01.2021.

(ii) First CoC meeting was held on 25.02.2021 and the applicant is appointed as RP by e-voting (Annexure A-2).

(iii) With the approval of CoC invitation of Expression of Interest (EoI) under Form-G was published by the applicant on 05.04.2021. About 10 investors responded to the EoI. Four Prospective Resolution Applicants (PRAs) submitted Resolution

Plans. The CoC informed the PRAs that they will be given one week time from the date of communicating the terms of renewal of lease by National Institute of Tourism & Hospitality Management (NITHM).

(iv) The promoters preferred an appeal before the Hon'ble NCLAT for setting aside order of admission of the Corporate Debtor into CIRP on the ground that the debt is time barred under the Limitation Act.

(v) The promoters failed to cooperate with IRP in providing record till date and the books of accounts were not found in the office. The promoters did not furnish details of the court cases.

(vi) The applicant/ RP was executing the ongoing CIRP smoothly until it was hit by COVID-19 pandemic. Exclusion of 99 days from CIRP was granted by this AA vide order dated 14.07.2021 (Annexure A-6) in IA No.327 of 2021.

(vii) The applicant sought revised Resolution Plans from PRAs and expecting chances of revival, the RP filed IA No.629 of 2021 for extension of CIRP. This Tribunal granted extension of 90 days vide order dated 01.11.2021 (Annexure A-8).

(viii) Second highest bidder/ Anirudh Agro Farms proposed to enhance his plan commitment. Such proposal was placed before 14th CoC.

(ix) Though Anirudh Agro Farms confirmed its offer of Rs.68 crores, NITHM did not respond in renewing the lease and advised the RP to seek extension of CIRP. Eighteenth CoC meeting dated 25.02.2022 deliberated the issue (Minutes are at Annexure A-11).

(x) The AA did not extend the CIRP period and Nineteenth CoC held on 11.03.2022 decided to treat both the Resolution Plans in question as void (Minutes are at Annexure A-12).

(xi) Secured Financial Creditors, PNB and PSB filed Writ Petition in the Hon'ble High Court of Telangana. Pursuant to directions of the Hon'ble High Court this AA vide order dated 08.04.2022 (Annexure A-14) in IA No.351 of 2022 has extended last date for completion of CIRP upto 18.04.2022

(xii) Twenty Second CoC Meeting held on 13.04.2022 (Minutes are at Annexure A-15) decided to recommend the Corporate Debtor into liquidation as the CIRP is coming to close.

(xiii) The Financial Creditors, through e-voting, with 90% majority, has voted as under:

(a) To share the shortfall in liquidation cost in claim ratio.

(b) Not to make an attempt to dispose the Corporate Debtor as a 'going concern'.

(c) Not to continue the Resolution Professional as Liquidator.

7. Heard Shri TSN Raja, RP and perused the records. Taking into consideration the facts and circumstances of the case we are of the confirmed view that it is fit case to order liquidation of the corporate debtor.

8. In so far, the appointment of liquidator is concerned, the financial creditors has filed an Application i.e IA No.457 of 2022 seeking leave of this Tribunal for appointment of another resolution professional as Liquidator in place of the resolution applicant contending that COC in its 22nd meeting held on 13.04.2022 have decided so.

9. In the above backdrop we framed the following **point** for consideration by this Tribunal.

Whether the existing resolution professional can by replaced as liquidator by another resolution professional on the grounds pleaded in the application?

10. We have heard the Ld. Counsel, for the applicant/Financial Creditor and Shri TSN Raja, RP. Perused the record and the case law.

POINT.

Whether the existing resolution professional can by replaced as liquidator by another resolution professional on the grounds pleaded in the application?

11. Learned Counsel for the financial creditor, placing reliance on the minutes of the 22nd COC meeting held on 13.04.2022, vehemently contended that existing RP be replaced with the person whose name is being proposed by the financial creditor, which is legally valid under IBC, 2016 for appointment of liquidator in the best interest of stakeholders and to discontinue the respondent herein and not to continue him as liquidator.

12. Per Contra, Learned RP Shri TSN Raja, submitted that though, Adjudicating Authority in terms of Section 34(1)(4) of IBC, is empowered to replace the RP as liquidator, the said power can be exercised only when the conditions laid down under Section 34 (4) of I&B Code are pleaded and exist. As no such condition is neither pleaded nor exist, the plea for replacement of the existing RP as liquidator is liable to be dismissed.

13. Before we proceed to decide the Point, we intend to refer to Section 34 IBC, which is as follows;

"**34.** (1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under [1][Chapter-II [2][or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

(2) On the appointment of a liquidator under this section, all 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.

(3) 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 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

(4) The Adjudicating Authority shall by order replace the resolution professional, if—

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [3][in writing; or]

[4][(c) the resolution professional fails to submit written consent under sub-section (1).]

(5) For the purposes of [5][clause (a) and (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

(6) The Board shall propose the name of another insolvency professional [4][along with written consent from the insolvency professional in the specified form,] within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

(7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

14. A bare perusal of *sub clause* 1 of the above provision, the aforesaid Section clearly discloses that subject to submission of written consent by the RP to the Adjudicating Authority in the manner specified to act as liquidator for the purposes of liquidation, the RP is **entitled to act as liquidator, unless he is replaced by the Adjudicating Authority under Sub-Section (4). Therefore,** replacement if warrants, shall be in accordance with *sub clause 4* of the above section, which says that the Adjudicating Authority shall by order replace the resolution professional, if—

(a) The resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or

(c) The resolution professional fails to submit written consent under sub section (1).

15. In so far as the case on hand is concerned, since the present RP had filed his written consent to act as liquidator the requirement under subsection 1 of section 34 IBC stands satisfied. None of the requirements mandated under sub section 4 of section 33 IB Code, either exist or even pleaded by the COC. As regards to the minutes of the COC meeting held on 13.04.2022 is totally silent with regard to expression of dissatisfaction on the performance of the Resolution professional**.**

16. Therefore, having regard to Section 34(1) of IBC, *supra*, more particularly, *sub-clause* (4), we find that the situation as contemplated under Section 34(1) (4) of IBC for replacement of the present RP to act as liquidator, since neither pleaded nor exists, We find merit in the submission of the Learned Counsel for the Applicant, that replacement of the present RP to act as liquidator by another RP is unsustainable under law.

17. It is pertinent to note that minutes of COC meeting discloses that newly proposed liquidator had accepted to act as liquidator at a discounted remuneration of 50% as per the remuneration payable under Reg.4 of the Liquidation Process Regulations. Therefore, the only ‘reason’ for replacement of the RP as liquidator appears to be the willingness of the newly proposed liquidator to accept 50% of the cost.

18. Be that as it may, the fact remains that the COC in their wisdom wanted replacement of the existing resolution professional as Liquidator by another resolution professional. Therefore, graceful exit of the present resolution professional perhaps will pave way for smooth liquidation process. We therefore, allow the plea of the COC for replacement of the present by another resolution professional as liquidator named in the minutes of the COC meeting dated 13.04.2022. The fee and expenses of the present RP if not paid shall forthwith be paid and only upon complete payment, the newly appointed resolution shall assume charge. Further, RP shall continue to act as liquidator, however, if the proposed liquidator fails to submit

his consent with regard to the remuneration within 7 days from the date of receipt of this Order in accordance with the provisions of law.

19. In view of the facts and circumstances recorded by Resolution Professional in IA No.413 of 2022 and IA No.457 of 2022 in CP IB No.599/7/HDB/2019, and in view of the fact that this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, the Tribunal proceeds to pass the following order:

(i) This Adjudicating Authority hereby orders for liquidation of M/s Saptarishi Hotels Pvt Limited, the Corporate Debtor herein, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

(ii) This Adjudicating Authority hereby appoints Shri G.Madhusudhana Rao, having IBBI Registration No. IBBI/IPA-001/IP-P00181/2017-18/10360, as Liquidator. He has given his consent dated 07.05.2022 to act as Liquidator in the present case. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(iii) The moratorium declared under Section 14 of the I&B Code, 2016, vide order dated 18.01.2021 passed in CP (IB) No.599/7/

HDB/ 2019, shall cease to have effect from the date of the order of liquidation;

(iv) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

(v) It is made clear that clause (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(vi) This Order 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.

(vii) 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 Company Liquidator viz., Shri G.Madhusudhana Rao .

(viii) In addition to this, the Company Liquidator shall exercise powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(ix) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(x) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.

(xi) The Company Liquidator shall be entitled to charge such fee for conducting the liquidation proceedings in such a proportion to the value of the Liquidation estate assets as specified by the

Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.

(xii) Copy of this Order shall be sent to the concerned Registrar of Companies, Regional Director, Official Liquidator, Registered Office of the Corporate Debtor and Company Liquidator viz., Shri G.Madhusudhana Rao, for information and compliance.

(xiii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

(xiv) In terms of the above, IA No.413 of 2022 and IA No.457 of 2022 in CP (IB) No.599/7/HDB/2019 stands disposed of.

Sd/-
VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-
DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Karim/Pavani