NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)

CA No. 1077/2019, IA Nos. 371/2020
& 412/2020
In
CP (IB) No. 117/Chd/CHD/2017
(Admitted Matter)

Under Section 12, 33(1)(a) & 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016

In the matter of:-

M/s Hajura Singh Bhim Singh ...Operational Creditor

Vs.

M/s Best Foods Limited ...Corporate Debtor

And in the matter of CA No. 1077/2019:-

Resolution Professional for
Best Foods Limited ...Applicant

And in the matter of IA No. 371/2020:-

Spring Infradev Limited ...Applicant

Vs.

Mr. Vikram Bajaj
(Resolution Professional for
Best Foods Limited) & another ...Respondents

And in the matter of IA No. 412/2020:-

Mr. Vikram Bajaj
Resolution Professional for
Best Foods Limited ...Applicant

Order delivered on: 01.03.2021

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

Present through Video Conferencing:-

For the applicant in IA No. CA No. 1077/2019 & 412/2020 and for respondents in IA No. 371/2020	:	Mr. G.S. Sarin, Practising Company Secretary
For the applicant in IA No. 371/2020	:	1). Ms. Suman Nayak, Advocate 2). Mr. Namit Suri, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

CA No. 1077/2019 & IA No. 412/2020

IA No. 412/2020 has been filed by the Resolution Professional for M/s Best Foods Limited (Corporate Debtor) under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s Best Foods Limited.

2. CP (IB) No. 117/Chd/CHD/2017 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by "M/s Hajura Singh Bhim Singh" to initiate Corporate Insolvency Resolution Process (in short CIRP) against M/s

Best Foods Limited was admitted on 02.02.2018 and Mr. Atul Kumar Kansal was appointed as Interim Resolution Professional. Subsequently, vide order dated 17.04.2018, IRP was replaced and Mr. Vikram Bajaj was appointed as Resolution Professional.

3. The facts of the case, briefly stated, are that Form G inviting Expression of Interest was published in the newspaper – Business Standard on 05.05.2018 and the same was republished on 07.08.2018. In pursuance of the said publication, RP received several EOI (s) but only one prospective Resolution Applicant-Maritime Trade Corporation (MTC) had submitted the resolution plan on 04.10.2018. Subsequently, in the 7th Meeting of COC held on 25.10.2018, the resolution plan submitted by MTC was discussed and it was decided that the same could not be taken forward as it had significant gaps and ambiguities (Annexure 1).

4. It is further submitted that the Resolution Applicant-MTC has filed an application bearing CA No. 603/2018 as the revised resolution plan was not put for voting and vide order dated 31.10.2019 (Annexure-2), certain directions were issued to RP to convene a meeting of COC and to place the revised resolution plan before the COC for consideration and voting.

5. In pursuance of order dated 31.10.2019, it is submitted that 8th meeting of COC was held on 06.11.2019 and the same was continued on 08.11.2019 in which the revised resolution plan submitted by MTC was discussed in detail (Annexures-3). The resolution applicant again submitted a revised resolution plan on 12.11.2019 and it was put to vote in the 9th meeting of COC held on 15.11.2019 (Annexure-6) and 42.544% has voted in favour of it. However, one of the financial creditors namely State Bank of India having

53.787% vote share abstained from voting. Afterwards, RP has filed an application on 18.11.2019 bearing CA No. 1077 of 2019 for seeking additional time. In the meantime, State Bank of India vide e-mail dated 07.02.2020 has voted for approval of the revised resolution plan submitted by MTC (Annexure-7). But, later on, the resolution applicant-Maritime Trade Corporation has withdrawn its resolution plan vide email dated 19.03.2020 (Annexure-8).

6. In view of the withdrawal of the Resolution plan by Maritime Trade Corporation, the ground on which the application CA No. 1077 of 2019 seeking extension of time for completion of CIRP Process was filed has been frustrated. Further since no resolution plan was approved under Section 30(6) of the I&B Code, 2016 within the time period permitted vide order dated 31.10.2019 i.e. by 15.11.2019 and since no resolution was passed by the COC under Section 33(2) of the I&B Code, 2016, the Resolution Professional filed IA No. 412/2020 under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 for passing an order of liquidation and also seeking withdrawal of CA No. 1077/2019.

7. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar Vs. 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."*

8. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

9. The relevant provisions of Section 33 (1) (a) of the Code are as follows:-

> ***"Section 33: Initiation of liquidation.***
>
> ****33.** (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."*

10. **Prescribed period for filing application** - In the present case, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 02.02.2018 and the present application is filed by the Resolution Professional on 25.08.2020. The period of 180 days would be completed on 30.10.2018. As per order dated 31.10.2019, RP has been directed to place the revised resolution plan before CoC and further directed to complete the process within 90 days. RP has also filed an application seeking additional time for concluding the CIRP process. However, during the pendency, the Resolution Applicant has withdrawn his resolution plan and the application for extension has been frustrated. Hence, no resolution has been passed by COC and the present

application has been filed under Section 33(1)(a) on 21.08.2020 and the essential ingredients of the same stand satisfied.

11. **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 corporate insolvency resolution process shall, subject to submission of written consent, act as the Liquidator for the purpose of liquidation. Mr. Vikram Bajaj, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00003/2016-2017/10003, has filed his consent in Form AA dated 18.05.2020 attached as Annexure-9 of the petition. The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, Mr. Vikram Bajaj is appointed as the Liquidator.

12. Regulation 39B, 39C and 39D in the CIRP 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.

13. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – The COC has not made compliance of Regulation 39B of the CIRP Regulations, 2016 regarding meeting of liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

14. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** – The COC has not made any recommendation regarding sale of the corporate debtor as a going concern. Therefore, the Liquidator is directed to refer to Regulation 32A of the IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

15. **Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016)** – The RP proposed to be appointed as Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate assets as may be specified by the Board. Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for Liquidator's fee. Regulation 4(2) thereof states that the Liquidator shall be entitled to such fee and in such manner as has been provided therein.

16. **Pending applications, if any, and its effect** – The learned authorized representative for applicant has stated that an Application bearing CA No. 1077/2020 dated 20.11.2019 seeking additional time for completion of CIRP with certain other reliefs is pending before this Tribunal. In the instant IA, the applicant also seeks liberty for withdrawal of CA No. 1077/2019 as Resolution Applicant has withdrawn its resolution plan.

17. In view of the satisfaction of the conditions provided under Section 33(1)(a) of the Code, the corporate debtor **Best Foods 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;

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(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 provisions of Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.

(vi) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (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 IBBI (Liquidation Process) Regulation, 2016.

(viii) That in accordance with Regulation 13 of the IBBI (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.

18. Thus, IA No. 412/2020 stands disposed of.

19. CA No. 1077/2019 has been filed by the Resolution Professional for M/s Best Foods Limited under Section 60(5) read with Section 12 of IBC 2016 and Rule 11 of NCLT Rules, 2016 seeking additional time period consumed in litigation. In view of the discussions as above, CA No. 1077/2019 is dismissed as withdrawn.

20. Accordingly, CA No. 1077/2019 is disposed of.

IA No. 371/2020

21. This IA has been filed by Spring Infradev Limited under Section 60(5) of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016 against the Resolution Professional for Best Foods Limited seeking the following reliefs:-

> *"i. To set aside the decision/communication of the Resolution Professional (Respondent No. 1) dated 03.08.2020 and direct the Resolution Professional (Respondent No. 1) to consider the Expression of Interest for onward consideration of resolution plan to be submitted by the Applicant;*
>
> *ii. To direct the Resolution Professional (Respondent No. 1) to place the Expression of Interest for onward consideration of resolution plan to be submitted, before the Committee of Creditors (CoC) (Respondent No. 2);*
>
> *iii. To direct the Committee of Creditors (CoC) (Respondent No. 2) to consider the resolution plan to be submitted by the Applicant on its merits;*

iv. To stay the Liquidation Application till a final decision is taken by the Committee of Creditors (CoC) (Respondent No. 2) on resolution plan to be submitted by the Applicant.

v. Pass any other order(s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

22. It is the case of the applicant that the CIRP process against the corporate debtor was initiated on 02.02.2018. The applicant had submitted its Expression of Interest (EOI) by e-mail on 31.07.2020 which includes Net Worth Certificate, financial statements for onward consideration but the Resolution Professional vide e-mail dated 03.05.2020 rejected the said EOI on the ground of completion of maximum period for CIRP. Challenging the said decision, the applicant filed the instant IA.

23. Heard Ms. Suman Nayak, the learned counsel for the applicant and Mr. G.S. Sarin, the learned authorized representative for the Resolution Professional and perused the pleadings on record.

24. It is not in dispute that the applicant failed to submit its Expression of Interest within the prescribed time. It is also not in dispute that the applicant approached the Resolution Professional after the CIRP period came to an end. It is also not in dispute that the applicant was not part of the CIRP till the period of CIRP is completed. The contention of the applicant is that keeping in view the object of the Code and the maximization of the value of assets of the corporate debtor, the RP shall be directed to place the resolution plan to be submitted by the applicant before the COC. Further, the contention of the applicant is that the COC decision not to seek extension of time for CIRP Process and to withdraw the CA No. 1077 of 2019 is bad and unsustainable.

25. The Hon'ble NCLAT in ***Kalinga Allied Industries India Pvt. Ltd. Vs. Hindustan Coils Ltd. and Ors. CA (AT) (Ins) No. 518 of 2020 dated 11.01.2021*** while answering the issue "whether the Adjudicating Authority can direct the COC to consider the resolution plan of a person who was not part of CIRP" observed as under:-

> *"15. In pursuant to the expression of interest issued by RP on 24.08.2018 the Appellant submitted a Resolution Plan. After several rounds of deliberation by the COC revised Resolution Plan was submitted by the Appellant on 19.12.2018. The same was approved on 28.12.2018 by the COC in the 13th meeting by requisite majority. Thereafter, the RP filed an Application under Section 30 (6) of the I&B Code for approval of Resolution Plan in the month of January, 2019 and sometime in the month of February, 2020 the Respondent No. 1 filed an Application seeking direction for consideration of its Resolution Plan. Admittedly the Respondent No. 1 has not submitted any Resolution Plan pursuant to the expression of interest issued by the RP. Thus, the Respondent No. 1 is not part of CIRP. The Respondent No. 1 has filed Application directly before the Adjudicating Authority. The Adjudicating Authority in the guise of maximization of the value of assets of the Corporate Debtor directed that the Respondent No. 1's Application and Resolution Plan be put up before the COC for consideration. There is no provision in the code or regulation which provides that while exercising the power under Section 31 of the I&B Code the Adjudicating Authority can direct the COC to consider the Resolution Plan of such person who has not been part of CIRP. Otherwise also if such procedure is adopted then the CIRP will be frustrated. Once the Resolution Plan has been opened and fundamentals and financials of the Plan and offer made therein were disclosed to all the participants including RP. Then anyone can enhance its offer before the Adjudicating Authority in the guise of maximization of realisation. Therefore, no further fresh bid or offer could have been accepted or considered as held by this Appellate Tribunal in the case of Kotak Investment Advisors Ltd. (Supra) (See Para 23).*
>
> *20. With the aforesaid, we are of the view that when the Application for approval of Resolution Plan is pending before the Adjudicating Authority at that time the Adjudicating Authority cannot entertain an Application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful Resolution Applicant. If a Resolution Plan is considered beyond the time limit then it will make a never-ending process. Thus, impugned order is not sustainable in law as well as in fact. The impugned order is hereby set aside."*

26. In view of our finding and also in view of the decision of the Hon'ble NCLAT, we do not find any merit in IA No. 371/2020 and accordingly, the same is dismissed.

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

(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

March 1st, 2021
YP

National Company Law Tribunal
Chandigarh Bench

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