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IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH III  
NEW DELHI

CA.218/C-III/ND/2019

In

CP.No.(IB)543/C-III/ND/2017

: Application By Resolution Professional to initiate Liquidation Process under Section 33(1)(a) Red With Section 60(5) of the Insolvency and Bankruptcy Code,2016 Read WITH Rule 11 of National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

M/s Bimla Maru Fashions Pvt. Ltd.

....Corporate Debtor

Sh.S.K.Mathur,  
Resolution Professional for  
M/s Bimla Maru Fashions Pvt. Ltd.

....Resolution Professional/Applicant

Versus

Sh. Yogesh Maheshwari & Ors.

.....Respondent

CORAM:

R.VARADHARAJAN,  
Hon'ble Member (Judicial)

K.K.Vohra  
Hon'ble Member(Technical)  
For Applicant/ Corporate Debtor:

Mr. Brijesh Kumar Tamber,  
Advocate

For Resolution professional:

Mr. S.K.Mathur

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ORDER DELIVERED ON: 23.09.2019

ORDER

This is an Application filed by the Resolution Professional (RP) seeking to initiate the liquidation process of the Corporate Debtor (CD) under Section 33(1)(a) of Insolvency and Bankruptcy Code, 2016 (IBC) read with Section 60(5) of the said Act. The above application as per the averments contained therein has been made in view of the expiry of the Corporate Insolvency Resolution Process (CIRP) on 16.2.2019 and also in view of rejection of the resolution plan by the Committee of Creditors (CoC) in its meeting held on 12.02.2019.

2. Prior to going into the aspect of rejection of the resolution plan by the CoC as well as the expiry of the CIRP period on 16.2.2019, it will be incumbent of this Tribunal as an adjudicating authority to take note of the happenings during the CIRP of the CD. From the Application, it is evident that the CIRP commenced on 2.5.2018 based on a Petition moved by the CD itself under Section 10 of IBC. Based on the proposal made by the CD itself, one Mr. Arun Chadha was appointed as the Interim Resolution Professional (IRP). Publication in relation to calling for the claims of creditors seems to have been effected on 25.5.2018 and the CoC was constituted by the IRP on 11.6.2018 and the first CoC meeting was held on 26.2.2018. In view of the non-confirmation of the IRP to continue as RP

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in the first meeting of CoC and that in the second CoC meeting held on 1.8.2018, the RP who has moved to present Application namely, Mr. S.K.Mathur was proposed and the proposal was passed with the necessary voting share in the meeting held on 17.8.2018 which prompted the CoC to move the Application before this Tribunal in CA.230/C-III/ND/201 which was also ordered by this Tribunal on 5.9.2018.

3. Subsequent to his appointment, the RP it is averred had appointed valuers on 15.9.2018. In the fourth meeting of CoC held on 25.9.2018, it is stated that in view of the fast approaching expiry of CIRP period, resolution plan as was required, if any, based on the existing time line for completion of CIRP, an Application was moved in CA-304/C-III/ND/2018 which was allowed by this Tribunal extending the completion of CIRP upto 16.2.2019 as contemplated under Section 12 of IBC. In the meanwhile, Expression of Interest (EoI) in Form-G was published on 29.9.2018 and with a view to get maximum resolution applicants and thereby to maximize the value of the CD, period was extended from time to time based on the approval of CoC to 15.1.2019. The final list of eligible resolution applicants was published on 18.1.2019 wherein two resolution applications were finalized and two resolution plans were also received by the CoC. Since one of the resolution applicants namely M/s Tomorrow Sales Agency Pvt. Ltd. had withdrawn the plan before it could be placed, the same was not voted upon by the CoC. In relation to the remaining, namely, the sole resolution plan which stood up for scrutiny before the CoC for its consideration was, however, rejected by the CoC on 12.2.2019 with a voting share of 58.18% against the resolution plan. In the circumstances, in view of the rejection of the resolution plan by the CoC and as the period of CIRP had also expired, the present



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Application has been moved before this Tribunal seeking for the liquidation of the CD.

4. Details of the Applications which have been filed from time to time before this Tribunal by the RP seeking for direction have also been given in relation to both namely which have been disposed of, or pending as the case may be. From the list of Applications, it is seen that CA.327/C-III/ND/2018 has been filed for surrender of vehicles of the CD, the possession of which are with the Board of Directors whose powers stand suspended. CA.9/2019 and CA.10/2019 relates to the transactions and preferential transactions respectively, as contemplated under Sections 45 and under 43 of IBC. In addition, CA.11/2019 relates to fraudulent trading filed under Section 49 and 66 of IBC, 2016 estimated at Rs.125.66 crores. It is also pertinent to note that CAs have also been filed by the RP seeking to bring to the notice of this Tribunal in relation to fraudulent sale of property of the CD during the pendency of the main CP filed under Section 10 of IBC by the CD itself. At the end of the Application, Lr. RP has also expressed that in view of no disqualification suffered by him for appointment as a liquidator and the consent dated 15.2.2019 to act as the liquidator, has also been furnished he is willing to act as such if permitted.

5. Submissions of the Ld. Counsel for the RP in support of the Application were heard in detail. Minutes of the respective meetings of the CoC have been annexed along with typed set with application.

6. From the minutes of the first CoC meeting held on 22.6.2018, it is seen that the CoC was for constituted with two Financial Creditors namely, Bank of Baroda with 59.77% voting share and Standard Chartered Bank having voting share of

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40.23%. Further, it is also seen from the minutes of the said meeting that the CoC had authorized IRP to appoint and negotiate fee of the Forensic Auditor/ Transaction Auditor. IRP's fee as prescribed seems to have been discussed and dissented with 100% voting share by the CoC and in the circumstances, the appointment of the RP was kept open.

7. In the second meeting held on 1.8.2018, CoC seems to have been reconstituted by inclusion of India Bulls Housing Finance Ltd. with a corresponding change in the voting share of the existing two Members. In the said meeting, it is also evident the appointment of IRP as the RP was dissented by 93.73% voting by the CoC and that Mr. Satish Kumar Mathur was proposed to be appointed as the RP. In relation to the appointment of the Forensic Auditor, despite considering 3 names, no voting took place.

8. From the third meeting of the CoC held on 27.8.2018, it is seen that appointment of Forensic Auditor/ Transaction Auditor has been objected to and it is seen from the minutes that no conclusion had been reached in relation to the appointment of Forensic Auditor. In the fourth CoC meeting held on 25.9.2018, the appointment of Shri Satish Kumar Mathur the above said RP and the applicant herein has been taken note of and also steps taken by the RP to keep the CD as a going concern and also in relation to the appointment of 2 registered valuers to determine the liquidation value and fair value of the CD. It is also evident from the minutes of the fourth CoC meeting held on 25.9.2018 that one M/s S.P.Chopra & Co. was confirmed as the Forensic Auditor/Transaction Auditor in view of the fast receding period of the CIRP as at the said stage only 34 days remained and was hence allowed to make a presentation before the CoC. Further, it is also evident



that the appointment of Process Advisors to assist the RP was also taken note of. It is also seen from the minutes of the fourth CoC that the eligibility criteria to be satisfied by the interested parties for submitting the resolution plan were also finalized from which it is seen that the minimum net worth criteria for providing the resolution plan if being a firm / Body Corporate was fixed as INR 1 crore or more as on 31.3.2018 and in case of Financial Institution/Fund/PE Investor, it should have the minimum assets under Management or Committed Fund of INR 50 crore or more as on 31.3.2018. In addition, the process participation deposit of Rs.5.00 lakhs was also fixed alongwith the application for EoI.

9. From the fifth meeting of the CoC held on 23.10.2018, it is evident that calling for EOI had been published in the Financial Express in all India edition in English and in Jansatta, Delhi NCR edition of vernacular on 23.9.2018 and which also reflects that 2 EoI had been received till 15.10.2018.

10. In the subsequent meetings, it is seen that the CoC had been confronted with the resolution applicants and the resolution plans consequent to the issue of EoI and its receipt as stated in paragraph supra that while one of the resolution applicants had withdrawn from the process, the resolution plan of the other was rejected by the CoC in its meeting held on 12.2.2019, the reasons for the refusal of the resolution plan have also been given, which is reflected in the minutes of the CoC meeting held on 11.2.2019, which are to the following effect:

- i) The Resolution Plan of the Designers Point (India) Pvt. Ltd. (DPIPL) was found much below the liquidation value of the Corporate Debtor.
- ii) The amount offered is comparatively lower than the offered amount by the other Resolution Applicant.
- iii) On evaluation the Resolution Plan of DPIPL scored lower marks in quantitative and qualitative aspects, as per the evaluation matrix approved by the CoC.

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Thus, it is evident that the manner in which the CIRP has been conducted and as reflected in the minutes of the CoC in relation to the meetings held from time to time, the CoC alongwith the RP has acted diligently with a view to resolve the insolvency of the CD and despite efforts, the same has not fructified and in the circumstances, this Application has been filed by the RP seeking for the liquidation of the CD.

11. Be that as it may, it is required to note that this Petition has been initiated by the CD itself under Section 10 of IBC,2016 and IRP proposal made by CD itself. However, it is also brought to the notice of this Tribunal by way of the minutes of the 4<sup>th</sup> CoC meeting held on 25.09.2018, that the IRP proposed by the CD and appointed had not acted as required of him under IBC and CIRP Regulations as framed by Insolvency and Bankruptcy Board of India (IBBI) which had resulted in an impasse being created even after the expiry of more than 130 days as in the meanwhile even EOI was not called for. In the circumstances, this Tribunal was compelled to pass an order dated 24.10.2018 in relation to the conduct of the said IRP and the said order to be communicated to IBBI for taking necessary action against him. Further, various Applications in C.A.No.327/C-III/ND/2019, CA. 9/2019, CA/10/2019 and Application filed in relation to fraudulent sale of immovable property which have been filed by the RP as detailed in paragraph (supra) and from the allegations made therein it is observed that the management of the CD, when the CD was a going concern and prior to the initiation of the CIRP had been indulging in various transactions not behooving their position and of the fidelity which were required of them to be maintained vis-à-vis the affairs of the CD, all of which seems to be to the detriment and the interest of the CD as well as seriously prejudicing the interests of the General

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Body of the Creditors and due to proximity of the transactions being stage managed prior to the filing of the main CP. The CD and its management prima facie from the averments in these Applications seem to have carefully and in a premeditated manner seem to have arranged the affairs and assets of the CD in such a manner so as to secrete away the assets from the grasp and benefit of the general body of creditors which this Tribunal cannot permit and the provisions of IBC being misused more particularly when the Petition has been filed under Section 10 of IBC by the CD itself emphasized at the cost of repetition. However, in this connection we are not coming to any conclusion unless a detailed enquiry is conducted in relation to these Applications. At the same time, it will not detract this Tribunal from initiating the process of liquidation of the CD, as these Applications can survive even after the order of liquidation, as may be passed by this Tribunal and as envisaged under the provisions of IBC. In the circumstances, all the above pending Applications shall survive this order of liquidation and continue to be proceeded with by this Tribunal and the liquidator named herein will be required to diligently proceed with these Applications in order to attain finality and conclusion. In relation to the financial affairs of the CD, it is seen that as against the total claim which the CD is required to meet and admitted in a sum of Rs.38,59,98,147.08, which includes claims of FCs, Operational Creditors (other than workman and employees), statutory dues and in relation to dues of workmen and employees, the assets which are available being the liquidation value even as reflected in the Application is to the tune of only Rs.10.71 crore, not satisfying 1/5<sup>th</sup> of the claims and in the circumstances the resolution of the insolvency of the CD is virtually remote based on the financial figures as made

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available before this Tribunal and as can be culled out from the records and which as per the commercial decision of the CoC is also not feasible.

12. Taking into consideration all the above aspects and as the resolution plan seems to also have been rejected by the CoC based on commercial decisions, which according to the decision of Hon'ble Supreme Court in the matter of K.Sashidhar vs. Indian Overseas Bank & Ors. (Civil Appeal No.10673 of 2018) is also final and also taking into consideration the provisions of IBC this Tribunal is hence constrained to order for the liquidation of the CD.

13. Mr. S.K.Mathur, the present RP is hereby appointed as the Liquidator in view of the CoC proposing his name as the Liquidator and also in view of his consent having been furnished to act as such to carry forward the liquidation of the CD henceforth. Liquidator appointed shall strictly act in accordance with the provisions of IBC and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him.

- a. The Liquidator appointed herein shall issue the public announcement that the CD is in liquidation. In relation to officers/employees and workers of the CD, taking into consideration Section 33(7) of IBC, this order shall be deemed to be a notice of discharge.
- b. The Liquidator shall investigate the financial affairs of the CD, particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences.
- 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. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory

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authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation

- e. The order of Moratorium passed under Section 14 of the IBC shall cease to have its effect and a fresh Moratorium under section 33(5) of the IBC shall commence;
- f. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in chapter III of Part II of the IBC.
- g. The Liquidator is directed to investigate the financial affairs of the CD in terms of the provisions of Section – 35(1) of IBC read with relevant rules and regulations and prosecute or file its response for disposal of any pending Company Applications inter alia CA.No.327/C-III/ND/2018, CA.No.9/2019, CA No.10/2019, CA No.11/2019 and CA filed vide Diary No.0710102000672019 of 2019 during the process of liquidation.
- h. The Liquidator shall submit a Preliminary report to this Tribunal 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 Members of CoC.
- j. The above application is disposed of in the aforesaid terms.

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(K.K.VOHRA)  
MEMBER(Technical)

U.D.Mehta  
23.09.2019

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23/09/2019  
(R.VARADHARAJAN)  
MEMBER(Judicial)

*[Signature]*  
सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003

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