



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.208/2022 in
C.P. (IB) No.26/BB/2021
(Admitted Matter)

Under Section 33 of the
Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s. Hindustan Tin Works Limited ...Applicant/Operational Creditor

Versus

M/s. Rich Fruits Private Limited
... Respondent/Corporate Debtor

And in the matter of IA No.208/2022:-

Mr.Hari Babu Thota,
Resolution Professional,
Rich Fruits Private Limited,
44/1,2nd Floor, 11th Cross
8th Main, 2nd Block, Jayanagar
Bangalore-560011 ...

Applicant-Resolution Professional

Order delivered on: 28th July, 2022

Coram: 1. Hon'ble Mr. Mr. Kishore Vemulapalli, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant/
Resolution Professional : Shri Chandramouli Prabhakar with
Shri Haribabu Thota, RP

ORDER**Per: Manoj Kumar Dubey, Member (Technical)****I.A No.208/2022:**

- 1 This application has been filed by Mr.Hari Babu Thota, the Resolution Professional of M/s Rich Fruits Private Limited (Corporate Debtor) under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of Rich Fruits Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation Process of the Corporate Debtor etc.
- 2 CP (IB) No.26/BB/2021 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by "M/s. Hindustan Tin Works Limited" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Rich Fruits Private Limited was admitted on 02.02.2022 and Mr.Hari Babu Thota 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 09.02.2022 (Annexure 2 to the Application) in English and in Kannada newspapers. On 02.03.2022, Interim Resolution Professional submitted the report certifying the constitution of CoC to this Tribunal. The IRP constituted a CoC consisting of the following sole creditor.

Sl No.	Name of the Financial Creditor	Amount Claimed	Amount Provisionally Admitted	% of voting share in the meeting
1	Shriram City Union Finance Limited	Rs.22,63,983	Rs.22,63,983	100%

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- 4 The 1st CoC meeting held on 09.03.2022 and confirmed the appointment of Interim Resolution Professional (IRP) as Resolution Professional (RP) . On 30.03.2022, the RP was appointed by this Tribunal in IA.No.100/2022.
- 5 At the 2nd meeting of the CoC held on 16.04.2022, the RP invited Expression of Interest (EOI) in Form G by Publishing in Financial Express (English) and Samyuktha Karnataka (Kannada) in 17.04.2022. The last date of submission of EOI was 05.05.2022.However, no EOI was received by the RP.
- 6 At the 3rd meeting held on 20.05.2022, the members of CoC approved the Liquidation of the Corporate Debtor with 100% voting share. Copy of the minutes of the 3rd CoC meeting is attached as Annexure 4 to the application, which is as under:

“Resolved that as no resolution plan is received for revival of the corporate debtor, the consent of Committee of Creditors be and is hereby accorded for initiation of liquidation of the corporate debtor under section 33 of Insolvency and Bankruptcy Code, 2016.

Resolved further that the committee be and hereby be appointed Mr.Hari Babu Thota as the Liquidator of Rich Fruits Private Limited for a monthly remuneration of Rs.50,000(excluding GST and out of pocket expenses) or as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016, whichever is higher.

Resolved further that Mr.Hari Babu Thota be and hereby be authorized to file necessary applications before the Hon’ble National Company Law Tribunal, Bengaluru Bench to give effect to the resolutions”

- 7 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

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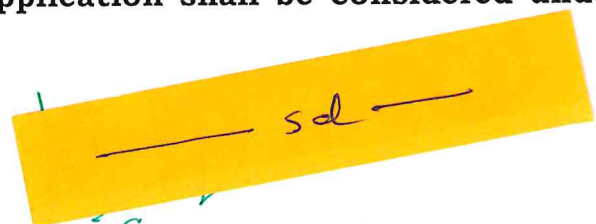
business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

- 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 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.
- 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).”

- 10 **Prescribed period for filing application-** In the present case, the application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 02.02.2022. The present application is filed on 01.06.2022, i.e., during the CIRP period but before the confirmation of Resolution Plan. **Hence, this application shall be considered under**



section 33(2), but not under section 33(1), which has been stated in the Application/Prayer.

- 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 CIRP shall, subject to submission of written consent, act as the Liquidator for the purpose of Liquidation. **Shri Hari Babu Thota, Resolution Professional with Registration No. IBBI/IPA-002/IP-N00084/2017-2018/10225.** The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, **Shri Hari Babu Thota** is appointed as the Liquidator.
- 12** 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 [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The liquidation cost is as per the resolution passed at agenda Item No.8 of Annexure 4 to the application
 - b. Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The CoC has made recommendation regarding sale of the Corporate Debtor as a going concern as per the resolution passed at agenda Item No.11 of Annexure 4 to the application. Therefore, the Liquidator is directed to refer Regulation 32A of the IBBI (Liquidation Process) Regulation, 2016 and take necessary action
 - c. Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** -The fee payable to the Liquidator is as per the resolution passed at agenda Item No.7 of Annexure 4 to the application.

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13 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.

14 In view of the satisfaction of the conditions provided under **Sec. 33(2) of the Code**, the Corporate Debtor **M/s. Rich Fruits 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:

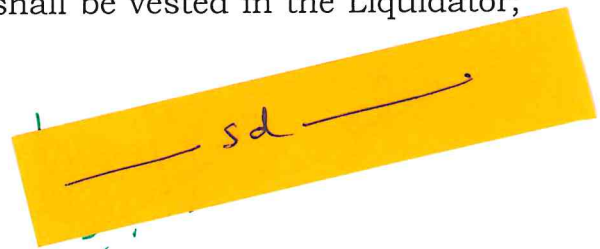
I. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the corporate Debtor;

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 references to the liquidator for references to the Interim Resolution Professional.
- 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.
- IX. The Liquidator shall file his written consent within one week from today

15 Thus **I.A No. 208 of 2022** stands disposed of.

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16 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)

(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)