IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH IV, NEW DELHI
C.A. 500/ND/2019
IN
Company Petition No. (IB)- 1061/(ND)/2018

IN THE MATTER OF:

PRADEEP KUMAR WATTS (RP) .... APPLICANT

AND

IN THE MATTER OF:

M/s MODI DISTILLERY

(A UNIT OF MODI DISTILLERY LTD)

.... PETITIONER

Versus

M/s GAGAN DISTILLERS AND

BEVERAGES PRIVATE LIMITED

.... CORPORATE DEBTOR

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor

ORDER PRONOUNCED ON: 08.01.2020

Coram:
DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
SH. HEMANT K. SARANGI
HON'BLE MEMBER (TECHNICAL)

Presents:
For the petitioner - Mr. Sandeep Kumar & Mr. Rishi Singhal, Adv.
For the Respondent -

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. This is an application filed by the Resolution Professional under Section 33 (2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code”) for passing an order for liquidation of the corporate debtor, M/s Gagan Distillers and Beverages Private Limited.

2. Facts in brief are that the Operational Creditor, M/s Modi Distillery, had filed an application bearing no. IB-1061/(ND)/2018 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s Gagan Distillers and Beverages Private Limited. The said application was admitted by this tribunal vide order dated 10.04.2019 and Mr. Sandeep Chandana was appointed as Interim Resolution Professional (IRP).

3. The Applicant states that, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in FORM-A on 12.04.2019, in Financial Express (for English) and Jansatta (for Hindi). The Public

announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI). The Applicant states that pursuant to the public announcement, two claims were received out of which one is financial creditor, M/s Punjab National Bank and one claim is from Operational Creditor, M/s Modi Distillery. The Interim Resolution Professional constituted a Committee of Creditors (CoC) on 15.02.2019, which comprised of Financial Creditor of the Corporate Debtor with 100% voting rights. IRP conducted first CoC meeting on 21.05.2019 wherein CoC decided to replace IRP and made appointment of Mr. Pradeep Kumar Watts as Resolution Professional under section 22(2) & 22(3) (b) by 100% voting rights, by the order dated 04.06.2019 the appointment of IRP as the RP was confirmed by this Tribunal.

4. The Applicant further submits that, it invited Expression of Interest from prospective Resolution Applicants in terms of section 25(h) and regulation 36(1) of IBBI (CIRP) Regulation, 2016 under prescribed FORM G on 24.06.2019. The same was also uploaded on the IBBI website. The applicant also prepared a provisional Information Memorandum, based on available information, including Audited Balance Sheet of 2017-18

obtained from Financial Creditor and Information available at MCA site and submitted to CoC on 26.06.2019 after taking required undertaking.

5. The Applicant further states that, the Corporate Debtor has fixed assets worth Rs. 2.72 crore as shown in the Audited Balance Sheet for 31.03.2018, provided by the Financial Creditor. There is no activities at Registered Office at New Delhi and the works at Abohar since, 01.04.2019 as the Corporate Debtor did not get any liquor license for 2019-20. Further, nothing has been found at the works of Corporate Debtor at Abohar except tables and chair. There were 4 cars and 2 two wheelers, Agriculture land at village Kalar-Khera, Abohar, District Fazilaka, Punjab and one Flat at Rohini, Delhi as per last audited balance sheet available on 31.03.2018. out of these assets cars and two wheelers were neither found at Registered Office at Delhi nor at the works at Abohar. Therefore, Physical Possession of fixed assets shown in balance sheet of CD as on 31.03.2018, except flat at Delhi and agriculture land at Punjab, could not be made available to RP as none of the directors could be contacted at the Registered office and the works at Abohar. It has also come to notice that

none of the employees was working at the Registered Office and the works at Abohar.

6. The RP states that, he convened the 5th CoC at the office of the PNB, Circle Office, Bhatinda at 12 noon on 01.10.2019 in which following conclusions were made:

    a. RP informed the CoC that no resolution plan was received from any resolution applicant of EOI pursuant to FORM G published on 24.06.2019 and 28.08.2019 except one EOI by M/s Jitalia Finance Co. Ltd. which did not respond after submitting of Information Memorandum.

    b. Further, CoC was of the view that revival of business activity by CD is not found to be feasible and viable at the present stage as liquor licence fee for 2019-20 were not granted by Excise Department where, company has been doing whole sale as well as retail trading of liquor.

Hence, CoC took the decision to liquidate Corporate Debtor and resolved to liquidate CD passed following

Resolution which was approved by 100% voting right as under:

"RESOLVED THAT as no resolution plan has been received during the CIRP, CoC recommended for liquidation of the company and Resolution professional is authorised to make an application before Hon'ble NCLT for liquidation of the CD u/s 33(2) of IBC 2016. Cost of filing the application through an advocate, shall be part of CIRP cost and paid by CoC"

7. The fair value and liquidation value of the assets of the Corporate Debtor based on average of two valuation reports obtained from the valuers is as under:

S.No.	Name of Valuer	Fair Market Value	Liquidation Value
1	Er. Anil Kumar Saxena	Rs.2,20,80,000/-	Rs.1,76,64,000/-
2	Mr. Mukesh Kumar Bhakhri	Rs.2,44,00,000/-	Rs.1,95,00,000/-
Average		Rs.2,32,40,000/-	Rs.1,85,82,000/-

8. The Applicant also states that, as the RP did not give his consent to continue as liquidator, therefore, CoC passed following resolution with 100% voting rights:

> *"Resolved that existing Resolution Professional is unable to continue as Liquidator and did not submit the written consent as required under section 34(1), application be moved before Hon'ble NCLT for appointment of Liquidator in terms of provisions of section 34 (4) (c) of the code. Name of Insolvency Professional to act as Liquidator for approval of Hon'ble NCLT shall be informed along with written consent soon on receipt of approval of competent authority. That till such time, the liquidator is appointed by Adjudicating Authority, the present RP to continue and perform his duties, subject to approval of Hon'ble NCLT."*

9. The CoC has proposed the name of Mr. Suresh Kumar Bansal having IBBI Reg. No. IBBI/IPA-2/IP-N00605/2018-19/11863, to act as liquidator by letter dated 12.10.2019, along with written consent of proposed Liquidator, the same has been annexed with the application.

10. The affidavit in respect of compliance under IBC and relevant Regulations by the Resolution Profession has also been annexed along with the application.

11. The CoC in its 5th meeting has resolved, by 100% majority, to liquidate the Corporate Debtor as no Resolution Plan was received for the Corporate Debtor. Accordingly, as instructed by the CoC, the Applicant has filed the present application seeking liquidation of the Corporate Debtor under section 33 of the Code.

12. As a sequel to above, the application is allowed, ordering liquidation of the corporate debtor, M/s. Gagan Distillers and Beverages Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

    1. Mr. Suresh Kumar Bansal having IBBI Reg. No. IBBI/IPA-2/IP-N00605/2018-19/11863, is appointed as Liquidator in terms of Section 34(1) of the Code;

2. Mr. Suresh Kumar Bansal is directed to issue Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

3. 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;

4. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insòlvency and Bankruptcy Code shall commence;

5. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

6. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

7. He shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc.

8. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

9. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

13. C.A. 126(ND)/2018 filed in IB 493(ND)/2018 is disposed of in the aforesaid terms.

14. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, Resolution Professional and the Liquidator at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd-

(HEMANT K. SARANGI)
MEMBER (TECHNICAL)

Sd-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)