

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

I.A./1169/ND/2023

IN

Company Petition No. (IB)-307/ND/2019

(Under Section 33 of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions)

IN THE MATTER OF:

M/s. Merckens Karton-UND Pappen Fabric GMBH

.... Operational Creditor

Versus

M/s. Franco Leone Limited

.... Corporate Debtor

AND IN THE MATTER OF:

Mr. Anil Kohli

Resolution Professional of

M/s. Franco Leone Limited

.... Applicant

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 15.03.2023

ORDER

PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

The above application i.e., I.A./1169/ND/2023 is filed by Mr. Anil Kohli ('Applicant') Resolution Professional of M/s. Franco Leone Limited seeking liquidation of M/s. Franco Leone Limited ('Corporate Debtor') under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ('Code') in view of the

rejection of the two resolution plans by Committee of Creditors ('CoC') in the 8th CoC Meeting and therefore, praying for the following relief(s):-

- a) Allow the present Application;
- b) Pass an order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 to liquidate the Corporate Debtor;
- c) Consequently, pass an order for appointment of Mr. Anil Kohli having IBBI Registration No. IBBI/IPA-001/IP-P00112/2017-2018/10219, as the liquidator of the Corporate Debtor;
- d) Allow the Liquidator to sell the Corporate Debtor as a going concern in terms of Regulation 32 of the Liquidation Process Regulations, 2016 as resolved by the Committee of Creditors in the 8th meeting convened on 23.12.2022;
- e) Pass such other or further order that Hon'ble Adjudicating Authority deem fit and proper in the facts and circumstances of the case.

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:

- i) The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Franco Leone Limited ('Corporate Debtor') vide this Adjudicating Authority order dated 09.05.2022 in C.P.(IB)/307/PB/2022 an application under Section 9 of the Code, 2016 filed by M/s. Merchens Karton-UND Paper Fabric GMBH ('Operational Creditor'). The applicant further submits that Mr. Vijender Sharma was appointed as the Interim Resolution Professional of the Corporate Debtor by this Adjudicating Authority. The Applicant adds that Mr. Anil Kohli ('applicant') was appointed as the Resolution Professional of the Corporate Debtor with 100% voting in favour by the CoC in the First CoC Meeting dated 01.06.2022 and the same is confirmed by this Adjudicating Authority vide its order dated 27.07.2022.
- ii) The applicant submits that the public announcement in terms of Regulation 6(1) of the CIRP Regulations, 2016 was made in Form – A on 10.05.2022 inviting the claims from public and the last date for submission of proof of claim was 23.05.2022, consequent to which after collating the claims received from Creditors, Committee of Creditors

(‘CoC’) was constituted comprising of a sole Financial Creditor i.e., M/s. Punjab & Sind Bank.

- iii) The applicant further submits that the CoC in its Third CoC Meeting dated 10.08.2022, had resolved to publish Form G inviting Expression of Interest from Prospective Resolution Applicants. The applicant adds that Form G was published on 13.08.2022 in two newspapers i.e., Business Standard (English-NCR & Chandigarh Edition) along with Dainik Jagran (Hindi-NCR, Haryana & Himachal Pradesh Edition) wherein the last date for submission of EoI was 29.08.2022 and last date for submission of Resolution Plan was 11.10.2022.
- iv) The applicant submits that pursuant to publication in Form-G, two Prospective Resolution Applicants (PRAs) has submitted the Resolution Plan which were discussed and deliberated in the 6th CoC Meeting convened on 04.11.2022 and both the PRAs sought time to re-asses the resolution plan as per the discussion held in the 6th CoC Meeting.
- v) The applicant further submits that the CoC members were apprised in 6th CoC Meeting that the CIRP period of 180 days was expiring on 05.11.2022. The applicant adds that considering the on-going negotiations with the PRA’s, the CoC had unanimously resolved to seek extension of CIRP period by further 90 days and the Adjudicating Authority vide order dated 10.11.2022 had granted the extension of CIRP Period by 90 days.
- vi) The applicant submits that the CoC in its 7th CoC Meeting held on 02.12.2022 was in receipt of the revised Resolution Plan from both the PRAs and in the 8th CoC Meeting held on 23.12.2022, both the Resolution Plan submitted by PRAs being compliant with the provisions of Code, 2016 were put to vote before the Committee of creditors and also the resolution for liquidation of the Corporate Debtor and the provisions of Regulation 39B, 39C and 39D of CIRP Regulations, 2016 were discussed in the meeting. The applicant adds that the voting on all the resolution were open from 26.12.2022 at 12:00 till 25.01.2023 at 6:00 P.M..

vii) The applicant submits that the resolutions in respect of the approval of resolution plans submitted by both the PRAs were rejected by the sole CoC Member. The applicant adds that the resolution under Regulation 39B and 39 C of the CIRP Regulation, 2016 were unanimously approved by the sole member of the Committee of Creditors having 100% voting share.

viii) The applicant submits that the present application is filed under Section 33(1) of the Code, 2016 as the sole member of the Committee of Creditors has not approved any resolution plan. The applicant adds that the applicant has given consent to act as the Liquidator in terms of Section 34(1) of the Code, 2016

3. We have considered the submissions made by the Learned Counsel on behalf of the applicant/Resolution Professional and upon perusing the material available on record, it is observed that the CoC in its commercial wisdom had rejected the resolution plans submitted by both the Prospective Resolution Applicants and has decided to liquidate the Corporate Debtor. From the minutes of the 08th CoC meeting held on 23.12.2022, it is observed that the CoC has unanimously decided to liquidate the Corporate Debtor and further decided to appoint the applicant as the liquidator for a professional fee at the discount of 25% on the fee payable as per Regulation 4(2) of IBBI (Liquidation Regulations), 2016 plus GST & OPE with vote share of 100% in the favor.

4. Further, the CoC in its 8th CoC Meeting had unanimously passed the resolution required under Regulations 39B, 39C of the CIRP Regulations, 2016, which are reproduced herein below: -

a) Regulation 39B of IBBI (CIRP) Regulations, 2016:

To consider and approve creation of Pool of Funds towards Contribution to Liquidation Cost (Excess of the Estimated Liquidation Costs over the estimated liquid assets of the corporate debtor) in accordance with Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The above matter is resolved as under:

"RESOLVED THAT the consent of members of Committee of Creditors be and is hereby accorded towards the creation of Pool of Funds for estimated Contributions to Liquidation Costs aggregating to Rs. 35 Lacs which is in excess of the estimated liquidation costs over the estimated liquid assets of the corporate debtor, from Financial Creditors, being Financial Institutions, to meet the Liquidation Costs, which shall be repayable with interest at bank rate referred to in Section 49 of the Reserve Bank of India Act, 1934 (12 of 1934) as part of liquidation cost.

b) Regulation 39C of IBBI (CIRP) Regulations, 2016:

To recommend for exploring the Sale of Corporate Debtor as a going concern once in accordance with Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

The above matter is resolved as under:

"RESOLVED THAT the members of Committee of Creditors hereby recommend for first exploring the Sale of Corporate Debtor as a going concern once in accordance with the provisions of Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

RESOLVED FURTHER THAT the RP is authorised to submit the recommendation of CoC before Hon'ble NCLT while filing the application for liquidation of Corporate Debtor."

5. It also seen from the record that the Applicant herein has accorded his written consent in Form AA to act as the Liquidator of the Corporate Debtor along with the IBBI certificate as Annexure A-12 to the present application. Further, in light of the above submissions, this Adjudicating Authority has not received any application for approval of Resolution Plan within the timeline prescribed under Section 12 of the Code, 2016 and the Resolution Professional under Section 33(2) of the Code, 2016 had intimated this Adjudicating Authority of the decision of the committee of creditors to liquidate the Corporate Debtor being approved with 100% votes in favor in the 8th CoC Meeting held on 23.12.2022.
6. Accordingly, the instant application **I.A./1169/ND/2023** is **allowed** and M/s. Franco Leone Limited ('Corporate Debtor') is ordered to be liquidated with the following directions:

- a. Mr. Anil Kohli, having IBBI Registration No. IBBI/IPA-001/IP-P00112/2017-2018/10219, as the liquidator of the Corporate Debtor and having E-Mail id: anilkohli@arck.in is hereby appointed as the Liquidator as provided under Section 34(1) of the Code, 2016.
- b. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c. 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 Insolvency and Bankruptcy Code shall commence;
- d. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.
- e. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.;
- f. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- g. On having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority
- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit 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;

- j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator and RoC, NCT of Delhi & Haryana for taking necessary steps.

With the above directions, this application i.e., **I.A./1169/ND/2023 in Company Petition No. (IB)-307/ND/2019** is hereby allowed and disposed of.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (J)