IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 218
(IB)-268/ND/2021
New IA-72/2024, New IA-82/2024, New IA-160/2024
New IA-181/2024, IA-1740/2023

IN THE MATTER OF:
Punjab National Bank ... Applicant/Petitioner

Versus

M/s. Shri Vishnu Eatables(INDIA)Ltd. & Ors. ... Respondent

Under Section: 7 of IBC 2016

Order delivered on 16.01.2024

CORAM:
SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:
For the Applicant :
For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-72/2024:- The IA has been preferred by the Liquidator for taking 15th Progress Report on record. For the reasons stated therein the IA is allowed and the report is kept on record, subject to all just exceptions.

IA-82/2024:- The prayer made in the captioned Application reads thus:

I. "Direct the liquidation of the Corporate Debtor as referred under sub-section (2) of Section 33 of the Insolvency and Bankruptcy Code, 2016 and in the manner as laid down in Chapter III of the code, 2016;

II. To issue a public announcement stating that the corporate debtor is in liquidation;

III. Require such order to be sent to the authority with which the corporate debtor is registered;

IV. To issue suitable directions to the officers concerned about the initiation of the Liquidation of the corporate debtor".

After holistic discussion, in its 14th meeting held on 28.06.2023, the CoC passed a resolution that an application should be filed for liquidation of the CD. Para 29 of the application reads thus:

> "**29.** *The RP convened 14th CoC Meeting on 28.06.2023, wherein the RP put forth agendas pertaining to the appointment of Mr. Hemanshu Kumar Jetley as the Liquidator for the liquidation process of the Corporate Debtor and the fees of the liquidator. Wherein, a voting was conducted though raise of hands. Wherein the UCO bank have abstained from voting citing that they had sent the matter to their head office (HO) for approval. Which they had not yet received. However, Punjab National bank, holding the majority share of 90.88%, approved the appointment of Mr. Hemanshu Jetely as the liquidator for the Corporate Debtor. Additionally, they approved a consolidated free amounting Rs. 3,00,000/- (excluding GST) be payable to the liquidator for the liquidation period. Resolution passed by the members of CoC is reproduced hereunder:*
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> ***AGENDA ITEM NO. 14.07***
>
> ***TO RECOMMEND THE APPOINTMENT OF MR. HEMANSHU JETLEY AS LIQUIDATOR SUBJECT TO THE APPROVAL OF ADJUDICATING AUTHORITY***
>
> ***"RESOLVED THAT,*** *the appointment of Mr. Hemanshu Jetley to act as Liquidator in the matter of M/s Shri Vishnu Eatables (India) Limited be and is hereby approved by COC members having more than 66% voting rights, subject to the approval of the Adjudicating Authority."*
>
> ***AGENDA ITEM NO. 14.08***
>
> ***TO CONSIDER AND APPROVE THE FEE AND EXPENSES OF LIQUIDATOR IN ACCORDANCE WITH REGULATION 39 D OF IBBI (CIRP) REGULATIONS 2016***
>
> ***"RESOLVED THAT*** *a consolidated fee of Rs. 3,00,000/- (excluding GST) be is and hereby approved and payable to the Liquidator for the complete duration of the liquidation period."*

As can be seen from Section 33 (2) of IBC, 2016, on being apprised of the decision taken by CoC regarding liquidation of the CD, this Adjudicating Authority would pass the order of liquidation in the manner specified in Section 33 (1) of the IBC. The provisions of Section 33 (1) & (2) of IBC. 2016 reads thus:

"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.

"33 (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 [1][approved by not less than sixty-six per cent. of the voting share] 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)

Explanation.-- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

In the wake of the resolution passed by the CoC with 90.88% vote share, we are left with no option but to order liquidation of the CD.

Accordingly, we appoint **Mr. Prabhjit Singh Soni** with ***Reg. No: [IBBI/IPA-003/IP-N00377-C01/2017-18/10143] (e-mail ID: psgurleensoni@gmail.com)*** based on the latest list furnished by the Insolvency and Bankruptcy Board of India applicable for the period between January 1 2024-June 30, 2024 as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions:

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the extent Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority. The financial affairs of the Corporate Debtor shall also be investigated in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and the Insolvency and Bankruptcy Board of India.

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

f) 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.

g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part 11 of the Insolvency and Bankruptcy Code, 2016.

h) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

i) Copy of this order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps qua the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

j) The Liquidator appointed as above may take steps to sell the Corporate Debtor as a Going Concern.

12. With the above directions, this IA(IBC)/ **82/2024** stands **allowed** and **disposed of.**

IA-160/2024:- Mr. Hemanshu Jetely, the RP is present in person, In the wake of the order passed in IA-82/2024, the present IA-1740/2023 has become otiose. Thus the same **is dismissed as infructuous.**

IA-181/2024:- The IA has been preferred for taking 8th Progress Report on record. For the reasons stated therein the IA is allowed and the report is kept on record, subject to all just exceptions.

IA-1740/2023:- There is no appearance on behalf of the respondents despite service of notice. In the wake the proceedings qua them are set ex-parte.

List the matter on 26.02.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)