

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

Under Section 33(1) of Insolvency & Bankruptcy Code, 2016

Interlocutory Application 871/2021

In

Company Petition No. 2534/I&BP/NCLT/MAH/2019

Mr. Anuj Bajpai

708, 7th Floor, Raheja Centre,

Nariman Point, Mumbai- 400021

.... Resolution Professional

In the matter of

Himgiri Textiles

.... Operational Creditor

vs.

Shirt Company (India) Pvt. Ltd.

... Corporate Debtor

Order delivered on 22.12.2021.

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (T)

For the Applicant: Adv. Shyam Kapadia a/w Adv Rahul Gaikwad a/w Adv Nikita
Abhyankar i/b Gravitas Legal for Mr. Anuj Bajpai Resolution Professional

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. This is an application filed by the Resolution Professional (RP) seeking Liquidation of the Corporate Debtor under section 33(1) of the Code.

2. The order of admission of CIRP against the Corporate Debtor was passed on 26.02.2020 and Mr. V. B. Reddy was appointed as an Interim Resolution Professional (IRP). The present applicant, Mr. Anuj Bajpai, was appointed as Resolution Professional on 18.09.2020, vide order passed by this Tribunal In I.A. 1177 of 2020.
3. The Resolution Professional called for the second meeting of the CoC which was held on October 14, 2020. At the time of the second meeting, the Resolution Professional informed the CoC that only the voting percentage of the Financial Creditor was mentioned and whereas there was no mention of the amounts of admitted claims of each Financial Creditor. For the said reason, it was necessary to re-examine all the claim documents for review and qualification of the claim amounts. Upon re-examination, the final voting percentage of the members of the CoC were as follows;

(amounts in Crores)

Sr. No.	Financial Creditor	Amount Claimed	Amount Admitted	Voting %*
1.	Bank of Baroda	36.99	36.66	30.13
2.	Deutsche Bank	8.70	8.70	7.15
3.	Pegasus Asset Reconstruction Pvt. Ltd.	58.57	58.57	48.14
4.	Religare Finvest Ltd.	20.17	17.33	14.58
	Total	124.43	121.26	100

** The aforementioned details were confirmed and informed to the CoC during its fourth meeting held on December 21, 2020.*

4. The Applicant filed I.A. 1232 of 2020 seeking co-operation of the suspended Board of Directors of the Corporate Debtor. Further, the Applicant took possession of the Registered office on 05.11.2020, pursuant to the direction by this Bench to conduct the joint meeting, vide its order dated 03.11.2020. The applicant also was informed about certain properties situated as Turbhe, which was under physical possession of court receiver, appointed by the Hon'ble Bombay High Court, in a commercial arbitration No. 1444 of 2019.

5. The Applicant/ Resolution Professional filed an Interim Application before the Hon'ble Bombay High Court, vide I.A. 6219 of 2020 and the same was allowed on 17.12.2020. Pursuant to that the Applicant took physical possession of the property at Turbhe on 28.12.2020.
6. However, the Applicant was not able to take physical possession of the property at Coimbatore, on account of several labour disputes. The Applicant filed an I.A. 440 OF 2021, and sought assistance from Superintendent of Police. The said I.A. was allowed on 11.06.2020.
7. The applicant has also given list of ongoing disputes pending as follows;
Interlocutory Application No. 696 of 2021

One of the Operational Creditors of the Corporate Debtor has filed the said Application thereby seeking directions from this Hon'ble Tribunal inter alia to take control of the assets of one Shivbhoj Hotels and Restaurants Private Limited, purportedly being a Subsidiary Company of the Corporate Debtor.

Interlocutory Application No. 2124 of 2021

One Royal Chains Private Limited, an Unsecured Creditor of the Corporate Debtor has filed the said Application thereby seeking a re-call/setting aside of the Order of Admission dated 26.02.2020 and/or the specific performance of a certain Memorandum of Understanding executed between the said Applicant and the suspended directors of the Corporate Debtor.

Company Petition No. 666 of 2021

The RP has filed the said Company Petition under Section 9 of the Code against Cathay Pacific Airways Limited for payment of the license fees in arrears alongwith interest and penalty thereon to the tune of Rs. 93,12,15,000/-.

8. The Applicant appointed valuers, in the fourth meeting of CoC, and have received the valuation report which is as follows;

Particulars	Avg. FMV	Avg. LV
Land & Building	134,75,98,000/-	98,17,10,750/-
Plant & Machinery	63,39,000/-	45,66,000/-
Financial Assets	11,46,775/-	11,46,775/-
Total	135,50,83,775/-	98,74,23,525/-
(In Words)	One Hundred Thirty Five Crores Fifty Lakhs Eighty three Thousand Seven Hundred Seventy Five Only	Ninety Eight Crores Seventy Four Lakhs Twenty Three Thousand Five Hundred Twenty Five Lakhs Only

9. The CoC in its 5th meeting have discussed EOI process documents, RFRP, Eligibility Criteria and Evaluation Matrix. At the same time, the CoC also considered the possibility of proceeding for liquidation of the Corporate Debtor without going into the EOI process. However, the Resolution Professional stated that since the Hon'ble Bombay High Court had recorded in its Order dated 17.12.2020, that Royal Chains Private Limited, would have the opportunity to put forth a Resolution Plan in order to take over the Turbhe property, it is advisable that the EOI process be continued by the CoC.
10. Further, Form G was issued on 19.01.2021, thereby inviting EOI from proposed Resolution Applicant. However, no EOI was received and the same was discussed in its 6th meeting of COC.
11. The COC in its 7th meeting on 06.03.2021 have resolved to liquidate the Corporate Debtor. The resolution of COC and the 100% voting result were recorded in to report .As per Resolution No. 2, Mr. Anuj Bajpai was appointed to act as the Liquidator of Shirt Company (India) Private Limited. The said Resolution is reproduced below;
Resolution No.2 – to appoint and fix the remuneration payable to the Liquidator of Shirt Company (India) Private Limited

"Resolved that pursuant to Section 34 of the Insolvency and Bankruptcy Code, 2016 and other relevant rules and Regulations made thereunder, the CoC members hereby approves the appointment of Mr. Anuj Bajpai having IBBI Registration No. IBBI/IPA-001/IP-P00311/2017-2018/10575 to act as the Liquidator of Shirt Company (India) private limited".

"Further resolved that pursuant to Section 34 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulations, 2016 and other relevant Rules and Regulations made thereunder, the CoC hereby approves the minimum non refundable fees to the Liquidator be Rs. 2,00,000/- per month (to be adjusted with the table provided Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulation 2016".

Resolutions as discussed in the 7 th Meeting of the CoC of the Corporate Debtor	Particulars of Votes Cast	
	Particulars	% Voting
Resolution No. 1 - To approve the liquidation of Shirt Company (India) Pvt Ltd "RESOLVED THAT pursuant to Section 33(2) of the Insolvency & Bankruptcy Code, 2016 and Rules & Regulations made thereunder, the CoC hereby decides to conclude the Corporate Insolvency Resolution Process of the Corporate Debtor, Shirt Company (India) Pvt Ltd and take the Corporate Debtor under Liquidation."	Votes cast in favour	100 %
	Votes cast against	0 %
	Votes Abstained	0 %
	Total	100 %
	Result: Resolution is passed by 100% votes.	
	Votes in Favour: CoC Members mentioned in point 6 (Sr. No. 1 to 4)	
Votes Against: Nil		
Votes Abstained: Nil		



12. This Bench, approves the Liquidation of the Corporate Debtor in view of the fact that no Expression of Interest were received and that the COC has resolved to Liquidate the Corporate Debtor. This Bench appoints Mr. Anuj Bajpai having IBBI Registration No. IBBI/IPA-001/IP-P00311/2017-2018/10575 as Liquidator and the fees of the Liquidator is fixed as Rs. 2,00,000/- p.m. The I.A. is allowed and disposed off.

13. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, we find that the complied with the procedures laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), Further the valuation report filed by the valuer has not been disputed by the CoC. On verification, we are of the view that this case is fit to pass liquidation order under sub-section 1 of Section 33 of the Code, as no Resolution Plan has been submitted before the Adjudicating Authority by the Resolution Professional. Accordingly, this Bench orders;
 - a. that the Corporate Debtor be liquidated, in the manner as laid down in the Chapter-III of the Code by issuing Public Notice, stating that the Corporate Debtor is in liquidation, with a direction to the Liquidator to send this order to the ROC, under which this Company has been registered.
 - b. that the Resolution Professional herein is hereby appointed as Liquidator, as provided under Section 34(1) of the Code.
 - c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter cease to exist. All these powers henceforth vest with the Liquidator.
 - d. 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.
 - e. that the Liquidator will charge fees for conduct of the liquidation proceedings, in proportion to the value of the liquidation estate assets, as specified by the IBBI, and the same shall be paid to the

Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

- f. that 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.
 - g. This liquidation order shall be deemed to be 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.
14. Consequently, the Applicant Resolution Professional is appointed as the Liquidator as provided under section 34(1) of the Code. All 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;
15. Accordingly, this Misc. Application is hereby allowed directing 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.

Sd/-

Anuradha Sanjay Bhatia
Member (T)

Sd/-

Suchitra Kanuparthi
Member (J)