



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

24. I.A. 1184/2022
I.A. 914/2022
IN
C.P.(IB)-3615(MB)/2019

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **24.01.2023**

NAME OF THE PARTIES: Ayush Food Products

V/s.

Magdha Creative Merchant LLP

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Zaid Ansarti, counsel appearing for the Liquidator in I.A. No. 914/2022,
Mr. CS Nithish Bangera counsel appearing for the RP in I.A. 1184/2022 are
present through virtual hearing.

I.A. 914/2022

The above Interlocutory Application is filed by the Applicant/IRP for
liquidation of the Corporate Debtor company.

Heard the argument of counsel appearing for the Applicant/IRP and the
above Interlocutory Application is **allowed**. Detail order follow.

List all other pending applications on **13.03.2023**.

Sd/-
MADHU SINHA
Member (Technical)

//SKS//

Sd/-
H.V.SUBBA RAO
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,
COURT-III**

IA. No. 914 of 2022

IN

C.P.No.(IB)3615(MB) of 2019

Under Section 33(3), r/w 14 of Insolvency
& Bankruptcy Code, 2016

In the matter of

M/s Magdha Creative Merchant LLP.

.... CORPORATE DEBTOR

I. A. No. 914 of 2022

Mr. Shyam Sundar Kasera

.... Applicant/Liquidator

Order delivered on 24.01.2023

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Zaid S. Ansari & Associates,(Advocate)
Shyam Sundar Kasera, RP

1. The above application I.A. No. 914/2022 is filed by Resolution Professional, Mr. **Shyam Sundar Kasera** (hereinafter referred to as the "Applicant") seeking liquidation of **Magdha Creative Merchant LLP.** (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:



- a. *That this Hon'ble Tribunal be pleased to pass suitable order to liquidate the Corporate Debtor as per the provisions of Section 33 of Insolvency and Bankruptcy Code, 2016;*
- b. *That this Hon'ble Tribunal be pleased to pass suitable order thereby appointing Liquidator for the Corporate Debtor and fixing his/her remuneration at such rate as this Hon'ble Tribunal may deem fit in its sole and absolute discretion; and*
- c. *Such other and further reliefs be granted by this Hon'ble Tribunal as it may deem fit in the facts and circumstances of the present matter.*

2. The brief facts of the application are as follows:

- A. The present Application has been filed by Mr. Shyam Sundar Kasera (IP Registration No. IBBI/IPA-001/IP-P00594/2017-18/11064, the Resolution Professional of M/s Magdha Creative Merchant LLP ("Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy code, 2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the financial creditor, namely Punjab National Bank and L & T Housing Finance Ltd, has resolved to liquidate the Corporate Debtor.
- B. On 05.03.2021, Corporate Debtor was admitted into CIRP and the Applicant herein was appointed as Interim Resolution professional in accordance with the code.
- C. The Applicant further stated that albeit with great difficulty, claims were invited from all the creditors of the Corporate



Debtor and after following the due process as envisaged under law, the claims of the Respondent No. 2 and 3, being the only claimants, were verified by 30.03.2021 and the CoC of the Corporate Debtor came to be constituted.

- D. On 18.01.2022, the Applicant prepared an information Memorandum of the Corporate Debtor.
- E. Further on 30.12.2021, the Applicant realized Expression of Interest (EOI) in Form G inviting Resolution Plans from Prospective Resolution Applicant(s) i.e PRA(s)
- F. The Applicant further stated that IA 1299/2021 in this Company Petition was preferred on 17.06.2021, seeking suitable direction from this Bench under Section 19 of the Code.
- G. On 15.02.2022, in its 5th CoC meeting decided to liquidate the Corporate Debtor.
- H. The Applicant further submits that as required by Regulation 39B (4) of the CIRP Regulations, 2016, the CoC has, in its 5th meeting held on 15.02.2022, approved the self-explanatory resolution, with the requisite majority, providing for contribution by its members for meeting the difference between Estimated Value of Liquidation Cost and the estimated value of the Liquid Assets.
- I. The Applicant further stated that as required by Regulation 39C (3) of the CIRP Regulations, 2016, self-explanatory



recommendations and resolutions of the CoC regarding assessment of sale of Corporate Debtor as a going concern during liquidation, as approved by the CoC in its 5th meeting held on 15.02.2022.

- J. The Applicant submits that as required by regulation 39B (4) of the CIRP Regulations, 2016, the CoC has, in its 05th meeting held on 15.02.2022, approved the following self-explanatory resolution, with the requisite majority, providing for contribution.
- K. The CoC in its 5th meeting, proposed the RP Shyam Sundar Kasera, the Resolution Professional the following Resolution was passed and the extract of the same are as below:

“RESOLVED THAT the Committee of Creditors (“CoC”) of M/s. Magdha Creative Merchant LLP hereby approves the liquidation of the corporate debtor, as no Expression of Interest was received from any of the Prospective Resolution Applicant.

The Above resolution was passed with voting of 100% in favour of the resolution.

“ALSO RESOLVED THAT all necessary steps be taken by the Interim Resolution Professional to intimate to Hon’ble adjudicating authority as required under Section 33 of the Insolvency and Bankruptcy Code, 2018 and an advocate be appointed by him for the purpose of filing interlocutory application with hon’ble adjudicating authority, requesting to pass order for liquidation of the corporate debtor.”



L. The CoC in its 5th meeting also discussed about the following alternative resolution as below:

“RESOLVED THAT the Committee of Creditors (“CoC”) of M/s. Magdha Creative Merchant LLP hereby approves the Republication of Form G in Newspapers, as per the provisions of the Insolvency and Bankruptcy Code, 2016, since no Expression of Interest was received from any Prospective Resolution Applicant”.

Further it was mentioned that originally it was decided that the CoC members will vote in favor of either of the above two alternate voting items (I.e. Either “Liquidation” or “Republication of Form G”).

The mentioned alternative resolution was rejected by CoC with majority of 92.76% voting share.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 5th CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor. This bench, therefore allows the above Interlocutory Application Number 914 of 2022 and passed the following:



ORDER

1. The above I.A. No. 914/2022 is Allowed and the Corporate Debtor Magdha Creative Merchant LLP is ordered to be liquidated as a going concern.
 - a. **Mr. Prakash Dattatraya Naringrekar**, having Registration No.IBBI/IPA-002/IP-N00270/2017-18/10783, Having Email Id prakash03041956@gmail.com, mobile no. 9322714508 respectively is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration shall be as per the chart given in Regulation 4(2) of the IBBI (Liquidation Process) Regulation 2016, subject to minimum fees of RS. 2.50 lakhs plus taxes for the entire liquidation process.
 - c. 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.
 - d. The Liquidator appointed under section 34(1) of the Code. Will have 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 with the liquidator.
 - e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter 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.

- f. 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.
- g. 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.
- h. 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.
- i. 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.

With the above directions, this application i.e. I.A. No. 914 of 2022 is hereby allowed and disposed of.

Sd/-

Madhu Sinha
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)