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

Item No. 203
(IB)-445(ND)2020
IA-3124/2023, IA-3125/2023
IA-3126/2023, IA-3526/2023

IN THE MATTER OF:
Jasoda Gulliya ... Applicant/Petitioner

Versus

M/s. Idzire Hospitality Private Limited ... Respondent

Under Section: 7 of IBC, 2016 (CIRP)

Order delivered on 05.12.2023

CORAM:
SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:
For the Applicant :
For the Respondent :
For the RP : Adv. Vinod Kumar

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-3124/2023: In view of the averments made in para 7 of the petition, the composition of the revised CoC is taken on record.

The IA stands disposed of.

IA-3125/2023: In view of the averments made in para 12 of the application, the period from 28.07.2021 to 07.12.2022, during which Mr. Manoj Kumar Singh IRP remained in position, is excluded from the CIRP process, as Mr. Manoj Kumar Singh was facing disciplinary action and did not discharge any functions. The order dated 07.12.2022 passed in IA-3727/2021, in terms of which Mr. Manoj Kumar Singh was discharged as IRP is reproduced thus:

IA-3727/2021: An application filed by the Ex-IRP Mr. Manoj Kumar Singh praying to release him from the present assignment, in view of the fact that he is under disciplinary proceedings by the IBBI. In view of the averments made in the application and submissions made by the Ld. Counsel, we hereby direct Mr. Manoj Kumar Singh the Ex-IRP to handover all the documents/records/assets of the Corporate Debtor to the newly appointed IRP within 7 days and file the compliance report within 10 days before this Tribunal. His discharge from the duties will be complete only after he hands over all the documents/records/assets of the CD to the newly appointed IRP.

With this, the present IA stands disposed of.

Accordingly, the IA stands allowed.

IA-3126/2023: In view of the resolution dated 30.01.2023 passed by CoC in terms of the provision of Section 22 of IBC, 2016, the report regarding the appointment of IRP as RP is taken on record.

IA stands disposed of.

IA-3526/2023: The Ld. Counsel appearing for the Applicant could draw our attention to the resolution dated 05.06.2023 passed by the CoC for initiating the Liquidation of the CD with a 100% vote share. The relevant excerpt of the resolution i.e., Item No. 9 reads thus:

Item No 09 – To consider the steps to be taken for further course of action including liquidation of CD

The IRP informed the Committee that the Corporate Debtor is not in operation for last three years. The CoC also consider the same and discussed that there is no possibility of revival of business against the Corporate Debtor in addition to that it is also noted that no resolution plan or expression of Interest has been received from any Prospective Resolution applicant and in the name of Assets also, the Corporate Debtor has negligible assets.

Pursuant to Section 33(2) of the IBC, 2016 the Committee of Creditors to File an Application before the Hon`ble NCLT for Initiation of Liquidation of the corporate debtor. The Liquidation of Corporate Debtor was discussed in detail by the member of CoC under the current status of CIRP and following resolution was passed unanimously

RESOLVED THAT the Corporate Debtor M/s I-Dzire Hospitality Private Limited be proposed to be liquidated and IRP Mr. Suman Kumar Verma is authorized to file necessary petition before Hon`ble NCLT Delhi to this effect of liquidation.

IBBI/IPA-003/IP-N00342/2021-2022/13657

RESOLVED FURTHER THAT the IRP, MR. Suman Kumar Verma, IBBI Registration No. IBBI/IPA-003/IP-N00342/2021-22/13657 is appointed as liquidator subject to Approval by Hon'ble NCLT, who has given his consent for the same on the fees as specified in Regulation 4 of IBBI(Liquidation Process) Regulation 2016 and liquidation Cost / Expenses as specified in Regulation 2(ea) of IBBI (Liquidation Process) Regulation 2016"

RESOLVED FURTHER THAT after taking the present status of Corporate Debtor into consideration the CoC has Approved with 100 percent majority to file an Application for Liquidation Before Hon`ble court of NCLT Delhi.

As the CoC has already decided to liquidate the CD, in terms of the provisions of Section 33 (2) of IBC 2016, the same is ordered to be liquidated. Though the application suggests that the name of the RP to be appointed as Liquidator, but in the wake of the decision circulated by IBBI vide Circular No. Liq-12011/214/2023-IBBI/840 dated 18.07.2023, when the CD goes into liquidation, the IRP/RP cannot be appointed as liquidator. The circular dated 18.07.2023 reads thus:

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delni-110001.
Telephone : +91 11 23462900, +91 11 23462800
Fax +91 11 23462902, Web : www.ibbi.gov.in

Liq-12011/214/2023-IBBI/840 Dated: 18th July 2023

To
Secretary,
National Company Law Tribunal
Principal Bench
New Delhi

Subject: Recommendation for appointment of liquidator other than IRP/RP under section 34(4)(h) of the IBC, 2016 – regarding

The Code envisages time bound resolution of the Corporate Debtor (CD) to maximise the value of the assets. In cases where the CD has not been resolved successfully. Adjudicating Authority (AA) orders for initiation of the liquidation process of the CD and appoints a liquidator. In this regard, Section 34 of the Code provides that where AA passes an order for liquidation of the CD. the resolution professional (RP) appointed for the CIRP shall act as the liquidator unless replaced by the AA under the following three circumstances:

(i) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(ii) the Board recommends the replacement of a RP to the AA for reasons to he recorded in writing: or

(iii) the RP fails to submit written consent.

2. Section 34(4)(b) inter-alia provides that the AA shall replace the RP if the Board recommends the replacement for reasons to be recorded. During the review of performance of processes under the Code, it has been found that there is a meagre 4% average realisation against the admitted claims during the liquidation process whereas in Corporate Insolvenc) Resolution Process (CIRP) the average realisation is 32% against the admitted claims during CIRP. This necessitated for fresh perspective in the liquidation process and replacement of RP to act as liquidator. This subject has been considered by the Board and it is considered that AA may appoint a new IP as liquidator due to the following reasons:

(i) The IBC has been introduced with larger economic goals to revive the distressed viable CDs to convert non-performing assets as performing promote employment, entrepreneurship. and credit by valuing capital invested in the project rather than selling in bits and pieces or recovery mechanism. The prime objective of the Code is resolution. Accordingly. in cases where the CD has not been successfully resolved or resolution plan has been failed, IP who has been assigned to conduct the resolution process of the CD. may not be recommended to continue to act as liquidator.

(ii) The Code creates an ecosystem for maximisation of the value of assets of a Non-revival of the CD through CIRP adversely impacts on its value. Value is usually dependent on the time taken to resolve the insolvency since it erodes over time and rapidly once the insolvency proceedings commence. Therefore. any delay in the insolvency resolution process may make reorganisation of the CD difficult and would induce liquidation. thereby destruction of value for the stakeholders. Thus, an independent IP needs to be entrusted to conduct the Liquidation process of the CL) for valise maximisation while also ensuring the transparency and complete independence in two separate assignments.

(iii) The Code envisages CIRP and liquidation as two distinct processes with distinct roles and responsibilities. Thus. an IP undertakes the two different assignments as RP and Liquidator, separately. Segregating the dual role of an IP in the same CD as RP and liquidator will Foster an inbuilt system of check and balance in the process. thereby enhancing the accountability of each job and strengthening stakeholder's trust in the processes under the Code. Further. it would eliminate any perverse incentives, whatsoever, available with RP in deliberately pushing the CD towards liquidation and secure next assignment on ex-ante basis.

3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b). recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth. The liquidator can be appointed from the panel list of IBBI.

(Rajesh Tiwari)

General Manager

Hence, the prayer for the appointment of IRP/RP as Liquidator is rejected. Accordingly, from the panel of IBBI, Mr. Ajay Gupta with Reg. No IBBI/IPA-001/IP-P00140/2017-18/ 10304, e-mail id: ip.ajaygupta@corpvisory.com (Mobile No. 9871277445), is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process, inter alia, in terms of the following directions:

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 38, 39 and 41 thereof) and other relevant 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.

d) 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.

e) 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.

f) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor 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.

g) 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.

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

i) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India

h) It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

IA stands disposed of.

Sd/-	**Sd/-**
(L. N. GUPTA)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**

Ashima