

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA No. 1991/2022,
Under Section 33(1) of Insolvency &
Bankruptcy Code, 2016

Mr. Hemant Sharma

Resolution Professional/
...Applicant

In the matter of

CP (IB) No.784/MB/C-IV/2021

Open Sky Shopping LLP

...Financial Creditor

Vs.

Thea Online Services Private Limited

...Corporate Debtor

Order Pronounced on: 03.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP : Mr. Karan Valecha, Advocate;

Per Prabhat Kumar, Member (Technical)

1. The Application is filed by Mr. Hemant Sharma, Applicant/Resolution Professional, seeking liquidation of Thea Online Services Private Limited, (hereinafter referred as Corporate Debtor) under Section 33(1) (a) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code").

The brief facts of the Application are as follows:

2. That this Tribunal vide an Order dated 28.01.2021 in C.P.(IB)784(MB)/2021 admitted the Petition under section 7 of the Code, filed by Open Sky Shopping LLP. (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against Thea Online Services Private Limited, (hereinafter called as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order and subsequently continued as Resolution Professional till filing of this application seeking liquidation.
3. The Resolution Professional carried out Corporate Insolvency Resolution Process and undertook required actions from time to time. The Resolution Professional had invited Expression of Interest vide publication of Form G dated 13.04.2022. The last date of submission of EOI was 28.04.2022. In pursuance to the publication of Form G dated 13.04.2022, the Resolution Professional did not receive any EOI from any Prospective resolution Applicants. However, it is submitted by the Applicant that 7 parties had requested the EOI document but had not submitted the Expression of Interest.
4. The CoC had informed the Applicant to approach the 7 parties who had requested the EOI document and all other interested parties for the Resolution of the Corporate Debtor. Accordingly, the Resolution Professional again published an Invitation of

Expression of Interest vide publication of Form G dated 09.05.2022.

5. In pursuance to the publication of Form G dated 09.05.2022, the Resolution Professional received Expression of Interest from 1 individual, however, no Resolution Plan was submitted by the interested individual.
6. Thus, after all endeavours of the Resolution Professional in reviving the Corporate Debtor met fate, the Resolution Professional in the 4th meeting of the COC of the Corporate Debtor held on 19.07.2022, placed before the COC, a resolution, to approve the resolution of the Corporate Debtor u/s 33 of the Code. This resolution was voted for by 100% of COC Members by the sole Financial Creditor. Thereupon, the IRP filed IA 1991/2022 seeking liquidation of the Corporate Debtor.
7. We have perused the record and find that the CIRP commenced on 28.01.2022 and a period of 180 days expired on 27.07.2022. The IRP has filed the IA 1991/2022 on 21.07.2022 seeking order for liquidation of the corporate Debtor. We note that there is no resolution plan received by the Resolution Professional pending for consideration before COC as on date despite the publication of Form G inviting Expression of Interest from Prospective Resolution Applicants twice.
8. Accordingly, in the absence of a resolution plan or any possibility for receiving the same and CoC passing a resolution for liquidation of Corporate Debtor, we hold that it is a fit case to order liquidation Section 33 of the Insolvency and Bankruptcy Code, 2016.

9. Section 33(1)(a) of the Insolvency And Bankruptcy Code, 2016 states that-

“ 33. Initiation of liquidation. -

(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;

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter”

10. The Applicant has also given his consent to act as the Liquidator in the matter. The Resolution for appointing the Applicant as the Liquidator for the Corporate debtor and payment of his fees according to Regulation 39D of the Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process for Corporate Persons Regulations), 2016 is also passed by COC by 100% voting.

ORDER

11. Mr. Hemant Sharma, Resolution Professional/Applicant having Registration No. IBBI/IPA-002/IP-N00015/2016-2017/10019 and Email- hemant78sharma@yahoo.com is hereby appointed as the Liquidator to conduct liquidation process of Thea Online Services Private Limited as provided under Section 34(1) of the Code.

12. That the Liquidator would be entitled for the fees to conduct the Liquidation Proceedings as per Regulation 39D of the Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process for Corporate Persons Regulations), 2016 as per the resolution for the fees of the Liquidator is passed by the COC.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. This liquidation order u/s 33(7) 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.
19. The Liquidator is directed to take into account unpaid CIRP costs as claimed by the IRP applicant after verification of the same in accordance with the approval granted by COC and shall disburse this amount in priority to the extent possible.
20. With the above directions, the IA No. 1991/2022 filed u/s 33(1) by the applicant is hereby **Allowed and Disposed of**.

Sd/-

PRABHAT KUMAR
Member (Technical)
03/03/2023

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)