

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

**C.A. No.168 of 2017
in C.P.(IB) No.23/10/HDB/2017**

In the matter of

M/s. Blossoms Oils & Fats Limited,
6-3-609/147A, Anand Nagar Colony,
Khairatabad, Hyderabad – 500004
Telangana.

...Corporate Debtor

And in the matter of

Mr. Arun Kumar Malani,
M/s. Blossoms Oils & Fats Limited
Hyderabad.

...Applicant/Resolution Professional

Versus

1. Indian Overseas Bank,
ARM Branch, 3rd Floor,
Chikkadpally, Hyderabad.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

2. Indian Bank, ARM Branch,
Liberty Plaza, Himayathnagar,
Hyderabad.

....Financial Creditors / Respondents

Judgement Delivered on: 10.10.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties / Counsels Present:

For Corporate Debtor : Mr.Rajesh Bohra, Advocate

Resolution Professional : Mr.Arun Kumar Malani,
Resolution Professional

Counsels for Financial Creditors: Mr.B.Praveen Kumar - IOB
Mr.V.K. Sajith – Indian Bank
Mr.Yash Vardhan G.P.

Per: Ravikumar Duraisamy, Member (Technical)

JUDGEMENT

1. The Applicant / Resolution Professional Mr. Arun Kumar Malani, has filed the aforesaid C.A.No.168 of 2017 under Section 33(1), 33(2) and 34(1) of Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:



- a) to pass the order under Section 33(1), 33(2) of the Code for Liquidation and also pass under Section 34 (1) of the Code for appointment of Liquidator and
- b) to pass such further or other orders as this Hon'ble Authority may deem fit and proper

BRIEF FACTS OF THE CORPORATE DEBTOR:

2. The Company namely M/s. Blossoms Oils & Fats Limited was incorporated as a Limited Company on 20-08-1998, main business is market its finished products (i.e. RBD palmolien) under the brand name of "POSHAK" besides selling a large chunk in bulk in tankers and it covers the states of Puducherry, Karnataka, Tamilnadu and Maharastra besides the state of erstwhile Andhra Pradesh.
3. The refinery unit of the Company was established at Yanam near Kakinada in the Union Territory of Puducherry. The unit commenced commercial production during the year 2002 with a capacity of 75 tonnes per day.
4. The Learned Applicant/Resolution Professional submits that Corporate Debtor defaulted dues to the Financial Creditors and the total default as on date of filing of application was about Rs.318.28 crores (Secured Creditors is Rs.285.56 crores + excluding the payments released to the Unsecured Creditors is Rs.32.72 crores).
5. Indian Overseas Bank/Financial Creditor issued possession notice dated 09-03-2016 to the Corporate Debtor directing to pay the dues under the SARFAESI Act 2002 and in exercise of powers conferred under Section 13(2) r/w Rule 3 of Security Interest (Enforcement) Rules, 2002, issued a demand notice dated 21-12-2015 calling upon the Corporate Debtor/Borrower and Mortgagers and Guarantors of the Company to repay Rs.269.66 crores and the same was published in the newspaper on 02-01-2016.
6. Indian Bank/Financial Creditor has stated that the loan account has been classified as Non-Performing Asset since 30-09-2015 in accordance with directions/guidelines relating to



asset classifications issued by RBI and issued a demand notice dated 15-03-2016 to pay the outstanding payable amount of Rs.42.88 crores as on 29-02-2016 which carries further interest at the agreed rate from 01-03-2016 till date of repayment.

7. The Adjudicating Authority vide Order dated 22.03.2017 admitted the Application filed under Section 10 of IBC read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Corporate Debtor viz Blossoms Oils & Fats Limited, recommended Mr.Arunk Kumar Malani, Chartered Accountant as Interim Resolution Professional (IRP) and Adjudicating Authority appointed him as Interim Resolution Professional, declared moratorium by prohibiting certain actions and the details are available at Para 15 of the Order dated 22.03.2017.
8. The Interim Resolution Professional (IRP) issued public announcement in Form-A dated 23.03.2017 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 inviting claims from the Creditors of the Corporate Debtor. The public announcement was made in one national & one regional newspaper. Subsequently the Resolution Professional / Applicant had constituted a Committee of Creditor (CoC) of the Corporate Debtor and meetings of the CoC were held on various dates as given below:

1 st CoC Meeting	..	21.04.2017
2 nd CoC Meeting	..	01.06.2017
3 rd CoC Meeting	..	24.07.2017
4 th CoC Meeting	..	19.08.2017

9. In the 1st CoC Meeting held on 21.04.2017, Mr.Arun Kumar Malani, was resolved to be appointed as Resolution Professional with 100% voting. The Officials of Indian Bank have informed that there is a CBI enquiry initiated by them against the Corporate Debtor is pending. Resolution Professional submitted that as per Regulation 27 of IBBI (Insolvency Resolution Process for



Corporate Persons) Regulations, 2016, Registered Valuers have been appointed to determine the Liquidation Value of the corporate Debtor in accordance with Regulation 35. The plant situated at Yanam was visited by Mr.Arun Kumar Malani along with the valuer on 05-04-2017 and the same is recorded at Factory Register.

10. In the 2nd CoC meeting held on 01.06.2017, the main two agenda items were :

- a. approval for opening of designated bank account in the name of Corporate Debtor at Indian Overseas Bank and the same will be operated by Resolution Professional and
- b. approval for treating the expenditure towards fees and protecting the assets of the Corporate Debtor as part of Resolution Process Cost.

11. In the 3rd CoC meeting held on 24.07.2017, a Resolution Plan was submitted by the Corporate Debtor. The representative of Corporate Debtor explained in brief the reasons for losses in the Company and submitted the explanation for Resolution Plan. The Resolution Plan was rejected by the CoC and asked to improve the offer failing which the further proceedings as per the IBC shall continue.

12. In the 4th CoC meeting held on 19.08.2017, No New Resolution Plan was submitted by the Corporate Debtor, CoC is in favour of liquidation. The Finance Officer, Blossoms Oils & Fats Ltd attended the meeting in place of CEO, who is not well and hospitalised and he further requests one week time to submit a Revised Resolution Plan with improved offer as they are in active negotiation with investor. The Bank has told that the Corporate Debtor has not submitted any fresh Revised Resolution Plan with improved offer and the Bank has decided to go ahead with the recommendation for Liquidation.

13. In view of the above facts, according to the Resolution Professional the case is now to be considered under Section 33 for initiation of liquidation. Further confirmation is awaited from IOB for confirmation of Resolution Professional to continue as Liquidator as per the provisions of Section 34 of IBC 2016.



14. Therefore, the applicant has no option but to file Company Application before this Hon'ble Authority for seeking the reliefs in accordance to provisions 33(1), 33(2) and 34(1) of IBC 2016 for Liquidation of the Corporate Debtor and appointment of Liquidator.
15. From the records submitted, it is observed that no Express of Interest (EoI) / Request for proposal was invited by Resolution Professional. In view of the above facts that the Resolution Plan submitted by the Corporate Debtor alone has been rejected by the Financial Creditors having 100% voting power, according to the Resolution Professional case is now to be considered under Section 33 for initiation of liquidation.
16. The case was listed on various dates viz 24-04-2017, 08-05-2017, 04-07-2017, 10-07-2017, 19-07-2017, 25-07-2017, 31-07-2017, 22-08-2017, 29-08-2017, 12-09-2017 and 13-09-2017.
- i) On 04-07-2017, the counsels for the respondents have stated that a case was registered by CBI on M/s. Blossoms Oils & Fats Limited, which is still pending. The Adjudicating Authority directed the parties to produce the copy of same and also furnish latest status on CBI case. The IRP is also instructed to submit the information on the same matter to the Bench. Case posted to 10-07-2017
 - ii) On 25-07-17, Counsel for the Petitioner filed C.A. 124 of 2017 by seeking stay of the Criminal Proceedings. The Adjudicating Authority ordered notice to the Respondent. However, Respondent not appeared before the Adjudicating Authority and directed the respondent to be present before the Adjudicating Authority on next week and case is posted to 31-07-2017.
 - iii) On 22-08-2017, counsel for the respondent takes notice for the Respondent and further submits that respondent has not received any paper except this notice. The Bench directed the Counsel for the Petitioner to furnish all the paper filed in this case at NCLT and posted the case on 29-08-2017.



- iv) At the request of counsels case is posted from 29-08-17 to 12-09-17. All the CAs along with CP is posted on 13-09-2017.
- v) On 13-09-2017, Mr.Ajay Tambhekar, AGM, IOB states that he will submit the name of the Liquidator in the prescribed format today, duly signed by him. It is mentioned that the stipulated 180 days will be completed on 17-09-2017, therefore there is an urgency to recommend the name of Liquidator immediately. As can be seen from the records, after long follow up by the Adjudicating Authority, the Financial Creditors have recommended another Resolution Professional as Liquidator vide their Affidavit dated 13-09-2017 barely giving anytime to Adjudicating Authority to pass appropriate reasoned orders.

17. According to Section 33(1) of the Code, “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.

According to Section 34(1) of the Code:

“34(1) where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process under Chapter-II shall act as the Liquidator



18. Though the Resolution Professional prayed to pass an order under Section 33(1) of the Code, after perusing entire record, we feel Section 33(2) would be the appropriate Section under which orders need to be passed. Accordingly, by exercising the powers conferred upon the Adjudicating Authority under Section 33 (2) of the IBC 2016, we pass the following orders:

- i) We pass an Order requiring the Corporate Debtor namely Blossoms Oils & Fats Limited to be liquidated in the manner as laid down in Chapter-III of IBC 2016, issue a public announcement stating that the Corporate Debtor is in liquidation, and a copy of this order to be sent to the Registrar of Companies, Hyderabad for the State of Telangana and for the State of Andhra Pradesh, where the Corporate Debtor is registered.
- ii) Mr.Ajay Tembhekar, Assistant General Manager, Indian Overseas Bank appeared before the Adjudicating Authority on 13-09-2017 and submitted notarised affidavit dated 13-09-2017 stating as follows:-
 - a. Indian Overseas Bank and Indian Bank jointly funded the Petitioner Company M/s. Blossoms Oils and Fats Ltd. IOB loan constitutes 87% and Indian Bank 13% of total liabilities.
 - b. Mr.Arun Kumar Malani was appointed as Resolution Professional in this case by the Corporate Debtor. It was decided in the CoC Meeting dated 19-08-2017 to go ahead with the liquidation of the unit as Resolution Plan acceptable to the Banks was not submitted by the promoters.
 - c. The Bankers have decided to replace Mr.Arun Kumar Malani, Resolution Professional with Mr.TSN Raja, FCMA and qualified Insolvency Professional, who is having three decades of Banking experience in recovery and liquidation procedures and opined that Mr.TSN Raja is competent to handle the liquidation of the unit.
- iii) Mr.TSN Raja, has submitted notarised affidavit dated 13-09-2017 stating that:-



- a. I am a qualified Insolvency Professional Registered with Insolvency and Bankruptcy Board of India bearing Regd.No.IBBI/IPA-003/IP-N00065/2017-18/10551.
- b. I was approached by AGM, Indian Overseas Bank, ARM Branch, Chikkadapally, Hyderabad to act as Resolution Professional/Liquidator in the matter of M/s. Blossoms Oils and Fats Limited, Hyderabad.
- c. I am willing to act as Resolution Professional/Liquidator in the above matter.
- d. I am not having any assignment as on today as IRP/RP/ Liquidator.
- e. There are no disciplinary proceedings pending against me with the Board or ICA, Insolvency Professional Agency.
- f. I am eligible to be appointed as Resolution Professional/ Liquidator in respect of Corporate Debtor in accordance with the provisions of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

iv) From our records, it is noted that subsequent to his affidavit, the Adjudicating Authority has appointed him as Liquidator in the matter of VNR Infrastructure Limited on 21-09-2017.

v) Having considered the above affidavit submitted by Mr.TSN Raja and background of the proposed Liquidator, we hereby appoint Mr.TSN Raja as Liquidator as decided by both the Financial Creditors, who have 100% voting shares.

vi) Subject to Section 52 of the I&B Code, no suit (or) other legal proceedings shall be instituted by or against the Corporate Debtor "provided that suit or other legal proceedings may be instituted by the liquidator on behalf of the Corporate Debtor with a prior approval of the Adjudicating Authority"

vii) As per Section 34 of IBC 2016 on the appointment of the Liquidator, 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.



- viii) As per Section 34 (3) the personnel of the Corporate Debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 shall apply.
- ix) The fee to be paid to the liquidator is as per Section 34 (8) & (9) of IBC 2016 and as amended from time to time.
- x) The liquidator will be strictly governed by Section 35 to 50, 52, 53 and 54 of IBC 2016 as amended from time to time.
- xi) The Liquidator appointed will be strictly governed by the Insolvency and Bankruptcy Board of India (Liquidation process) Regulations, 2016 as amended from time to time.
- xii) The liquidator has to submit various reports to the Adjudicating Authority in the manner prescribed under IBC 2016 and the above referred Regulation 2016.
- xiii) As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator has to maintain various registers, books of accounts of the Corporate Debtor.
- xiv) As per Regulation 7, a Liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.
- xv) The Liquidator shall make public announcement in Form-B of Schedule-II within 5 days from his appointment as per Regulation 12. The public announcement shall :
 1. a) Call upon stakeholders to submit their claims as on the liquidation commencement date; and
 - b) Provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date
 2. The announcement shall be published;
 - a) in one English and one Regional language newspaper with wide circulation at the location of the Registered Office and Principal Office, if any, of the Corporate Debtor and any other location where in the opinion of the liquidator, the Corporate Debtor conducts material business operations;



- b) on the website if any, of the Corporate Debtor; and
- c) on the website, if any, designated by the Board for this purpose.

19. As per Regulation 13 the liquidator shall submit a Preliminary Report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details / information as mentioned in the said regulation.

- a) As per Regulation 15, the Liquidator shall submit various progress reports regularly to the Adjudicating Authority
- b) The Liquidator should strictly follow all the provisions of the IBC 2016 and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 while exercising his powers, functions, duties, various process of liquidation and distribution of assets, mode of sale etc.

20. With the above directions C.A.No.168 of 2017 in C.P.(IB).No. 23/10/HDB/2017 is disposed of.

21. No Order as to costs.



Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

for *[Signature]*
**Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench**

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केस संख्या
CASE NUMBER *C.A. No. 168 of 2017 IN*
निर्णय का तारीख *CP(IB) No. 23/10/HDB/2017*
DATE OF JUDGEMENT *10.10.2017*
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