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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No. 28/BB/2017

U/s 9 of the IBC, 2016

R/w Rule 6 of the I & B (AAA) Rules, 2016

In the matter of

M/s Sunrise Enterprises,

No.24, 100 ft. Road,

Jalahalli Cross,

Bengaluru-560058.

-

Petitioner/Operational Creditor

Versus

M/s Karuturi Foods Private Limited,

303, Embassy centre,

11, Crescent road,

Bengaluru-560001.

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Respondent/Corporate Debtor

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Date of Order: 5th July, 2018

For the R.P : Mr. Anil Kumar Birla, R.P.

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Petition bearing C.P (IB) No. 28/BB/2017 is filed by **M/s Sunrise Enterprises**, Petitioner/Operational Creditor u/s 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of I & B (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **M/s Karuturi Foods Private Limited** (Corporate Debtor).



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2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- 1) The case was admitted by the Adjudicating Authority, by an order dated 10th October 2017 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s Karuturi Foods Private Limited (Corporate Debtor) by appointing Shri Pankaj Srivastava as Interim Resolution Professional. Subsequently, the 1st meeting of the Committee of Creditors comprising of Axis Bank, a sole financial creditor in the Committee of Creditors was held on 9th November 2017, wherein a decision was taken to replace the existing Interim Resolution Professional by appointing Shri Anil Kumar Birla and he was confirmed as Resolution Professional by the Committee of Creditors of the Corporate Debtor, and the same was also confirmed by the Tribunal vide its order dated 22nd December 2017.
- 2) The Resolution Professional upon instruction in the 2nd meeting of the Committee of Creditors held on 27th February 2018, has filed an application before the Tribunal for extension of period of CIRP by 90 days beyond 180 days. In pursuant to this, the Tribunal vide its order dated 10th April 2018 has granted an extension of 90 days and the CIRP process which ends on 9th July 2018.
- 3) Subsequently, the Resolution Professional has filed an Affidavit dated 30th June 2018 stating that:
 - (a) Necessary action as required under the IBC 2016, were taken from time to time.
 - (b) Issued advertisement on 3rd May 2018 calling for expression of Interest from prospective Resolution Applicants.
 - (c) Follow up action in order to procure data related to financials of the Corporate Debtor;



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- (d) Co-ordinating with the new Statutory Auditor to prepare the statement of affairs as on 31st March 2018
- (e) Co-ordinating with the forensic auditor;
- (f) Issue of legal notice to M/s Chandru and Company
- (g) Obtaining legal opinion on the option to inspect the Tumkur Factory and assets belonging to the Corporate Debtor.
- (h) Due to non-cooperation of the Corporate Debtor and Directors of the Corporate Debtor; he has filed an application under Section 19(2) and (3) of the IBC before the Tribunal. In pursuant to this, the Tribunal vide its order dated 28th May 2018, has directed the Directors of the Corporate Debtor to furnish the required information as sought for within a period of one week. However, there is non-compliance of the order.
- (i) It is submitted that, inspite of several requests and follow ups, the directors failed to produce the books of accounts, documents etc., relating to the Corporate Debtor. The Directors have stated that the records etc., are not in their possession since the Financial Creditor i.e., Axis Bank has taken possession of the office under SARFAESI Act, 2002 alongwith the records. However, on perusing the panchnama attached to the possession notice, there is no mention of any records. Hence, it is concluded that the records etc, of the Corporate Debtor are missing. This has severely affected the CIRP process.
- (j) It is submitted that, as per the information available, there has been no operations in the company since 1st April 2017. Substantial assets of the Company have been shown as deletions for the year ending 31st March 2017. The statutory auditor has expressed a qualified opinion for the year ending 31st March 2017 with regard to the company continuing as a going concern.



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(k) The Committee of Creditors at its meeting held on 27th June 2018, concluded that there was no merits in prolonging the CIRP beyond the statutory period of 270 days for the reasons as stated above. In view of the same, the CoC concluded that only option available under the Code was to recommend for liquidation and the same was Resolved in the meeting.

“RESOLVED THAT pursuant to Section 33, sub section (2) of Insolvency and Bankruptcy Code, 2016 and other applicable provisions of Insolvency and Bankruptcy Code, and in accordance with Regulation 31 and Regulation 34 of Insolvency and Bankruptcy Code of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable provisions of other applicable provisions of Insolvency and Bankruptcy Code of India (Liquidation Process) Regulations, 2016, if any, and in accordance with rules and regulations made there under the Committee of Creditors hereby recommend that M/s Karuturi Foods Private Limited, Corporate Debtor under Corporate Insolvency Resolution Process be liquidated.

Resolved further that the Committee hereby directs the Resolution Professional to intimate the decision of the Committee of Creditors to recommend liquidation of the Corporate Debtor to the Adjudicating Authority.

Resolved further that the Committee hereby authorise the Resolution Professional to take legal assistance for giving effect to this resolution.

Resolved further that the Committee hereby authorises Axis Bank Ltd., to incur/disburse the said fees/cost/expenses on behalf of the Corporate Debtor. The said fees shall be treated as Insolvency Resolution Process Cost of the Karuturi Foods Private Limited.



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Resolved further that the Committee hereby authorise the Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution”.

The above resolution was put to vote and the same was passed unanimously. Axis Bank Ltd., sole member of CoC constituting 100 per cent of voting share votes in favour of the Resolution”

3. Heard Shri Anil Kumar Birla, Resolution Professional along with Mr. H.S. Shafiulla; Ms. Medha Rao and Ms. Vinuta Rayadurg, learned Counsels for Petitioner, and carefully perused all the pleadings and also extant provisions of IBC, 2016 and Rules made thereunder.
4. The learned Counsels, while reiterating various contentions raised in their pleadings from the date of application till date, has stated that as per the provisions of the I& B Code, an advertisement inviting Expression of Interest (EoI) was issued on 3rd May 2018. In response to the said advertisement, no EoI has been received from any prospective Resolution Applicants and no Resolution Plan was approved for the following reasons:-
 - i) Non-availability of records of the Corporate Debtor;
 - ii) Non-cooperation by the Directors/personnel of the Corporate Debtor.
 - iii) No manufacturing assets;
 - iv) Various statutory defaults by the Corporate Debtor;
 - v) No revenue sources;
 - vi) Overdue creditors;
 - vii) Overdue financial creditors;
 - viii) No employees;
 - ix) No business model;
 - x) No cash flow and negative image of the Corporate Debtor.

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5. It is seen from the report that, 4 (four) meetings of Committee of Creditors were held. However, no resolution plan was approved by the Committee of Creditors. Section 30 of Insolvency & Bankruptcy code herein after referred to as code provides for submission of Resolution Plan. As seen from the report in response to Expression of Interest published in the newspapers in Business Standard (English Language newspaper) and Samyukta Karnataka (local/Regional Language newspaper) in Bangalore Edition was issued on 3rd May 2018 and no EoI has been received from any prospective Resolution Applicants, and as such there is no any Resolution Plan due to Non-availability of records of the Corporate Debtor; Non-cooperation by the Directors/personnel of the Corporate Debtor and No manufacturing assets etc., It is clear that, Committee of Creditors have not approved any resolution plan within the period of moratorium, which was initially for 180 days and later it was extended by another 90 days.
6. The Resolution Professional submitted report to the Tribunal narrating the events which had taken place and inability to submit any resolution plan and requesting the Adjudicating Authority to pass necessary direction.
7. If no resolution plan is submitted within the Insolvency Resolution Process period or a maximum period permitted for completion of 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 (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 pass
- (i) An order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter-III.
 - (ii) It is clear from the report of Resolution Professional that, no resolution plan was received and approved by the Committee of Creditors and only alternative is to pass the order of liquidation under section 33 of the code.

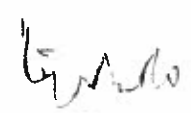


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8. Therefore, the Adjudicating Authority by exercising power conferred under section 33 of I & B Code, has to pass order of Liquidation. Hence, the Adjudicating Authority passed the following Liquidation order requiring the Corporate Debtor/Karuturi Foods Private Limited to be liquidate:-

- i) That Mr. Anil Kumar Birla, the Resolution Professional appointed for the Corporate Insolvency Resolution Process is appointed as Liquidator for the purpose of liquidation in pursuant to Section 34(1) of Insolvency and Bankruptcy Code, 2016.
- ii) That all the 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.
- iii) That the Personnel of Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- iv) Issue a public announcement stating that the Corporate Debtor is in liquidation within 5 days of the receipt of certified copy of this Order;
- v) The Liquidator appointed shall discharge his functions pursuant to the powers and duties conferred under Section 35 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016.
- vi) The fee of the liquidator shall be proportionate to the liquidation estate assets as specified by the Board and it shall be paid from the proceeds of the liquidation estate u/s 53 of the Code.
- vii) Liquidator is directed to follow all extant provisions of IBC 2016, and Rules framed by IBBI from time to time.
- viii) Post the case for hearing on 17th October 2018.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL


Deputy Registrar
National Company Law Tribunal
Bengaluru Bench
