

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT III
NEW DELHI

IA/842/2019 filed under Section 60 (5), R/w 12 &
33(1) of the IBC Code, 2016 in CP (IB)-
1440(ND)/2018

In the matter of M/s. Kwaliti Limited.

K. K. R. India Financial Services Private Limited

.... Financial Creditor

Versus

M/s. Kwaliti Limited

.... Corporate Debtor

In the matter of IA/842/ 2019

Shailendra Ajmera

RP for Corporate Debtor namely, M/s. Kwaliti Limited.

.... Applicant

Order delivered on 11th January 2020

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Shri. NARENDRA KUMAR BHOLA, MEMBER (TECHNICAL)

For Applicant: Kesar Dass B & Associates

ORDER

(Through Video Conferencing)

Per. CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The IA is filed by the Resolution Professional viz., *Mr. Shailendra Ajmera*, under Section 60 (5), R/w 12 & 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC, 2016") seeking liquidation of the Corporate Debtor viz., *M/s. Kwaliti Limited*, based on the resolution passed by the Committee of Creditors in its 22nd Meeting on 05.11.2019. The other prayers made in the Application are:

"a) Allow the present application

b) Pass such order or direction as it considers fit and proper in the facts and circumstances of the case.

c) Pass such other further order/Order(s) as may deem fit"

2. On perusal of this Application, it appears that the CP (IB)-1440 (ND)/2018 was filed by the Financial Creditor viz., *M/s. Punjab National Bank K. K. R. India Financial Services Private Limited* (hereinafter referred as "Financial Creditor") against the Corporate Debtor viz., *M/s. Kwaliti Limited* (hereinafter referred as "Corporate Debtor") under Section 7 of IBC, 2016 R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) to initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), declare moratorium and appoint Interim Resolution Professional (hereinafter referred as "IRP"). This Adjudicating Authority vide Order dated 11.12.2018, admitted the Application, initiated the CIRP against the Corporate Debtor and appointed one Mr. Shailender Ajmera as the IRP.

3. It is averred that pursuant to the Order of this Authority which was received by the IRP on 18.12.2018. The Resolution Professional made public announcement in Form A in two newspapers namely "Economic Times (English)" and Navbharat times (Hindi) to invite claims along with proof from creditors of the Corporate Debtor. The Committee of Creditors was constituted on 03.01.2019. The 1st meeting of the Committee of Creditors (hereinafter referred as "CoC") was held on 11.01.2019 wherein, it was resolved to appoint IRP viz., Mr. Shailendra Ajmera as the Resolution Professional. The Resolution Professional appointed GAA Advisory LLP and Adroit Technical Services Pvt.

Ltd as the Registered Valuers as per Regulation 27 of CIRP Regulations to determine the Fair Value and the Liquidation Value of the Corporate Debtor. Further, as per Section the Resolution Professional provided the information memorandum to the members of the CoC on 31.01.2019.

4. The CoC was reconstituted on 05.02.2019 and pursuant to Section 21 (1) of the IBC,2016 R/w Regulation 13(2) (d) of the CIRP Regulations, the Resolution Professional filed a report with this Authority in 08.02.2019. The 2nd CoC Meeting was convened on 11.02.2019 wherein the publication and eligibility criteria for Form-G was approved with a majority vote of 99.74% of voting shares. The Form -G i.e., Invitation for Expression of Interest (hereinafter referred as "Eoi") was published on 25.02.2019 in two newspapers namely "Economic Times" (English) all India Edition and "Business Standard" (Hindi). The revised Form-G was published on 12.03.2019. In the 3rd CoC meeting ratified the decision for extension of last date of submission of the Eoi. The Resolution Professional received Eoi from 7 potential Resolution Applicants and issued the provisional list of eligible prospective resolution applicants. The Resolution Professional issued the Information Memorandum, evaluation matrix and a request for the Resolution Plans to the Prospective Resolution Applicants with effect from 15.04.2019.
5. In the 5th CoC Meeting it was decided that the criteria for submission of the refundable deposit/BG at the EOI stage submission be waived off for all Prospective Resolution Applicants. The RP issued the final list of Prospective Resolution Applicants in terms of Sub-Regulation of Regulation 36A of the CIRP Regulations. The 6thCoC Meeting was convened on 13.05.2019 wherein the agenda for seeking extension of CIRP by 90 days was passed. Therefore, the Resolution Professional filed application CA No.659/2019 for extension of CIRP period by 90 days and vide Order dated 24.05.2019 the extension was granted.
6. The 7th CoC meeting was held on 30.05.2019 wherein the CoC extended the deadline for submission of resolution plan to 30.06.2019. The Resolution Professional received only one resolution plan despite various extensions from

the consortium of Haldiram Snacks Pvt. Ltd & Pioneer Securities Pvt. Ltd. The 10th CoC Meeting was convened on 06.08.2019 to discuss the the update on the CIRP including the resolution plan. The 14th CoC Meeting was held on 31.08.2019 for extension of CIRP period. The Application was allowed vide Order dated 06.09.2019 and 60 days beyond a period of 270 days was allowed. The 21st CoC Meeting was convened on 02.11.2019 to update the outcome of the voting results on the Resolution Plan dated 17.10.2019 alongwith Addendum1 and 2 submitted by Haldiram- Pioneer Consortium which was not approved in terms of the requirement of the provisions of Section 30 (4) and the voted cast in favour were less than 66% of the voting share of CoC. The Resolution Professional informed Haldiram- Pioneer Consortium about the rejection of the Resolution Plan via E-Mail dated 02.112019.

7. The 22nd CoC Meeting was convened on 05.11.2019, wherein the Resolution Professional appraised the members of the CoC about the Addendum 3 and Letter by Haldiram Pioneer Consortium and discussed about the key highlights of the same. The CoC concluded that the Addendum 3 and Letter cannot be considered as the members of the CoC have already voted upon the Resolution Plan along with the Addendum1 and Addendum 2 and it will be not appropriate to consider the Addendum 3 sent by the Haldiram Pioneer Consortium. Further, it was decided by the CoC that in the event, if an order of Liquidation of the Corporate Debtor under the provisions of Section 33 of IBC, 2016 is passed then the Resolution Professional may be appointed to act as the Liquidator for the purpose of conducting liquidation process and if a scheme of compromise or arrangement under the provisions of Section 230 of the Companies Act, 2013 is not proposed then the liquidation of the Corporate Debtor as a going concern under the provisions of IBC,2016 will automatically commence and the liquidator will be given 90 days from the liquidation commencement date to sell the Corporate Debtor and its business as a going concern and if the said sale proceeds fail to get approved by the relevant parties or otherwise, the liquidator shall sell the assets on a piecemeal basis or slump sale in accordance with the provisions of law for the time being in force.

8. The Resolution Professional convened 22nd CoC Meeting on 05.11.2019 wherein the CoC approved the fees of the liquidator for the liquidation period at Rs. 22.5 Lakhs and Remuneration payable by the Liquidator to advisors and legal counsel is Rs. 252.5 Lakhs and the fees to be remitted as a lumpsum amount from the value realised by selling the assets of the Corporate Debtor. It was also approved by the members of the CoC that the estimated CIRP costs amounting to Rs. 16.55 Crores are to be paid on priority of the proceeds of the liquidation estate. It is stated that the Resolution Professional has given his written consent to be appointed as the Liquidator of the Corporate Debtor.

ORDER

9. In view of the facts and circumstances, this Authority is satisfied that the Application **IA/842/2019 filed** for initiation of Liquidation proceedings against the Corporate Debtor is a fit case for ordering liquidation of the Corporate Debtor namely, *M/s. Kquality Limited* in the manner laid down in the Chapter III of Part II of IBC, 2016 and **allowed** with the directions as follows: -

- I. This Authority appoints the Resolution Professional **Mr. Shailender Ajmera**, who has provided written consent to act as the Liquidator for the Liquidation Process having Registration number: IBBI/IPA-001/IP-P00304/2017-2018/10568, Address: Ernst & Young LLP, 3rd Floor, Worldmark 1, Aerocity Hospitality, New Delhi, NCT of Delhi- 110037
- II. Mr. Shailender Ajmera, is appointed as Liquidator in terms of Section 34 (1) of IBC, 2016 therefore, all the powers of Board of Directors, key Managerial Personnel, and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested with the Liquidator. The Personnel of the Corporate Debtor are hereby directed to extend all corporations to the Liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for the conduct of liquidation proceedings as stands decided by the CoC, failing which in the proportion to the value of the liquidation estate assets as specified under

Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of IBC, 2016.

III. Mr. Shailender Ajmera, is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

IV. Since this Liquidation Order has been passed, no suit or other legal proceedings shall be initiated by or against the corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub section 6 of the Section 33 of the Code

V. This Authority makes it clear that Para (V) herein above shall not apply to legal proceedings in relation to such transactions as notified by Central government in consultation with any financial sector regulator.

VI. The liquidation Order shall be deemed to be the notice of discharge to the officers, employees, workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

VII. The Order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect from the date of the order and that a fresh Moratorium under Section 33(5) of IBC, 2016 shall commence.

VIII. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

IX. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.

X. The Liquidator shall also follow up the pending applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

XI. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

XII. Copy of this Order shall be sent by the Liquidator to the corporate debtor, the Registrar of Companies, NCT of Delhi & Haryana, the Insolvency and Bankruptcy Board of India and IT Department including Assessing IT Officer of the IT Circle.

10. In terms of the above, IA/842(ND)2019 filed in CP (IB)-1440(ND)/2018 is **allowed.**

11. Order is pronounced through video conferencing.



NARENDRA KUMAR BHOLA
Member (Technical)



CH. MOHD SHARIEF TARIQ
Member (Judicial)