

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
MA 309/2018 in CP 1067/2017
(Under Section 33 of IBC, 2016)

Dipti Mehta, Resolution Professional... Applicant

In the matter of

Standard Chartered Bank ... Petitioner,

Vs

Prag Distillery Pvt Ltd ... Respondent

Order delivered on 09.08.2018

Coram: Hon'ble Shri B. S. V. Prakash Kumar, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Applicant : Mr. Rishabh Jaisani, Advocate for Resolution Professional
and Ms. Dipti Mehta, Resolution Professional

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral order dictated in open court on 26.07.2018

It's an application filed under Section 33(1) and 33(2) of Insolvency and Bankruptcy Code, 2016 by the Resolution Professional herein basing on the resolution passed by the COC on 23.3.2018, giving an approval to the Resolution Professional to file an application before this Bench for liquidation.

2. The facts given by the Resolution Professional in respect to the historical events happened from the date of admission till the date of filing this application are as follows:

Sr No.	Date	Particulars
1.	June 27, 2017	The Petition filed by a Financial Creditor against the Corporate Debtor was admitted. The Interim Resolution Professional (Ms Dipti Mehta) (" IRP ") was appointed.
2.	July 02, 2017	The IRP made published announcement in Free Press Journal and Navshakti.
3.	July 28, 2018	The IRP appointed two registered valuers as required under Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Person) 2016.
4.	July 28, 2017	<u>First COC Meeting</u>

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		<p>In the First COC Meeting, <i>inter alia</i>, the members of the COC unanimously resolved to appoint the IRP/Applicant as Resolution Professional ("RP") after expiry of the 30 days tenure of IRP.</p> <p>Further, various expenses in respect of the Corporate Debtor were approved by the COC members.</p>
5.	August 31, 2017	<p><u>Second Meeting of the COC</u></p> <p>In the Second Meeting of the COC, <i>inter alia</i>, the valuation report of the Corporate Debtor prepared by the registered valuer was discussed. It was noted that in terms of the liquidation value of the Corporate Debtor read with Section 53 of the Code, the Operational Creditor would not receive any amount.</p>
6.	September 18, 2017	<p><u>Third COC Meeting</u></p> <p>In the third COC Meeting, <i>inter alia</i>, Amit Dahanukar (Member of suspended Board of the Corporate Debtor) invited the consultants, Mr. Amar Dalal and Mr. Bhavesh Parekh of Whitewater Corporate Advisory Private Limited to give brief explanation for possible resolution plan of the Corporate Debtor. The Members of COC requested Mr. Amit Dahanukar to submit a resolution plan to the Applicant.</p>
7.	September 22, 2017	<p>Expression of Interest (the "EOI") published in respect of the Corporate Debtor inviting resolution plan.</p>
8.	October 05, 2017	<p><u>Fourth COC Meeting</u></p> <p>The following agendas/items were discussed:-</p> <ul style="list-style-type: none"> • No resolution plans were received in pursuant to the EOI. • Valuation report were placed before the COC member. There was a difference of Rs.10 crores from the two reports of the valuers.
9.	November 10, 2017	<p><u>Fifth meeting of COC</u></p> <p>Tilaknagar Industries Limited ("TIL") submitted a proposal. However, the Members could not to agree to the commercials of the proposals submitted by TIL. The proposed Resolution Applicant was requested to modify and submit a revised proposal.</p>
10.	November 20, 2017	<p><u>Sixth meeting of COC</u></p> <p>Applicant informed that the proposed resolution plan submitted by TIL was not meeting the requirements and thus the same cannot be taken into consideration.</p>
11.	December 07, 2017	<p><u>Seventh meeting of COC</u></p> <p>The Applicant informed the members of COC that the Promoter Company i.e. TIL being a related party to the corporate debtor, is ineligible under Section 29A(c) of the Code as the accounts of the TIL had been classified as Non-Performing Asset.</p>

		<p>The members of the COC authorised the Applicant to file an application NCLT under Section 12(2) under the Code read with Regulation 40, seeking for extension the period of the CIRP beyond 180 days.</p> <p>KRM Associates Chartered Engineers & Approved Valuers were appointed as registered valuer of the Corporate Debtor</p>
12.	December 10, 2017	By an order dated January 10, 2017, the Hon'ble NCLT extended the period of CIRP of the Corporate Debtor by period of 90 days.
13.	January 19, 2018, February 5, 2018, February 12, 2018	<p><u>Eighth COC Meeting, Ninth meeting of COC, & Tenth Meeting of COC</u></p> <p>In the Ninth Meeting of COC, COC members decided to publish another the Expression of Interest.</p>
14.	January	Second Expression of Interest was published in two newspapers.
15.	March 22, 2018,	<p><u>Eleventh Meeting of COC</u></p> <p>The Applicant informed the COC that (i) the 270 days of CIRP was expiring on March 23, 2018 and (ii) an application for order of liquidation of the Corporate Debtor under the Code, would have to be filed since no plan was approved by the COC.</p>
16.	March 23, 2018,	<p><u>Twelfth Meeting of COC</u></p> <p>In the said meeting, <i>inter alia</i>, the resolution plan was received from resolution applicant i.e. Srinivasa Enterprise and the same was placed before COC. However, since the plan was received on the 270 days the members of the COC sought time to review and decided about the plan.</p> <p>The COC directed the Applicant to file a petition for order of liquidation of the Corporate Debtor on "<i>going concern basis</i>" as prescribed under the Code.</p>

Note:-

- 270 days of CIRP of the Corporate Debtor got over on March 23, 2018.
- Liquidation value – **Rs.12,67,36,144**
- Admitted claims – **Rs.94,91,85,107**

3. This Bench having noticed that the Resolution Professional has already followed the procedural aspects asking for the Valuation Report from the two registered Valuers thereafter when he noticed variation in the registered Valuation Report, he took the valuation report of the 3rd registered Valuer basin, and on which he has prepared this liquidation report on the valuation of the assets of the company and placed the same before the COC in its 8th meeting held on 19.1.2018.

4. Basing on the first Expression of Interest, when the Resolution Applicant namely Tilak Nagar Industries submitted a proposal, by the time Section 29A having already come into operation, the Resolution Professional informed the members of COC that the Resolution Applicant who filed Resolution Plan with the Resolution Professional is ineligible to file the plan, henceforth it has been held that this applicant is hit by Section 29A of the IB Code. Furthermore, it has also been stated that the members of the COC could not agree to the commercials of the proposal submitted by the said Resolution Applicant.

5. Since no Resolution Applicant came forward except the aforesaid Resolution Applicant, this Resolution Professional, basing on the approval given by the COC for giving another Expression of Interest, published another Expression of Interest on 11.2.2018, upon which, when Resolution Applicant Shrinivas Enterprises submitted a plan to the Resolution Professional, both the creditors constituting 100% voting stated they need time to review and decide the same. Upon which, when the RP informed the COC that it could not decide the prospects of the plan after completion of 270 days, the COC again decided and directed the RP to file an application for liquidation under IBC as per the requirements of law since 270 days of CIRP was over by stating that the resolution plan came before the CoC only on 270th day of CIRP. Therefore, finally, the COC decided to make an application for liquidation of the company on "going concern basis" to maintain and maximise the value of the organisation.

6. It appears that the COC has prayed for the company to be liquidated as a "going concern basis" so that it would fetch more value, which is permissible under Regulation 32(c) of the Insolvency and Bankruptcy (Liquidation Process) Regulation, 2016.

7. The reason given by the COC for liquidation of this company on "going concern basis" is that the Corporate Debtor is involved in bottling of IMFL, particularly, Brandy, Whisky, Rum, Gin and Vodka, the Corporate Debtor holds license to manufacturing Indian made Foreign Liquor, issued by the Commissioner of Prohibition and Excise under the provisions of Andhra Pradesh Distillery (Manufacturing of Indian made Foreign Liquors other than Beer and Wine) Rules, 2006. This license is subject to payment of annual license fee of ₹39,00,000, during the CIRP, the Corporate Debtor has renewed the license by making payment of ₹39,00,000 and the license of the Corporate Debtor is valid from 1.4.2018 to 31.3.2019. In view of this reason, the

Creditors have passed a resolution for liquidation of the company as a going concern.

8. On having the COC approved for liquidation of this company, the RP filed this application for approval of this Bench under Section 33 of the IBC, therefore, we are of the view that the RP as well as the COC made all their efforts to agree for some resolution plan but for no resolution plan which is agreeable to the COC has come before COC, the COC could not take any decision to approve any of the resolution plans that have been placed before the COC.

9. Looking at the application filed by the RP, it appears that 270 days were over on 23.3.2018 whereby basing on the COC approval dated 23.3.2018 for liquidation, this applicant has filed this application before this Bench.

10. While the hearing in respect to this application is in progress, M/s. Sree Meenakshi Wines has filed an application (MA 452/2018) stating that this applicant (this is not the applicant who filed the resolution plan in the past) placed its resolution plan for the first time before the COC members on 15.5.2018, by that time since CIRP was over, it could not even be presumed that COC was in existence. Now by seeing this liquidation application pending before this Bench, this applicant has filed this resolution plan before COC after expiry of 270 days and started arguing this matter as if this applicant has been aggrieved by the action of the COC. When this Bench asked the Counsel appearing on behalf of this applicant as to what right he has to make this submission before this Bench, then having realised that this resolution applicant has no merit, the Counsel appearing on behalf of this applicant has candidly filed withdrawal memo before this Bench for withdrawal of application (MA 452/2018) filed by M/s. Sree Meenakshi Wines.

10. Therefore, on looking at the withdrawal memo filed by this Resolution Applicant, namely M/s. Sree Meenakshi Wines, the same is hereby dismissed as withdrawn.

11. In view of the reasons aforementioned, this Bench being satisfied of the application moved by the Resolution Professional for approval of the liquidation order against this company to liquidate it as going concern, this Bench hereby orders as follows:

- a. This Bench hereby orders the Corporate Debtor to be liquidated as going concern in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction

to the Liquidator to send this order to RoC under which this Company has been registered.

- b. As to appointment of Liquidator, the Resolution Professional i.e. the applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation with all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- c. Since this liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
- d. This liquidation order shall be deemed to be notice of discharge to the officers, employees and 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.
- e. The moratorium declared vide order dated 27.6.2017 ceased to exist.

12. The Registry is hereby directed to communicate this order to the parties, within seven days from the date order is made available.

SDI-

RAVIKUMAR DURAISAMY
Member(Technical)

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B. S. V. PRAKASH KUMAR
Member (Judicial)