

**(2019) 09 NCLT CK 0009**

**In the National Company Law Tribunal**

**Case No :** Interlocutory Application No. 66 Of 2019 In Company Petition No. (IB) 06 GB Of 2019

Chhedi Rajbhar And Another

APPELLANT

Vs

Himatsingka Resorts Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 19-09-2019

**Acts Referred:**

Insolvency And Bankruptcy Code, 2016 — Section 7, 14, 14(4), 32(2), 33, 33(b), 33(5), 33(7), 34(1), 34(8), 34(9), 35(1), 52

Insolvency And Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 4

**Citation :** (2019) 09 NCLT CK 0009

**Hon'ble Judges :** Hari Venkata Subba Rao, J; Ashutosh Chandra, Member (Technical)

**Bench :** Division Bench

**Advocate :** Siddarth Sancheti

**Final Decision :** Disposed Of

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## **Judgement**

Ashutosh Chandra, J

1. A petition bearing CP (IB) No. 06/GB/2019 had been preferred jointly by (1) Ms Neha Himatsingka and (2) Mr. Kanishka Himatsingka, hereinafter referred to as the Financial Creditors (FC1 and FC2), under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code of 2016) read with rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 for initiating a Corporate Insolvency Resolution Process (CIRP) in the matter of Himatsingka Resorts Pvt. Ltd., hereinafter referred to as the Corporate Debtor (CD), claiming the dues amounting to the tune of Rs. 83,30,499/- owed to the said FC1 by the CD, and an amount to the tune of Rs. 38,52,630/- owed to the said FC2.

2. The aforesaid petition was heard by this Tribunal on different dates and vide order dated 08.03.2019, a CIRP was initiated in the matter of Himatsingka

Resorts Pvt. Ltd., the CD. Thereafter, this Tribunal vide order dated 08.03.2019, appointed the applicant, Mr. Chhedi Rajbhar as the IRP. Subsequently, the IRP was appointed as the RP with 100% majority of the 1st COC meeting held on 07.04.2019 and was later confirmed as the RP by this Tribunal, vide order dated 12.04.2019.

3. In furtherance of the said order dated 08.03.2019, the applicant intimated the CD regarding commencement of the CIRP from the date of admission of the petition by this Tribunal, and accordingly it took over the management of the CD. The applicant, after taking over the management of the CD on 08.03.2019, found that the CD is not a going concern and not doing any business activities. The applicant further constituted a COC meeting on 31.03.2019 and the report thereof was filed on 04.04.2019. The applicant also filed his first progress report dated 09.04.2019 with this Tribunal on 12.04.2019. The applicant also observed that the CD does not have any assets and its hotel business was closed for more than one year before the initiation of the CIRP and that the applicant neither approved any payment nor any person/employees of the CD has approached the applicant for approval of any payment from the CD and other compliance as required under the Code of 2016.

4. The applicant accordingly decided to conduct a transaction/forensic Audit to find out the preferential/undervalued/fraudulent transaction if any entered by the Management of CD. The applicant proposed the forensic audit of transactions of the last two years of the CD which was duly taken up by the COC in its 2nd meeting dated 07.06.2019, and it appointed Mr. Chandra Kumar Jain, CA, certified forensic Auditor, for the purpose.

5. The applicant states that in the 3rd Progress Report a copy of Forensic Report was placed for discussion in the 3rd COC meeting held on 02.08.2019 and it was found that nothing was notified in the Forensic Audit Report in respect of preferential transactions, undervalued transactions and transactions defrauding creditors. Hence, the COC decided, with 100% voting, that considering that no assets were available with the CD, EOI will not be invited for a resolution plan and the CD will be liquidated. Hence, the COC in its meeting dated 02.08.2019 approved the liquidation of the CD and authorized the applicant to file this application u/s 33(2). Further the COC in its meeting dated 02.08.2019 also appointed the applicant as Liquidator of the CD, with 100% voting.

6. The applicant further states that he did not find any case or suit pending by or against the CD during the CIRP, and accordingly no list of pending cases was prepared by the applicant.

7. The applicant has submitted that necessary orders may be passed in the matter and the Resolution Professional be appointed as the liquidator in terms of Section 34(1) of the Code of 2016.

8. In the aforesaid facts and circumstances, this IA has been filed this application u/s 33(2) of the Code of 2016 wherein it is prayed that this Tribunal may be

pleased:

a) To admit this application, call for the records and after hearing may be pleased to pass necessary Orders for Liquidation of the Corporate Debtor as referred to in Sub-clause (i), (ii) and (iii) of clause (b) of sub-section 33 of the Insolvency and Bankruptcy Code, 2016;

b) Be further pleased to order that the moratorium dated 08.03.2019 passed under Section 14 shall cease to have effect pursuant to the proviso to sub-section (4) of Section 14 of the Insolvency and Bankruptcy Code, 2016 and a fresh moratorium be ordered under Subsection (5) of section 33 of the Insolvency and Bankruptcy Code, 2016 subject to the provisions of Section 52 of the Code.

c) Be further pleased to order that the order off liquidation passed under Section 33 of the Insolvency and Bankruptcy Code, 2016 shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor.

d) Be further pleased to appoint the present applicant as resolution professional of the corporate debtor be appointed as Liquidator of the Corporate Debtor.

e) Pass such other Order/directions as this Hon'ble Bench may deem fit and necessary in the facts and circumstances of the case.

9. The RP and the OC have appeared before us and have taken us through the facts of the case and the material on record, as referred to in the foregoing paragraphs, which has been perused. On a consideration of the same, we are of the view that in spite of protracted and best efforts made by the COC and the RP, they cannot carry out the CIRP as the COC had decided not to issue the EOI for inviting a resolution plan due to non-availability of assets with the CD, which is evident from the copy of Forensic Report by Mr. Chandra Kumar Jain, CA, a certified forensic Auditor, placed in the 3rd COC meeting held on 02.08.2019. In this report nothing was notified in respect of preferential transactions, undervalued transactions and transactions defrauding creditor. For these reasons the COC had approved the liquidation of the CD.

10. It is therefore seen that the CIRP remained unresolved. In such a situation, this Tribunal is left with no option but to accept the recommendations of the COC, as referred to above, for liquidation of the CD. Hence, we proceed to pass an order requiring the CD to be liquidated in the manner as laid down in the Chapter III of Part II of the Code of 2016 and also to pass an order under section 33 of the Code of 2016, for the initiation of the process of liquidation of the CD, as under:

#### ORDER

(a) By this order, the Corporate Debtor, Himatsingka Resorts Pvt. Ltd is liquidated.

(b) Mr Chhedi Rajbhar (the existing Resolution Professional/applicant), an Insolvency Professional, having office at 40, Strand Road, Model House, 2nd

Floor, Room No. 49, Kolkata 700001, West Bengal and having registration no. IBBI/IPA-001/IP-P00129/2017-18/10271 is appointed as the Liquidator in respect of the CD.

(c) Mr Chhedi Rajbhar, the Liquidator, shall exercise the powers and duties listed out under section 35(1) of the Code of 2016.

(d) Mr Chhedi Rajbhar, the Liquidator, is directed to issue Public Announcement stating that the CD is in liquidation, in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.

(e) The Registry is directed to communicate this order to the Registrar of Companies, and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

(f) The Order of Moratorium passed under Section 14 of the Code of 2016 shall cease to have effect and a fresh moratorium under Section 33(5) shall commence.

(g) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the CD, in keeping with the provisions of Section 33(7) of the Code of 2016.

(h) Mr Chhedi Rajbhar is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code of 2016.

(i) Upon proceeding with the liquidation, the Liquidator shall file a preliminary report as per Regulation 5 read with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016 at the registry within 75 days from the date of commencement of liquidation, and continue to file progress reports as per the Regulation 15(1) of the IBBI (Liquidation Process) Regulations, 2016 within 15 days after the end of the quarter in which he is appointed.

(j) The fee payable to the Liquidator under section 34(8) of the Code of 2016, for conduct of the liquidation proceedings, shall be paid to the Liquidator from the proceeds of liquidation estate, as referred to u/s 34(9) of the Code of 2016 and as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.

(k) The Registry is hereby directed to communicate the order to the Liquidator, Financial Creditor, the Corporate Debtor and to all parties concerned immediately for information and further necessary action.

(I) Let certified copy of the order be issued to concerned parties, if applied for, and upon compliance with the requisite formalities.

11. With this order, CP (IB)/06/GB/2019 stands disposed of, as above. No order as to costs.