

(2023) 11 NCLT CK 0017

In the National Company Law Tribunal

Case No : I.A. No. 676 of 2023 In C.P. No. 220 of 2021

Nova Cosmetics Private Limited Vs Phantom Resources Private Limited ?

Date of Decision : 29-11-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 33, 33(2), 34(1), 52
Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 — Regulation 6

Citation : (2023) 11 NCLT CK 0017

Hon'ble Judges : Reeta Kohli, Member (J); Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Amit Tungare

Final Decision : Disposed Of

Judgement

Madhu Sinha, Member (Technical)

1. This is an Application filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (Code) by the Applicant who is also the Resolution Professional (RP) of the Corporate Debtor seeking the following reliefs:-

- a. Pass an order directing the initiation of liquidation process against the Corporate Debtor as per Section 33(2) of the Code;
- b. Appoint Mr. Ajay Ganesh Marathe having IBBI Registration Number IBBI/IPA-001/IP-PO1262/2018-2019/12170 as the liquidator of the Corporate Debtor; and
- c. Pass such other order(s) and/or direction(s) in the interest of justice which this Hon'ble Tribunal deems fit.

2. The Brief facts of the Applicant are as follows:

- i. The Applicant submitted that the Corporate Debtor is presently undergoing Corporate Insolvency Resolution Process (CIRP) with effect from 15.07.2022 as per the order of this Hon'ble Tribunal. The aforementioned order appointed the Applicant, having Registration No. IBBI/IPA-001/IP-PO1262/2018-2019/12170 as

Interim Resolution Professional (IRP) of the Corporate Debtor.

ii. The IRP issued Public Announcement in accordance with Sections 13 and 15 of the Code and Regulation 6 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 dated 22.08.2022 in two newspapers namely Financial Express (English) and Navrashttra (Marathi). The last date of submission of claims as stated in the Public Announcement was 03.09.2022.

iii. The Corporate Debtor does not have any Financial Creditors and therefore, the Committee of Creditors (CoC) was constituted with only one Operational Creditor i.e. Nova Cosmetics Private Limited having a claim amount of Rs. 47,22,294/- with 100% voting share.

iv. The first CoC Meeting was conducted by the IRP on 19.09.2022 in which the CoC resolved to appoint the IRP as the Resolution professional (RP).

v. On 27.10.2022, claim was received from another Operational Creditor namely Manipal Utility Packaging Solutions Private Limited. The CoC now consisted of two Operational Creditors, the details of which are as follows:

Serial Number

Name of Operational

Creditor

Amount of Claim

% of Voting Share

1

Nova Cosmetics Pvt.

Ltd.

4722294

38.24

2

Manipal Utility

Packaging Solutions

7626225

61.76

Total

100.00

vi. Two registered valuers, namely Mr. Navin Khandelwal (IBBI Reg No. IBBI/RV/05/2019/10779) and Mr. Hiten Prajapati (IBBI Reg No. IBBI/RV/06/2019/11439) were appointed by the Applicant on 06.10.2022 to value the asset class securities or Financial Asset. On the basis of the Balance sheet available for the period of 2021-2022 the Corporate Debtor is not having any investment in plant and Machinery and land and building and hence no valuers are appointed for the same. The Applicant craves leave from this Hon'ble Tribunal to produce the Valuation Report as and when made available from the valuers.

vii. The Applicant further submitted that the Suspended Directors of the Corporate Debtor informed the Applicant that the Corporate Debtor is not engaged in business activities post Covid-19 and there is also no prospect of reviving the Corporate debtor as a going concern as it is in severe financial crisis and also the stock in trade is out of order as expiry date has already elapsed.

viii. When the abovementioned contentions were presented to the CoC in its third meeting dated 05.11.2022, the CoC resolved to liquidate the Corporate debtor before the expiry of CIRP of 180 days as it is not possible to revive the Corporate Debtor as a going concern.

ix. The Suspended Directors of the Corporate Debtor were also present in the third CoC Meeting and raised no objections to this decision of the CoC to liquidate the Corporate Debtor.

x. The applicant further submitted that during the CIRP of the Corporate Debtor, the following CoC meetings were held:

Serial Number

Committee of

Creditors Meeting

Date of Meeting

1

1st CoC

19.09.2022

2

2nd CoC

15.10.2022

3

3rd CoC

05.11.2022

30.12.2022

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, the Counsel for the Applicant submits that the Corporate Debtor is not operational and is in extreme financial crisis so there is no option except to put the Corporate Debtor Company into Liquidation as per the Code since it is observed from the minutes of the 3rd CoC meeting that the CoC with required mandate of 100% voting approved to liquidate the Corporate Debtor in view of it not being engaged in any business activity and being in financial crisis and the stock in trade having crossed the expiry date, this Tribunal has very limited judicial review in such matters of commercial wisdom therefore there is no option except to allow the above Liquidation Application. This bench, therefore feels this is a fit case for ordering Liquidation Corporate Debtor. The Bench hereby appoints Mr. Ajay Ganesh Marathe having IP Registration Number IBBI/IPA-001/IP-PO1262/2018-2019/12170 as Liquidator to carry on the process of Liquidation of the Corporate Debtor. Accordingly, the above Interlocutory Application Number 676 of 2023 is allowed directing the Liquidation of the Corporate Debtor. Accordingly, we pass the following:

ORDER

- a. The above I.A. No. 676 of 2023 is allowed and the Corporate Debtor Phantom Resources Private Limited is ordered to be liquidated.
- b. Mr. Ajay Ganesh Marathe having Registration Number IBBI/IPA-001/IP-PO1262/2018-2019/12170 and office at 201, Aadhr Height, Opposite Bhagshala Maidan, Dombivali West District Thane 421202, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees as per table mentioned in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. 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 with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in

liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 676 of 2023 is hereby allowed and disposed of.