

(2023) 03 NCLT CK 0014

In the National Company Law Tribunal

Case No : I.A. 2663 OF 2021 In C.P.(IB) No. 236 of 2020

Shivkumar Suppliers Vs Madhur Nourishment Products LLP ?

Date of Decision : 01-03-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 30, 31, 33(1), 34(1), 43, 45, 49, 50, 52, 66

Citation : (2023) 03 NCLT CK 0014

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Nishit Dhruva, Meghna Arvind, Astha Ojha

Final Decision : Disposed Of

Judgement

Anuradha Sanjay Bhatia, Member (Technical)

I.A. 2663 OF 2021

1. The above Application I.A. No. 2663/2021 is filled by the Resolution Professional, Ms. Akansha Ashish Rathi (hereinafter referred as the "Applicant") seeking Liquidation of Madhur Nourishment Products LLP (hereinafter referred as the "Corporate Debtor") under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying the following reliefs:

I. Pass an order directing the Corporate Debtor to be liquidated in accordance with Chapter III in Part II of the Insolvency and Bankruptcy Code, 2016;

II. Appoint Mr. Prashant Jain, having Registration No. IBBI/IPA-001/IP-P01368/2018-19/12131 as the liquidator of the Corporate Debtor;

III. Cost of this Interlocutory Application;

IV. Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.

BRIEF FACTS OF THE CASE:

2. The Applicant mentioned that this Tribunal, vide its order dated 20.02.2020, in Company Petition No. (IB) 236/MB/2020, admitted the petition, under Section 9 of the Code, filed by Shivkumar Suppliers (hereinafter referred to as the "Operational Creditor") and Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") was initiated against Madhur Nourishment Products LLP (hereinafter referred to as the "Corporate Debtor"). vide the same Order, this Tribunal appointed, one Mr. Udaykumar Bhaskar Bhat, as IRP of the Corporate Debtor.
3. Miscellaneous Application No. I.A. 294 of 2021 was filed for the replacement of the Resolution Professional. This Tribunal, vide its order dated 25.02.2021, confirmed the appointment of the Applicant, as Resolution Professional.
4. Based on the order of this Tribunal dated. 20.02.2020, the IRP published a Public Announcement under Form A dated 29.02.2020 on 01.03.2020 in Mumbai & 02.03.2020 in Pune as per the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. It has been further submitted that Canara Bank is the sole Financial Creditor of the Corporate Debtor and therefore, comprises of the 100% voting share in the Committee of Creditors (CoC).
6. The First meeting of the Committee of Creditors was held on 13.07.2020. In view of the Pandemic Lockdown, the Committee of Creditors decided to defer the appointment of Resolution Professional.
7. The Second Meeting of the Committee of Creditors was conducted on 03.11.2020, where the appointment of the Applicant as the Resolution Professional was Confirmed. It was also proposed to move an Application before this Tribunal for exclusion of a period of 193 days i.e. between 25th March 2020 to 5th October 2020 from the CIRP period in view of the provision of Regulation 40C of CIRP Regulations. Application bearing no. 2709138/05140/2020 was filed for the same, before the Hon'ble NCLT. However, the same has not yet come up for hearing and would not become infructuous.
8. The Fifth Meeting of the Committee of Creditors was held on 22.04.2021, where the Committee of Creditors has approved the appointment of two Registered Valuers for conducting the valuation of three classes- Land & Building, Plant & Machinery and the Financial Assets of the Corporate Debtor. Approval to move an Application to this Tribunal to seek exclusion of 435 days i.e. period between 20th February 2020 till 30th April 2021, was given by Committee of Creditors in the same meeting.
9. The Sixth Meeting of the Committee of Creditors was held on 25.05.2021, where the appointment of one M/s R.G. Gandhi & Co., as Transaction Auditor, along with other valuers, was informed to the Committee of Creditors.
10. The Seventh Meeting of the Committee of Creditors was held on 11.06.2021, where the draft Form G was approved for publication in Mumbai and Pune

(English Editions of the Financial Express) and Mumbai Marathi Edition of Navshakti and Pune Marathi Edition of Loksatta Newspaper.

11. Pursuant to the above, the Form G was published by the Applicant on 16.06.2021. The Applicant received the Expressions of Interest (EOI) from one Prospective Resolution Applicant being Mr. Madhav Gandhale, the Suspended Partner of the Corporate Debtor. The Applicant, then issued Information Memorandum to the Prospective Resolution Applicant.

12. The Eight Meeting of the Committee of Creditors was held on 13.07.2021, where the Request for Resolution Plan to be, to the Prospective Resolution Applicants was discussed and finalised.

13. Pursuant to the above, on 14.07.2021, the Request for Resolution Plan and the Evaluation Matrix was shared by the Applicant, with the Prospective Resolution Applicants, to enable them to submit their respective Resolution Plan on or before 13.08.2021.

14. The Transaction Auditor did not find any transaction that would qualify to be classified as falling under the purview of Section 43, 45, 49, 50 and 66 of the Code. The report dated 04.08.2021 was submitted for the audit period of 1st April 2017 to 20th February 2020 to the Applicant by the Transaction Auditor.

15. The Ninth Meeting of the Committee of Creditors was held on 18.08.2021, where it was discussed that no resolution plan had been received till such date and since the period of CIRP had concluded without any extensions or exclusions of time granted, liquidation of the Corporate Debtor would have to be contemplated.

16. The tenth Meeting of the Committee of Creditors was held on 26.08.2021, where it was held that in view of the Non-receipt of any Resolution Plan, Liquidation of the Corporate Debtor would have to be initiated.

17. The Eleventh Meeting of the Committee of Creditors was held on 06.09.2021, where it was decided that a Liquidation Application would have to be filed before the Hon'ble Tribunal seeking liquidation of the Corporate Debtor on account of the expiry of the CIRP period and non-receipt of any resolution plans.

18. The Twelfth Meeting of Committee of Creditors, being the last meeting, was held on 01.10.2021.

19. The Committee of Creditors has proposed Mr. Prashant Jain (email id: ipprashantjain@gmail.com), having IBBI Registration No. IBBI/IPA-001/IP-P01368/2018-19/12131 and address at A 501, Shanti Heights, Plot No 2, 3, 9 B/10, Sector 11, Koparkhairne, Navi Mumbai-400709 to Act as liquidator of the Corporate Debtor vide its email dated 18.10.2021.

20. The Applicant submitted that the Corporate Debtor has a liability of Rs. 17,33,23,961/- in terms of the total claims admitted. Claims received from Financial Creditor amounting to Rs. 16,84,23,387/-. Claims received from

Operational Creditor amounting to Rs. 49,00,574/-.

21. As the Committee of Creditors were unable to approve a Resolution Plan under Section 30 of the Code for Submission to the Hon'ble Tribunal under Section 31 of the Code before the end of the Insolvency Resolution Period, the Applicant, therefore, filed this Application under the Provisions of Section 33(1) of the Code for an order of Liquidation against the Corporate Debtor.

22. 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 submitted that no Resolution Plan has been received and there is no option except to put the Corporate Debtor Company into Liquidation as per the Code, as well as also to protect the asset of the Corporate Debtor from further deterioration, since it is observed from the minutes of the 11th COC meeting that the COC with required mandate of 100% voting approved to liquidate the Corporate Debtor in view of not getting any Resolution Plans. Under these circumstances, 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. The COC thereby, has appointed Mr. Prashant Jain (IBBI Registration No. IBBI/IPA-001/IP-P01368/2018-19/12131) as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The proposed Liquidator has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as the Liquidator. This Bench, therefore, feels this is a fit case for ordering Liquidation of the Corporate Debtor. Accordingly, the above Interlocutory Application Number 2663 of 2021 is allowed directing the Liquidation of the Corporate Debtor.

23. Accordingly, we pass the following:

ORDER

a. The above I.A. 2663 of 2021 is 'allowed' and the Corporate Debtor Madhur Nourishment Products LLP is ordered to be liquidated.

b. Mr. Prashant Jain (email id: ipprashantjain@gmail.com), having IBBI Registration No. IBBI/IPA-001/IP-P01368/2018-19/12131 and address at A 501, Shanti Heights, Plot No 2, 3, 9 B/10, Sector 11, Koparkhairne, Navi Mumbai-400709, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

c. The Liquidator, for conduct of the liquidation proceedings would be entitled for fees as per Regulation 4 of the Insolvency and Bankruptcy Board of India (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. 2663 of 2021 is hereby allowed and disposed of.