

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II**

IA 2391 of 2019 & IA 3743 of 2019

In

CP (IB) 4062/MB/C-II/2018

Under Section 33 (2) of the
Insolvency and Bankruptcy Code,
2016

In the Application of

Mr. Vijay Kumar Garg

Address: Flat 1402, Tower A, GPL
Eden Heights, Sector 70, Darbaripur
Road, Gurugram.

**...Applicant/Resolution
Professional**

In the matter of

ICICI Bank Limited

...Financial Creditor
Versus

Nakshatra Brands Limited

...Corporate Debtor

Order Delivered on 10.11.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearance:

For the Applicant

: Mr. Ayush Agarwal

ORDER

Per: Ashok Kumar Borah, Member (Judicial)

1. The present application is filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Nakshatra World Limited, on the ground that there is no possibility for resolution of the Corporate Debtor.
2. This Adjudicating Authority, *vide* its order dated 29.01.2019 on a Petition filed by ICICI Bank Limited (*Financial Creditor*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*the Code*), directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Vijay Kumar Garg as the Interim Resolution Professional (IRP) of the Corporate Debtor.
3. The Committee of Creditors (CoC) was duly constituted on 27.02.2019. The first meeting of the CoC was held on 06.03.2019 and the Applicant herein was appointed as the Resolution Professional.
4. Meanwhile a Company Petition being CP No. 277 of 2018 filed by Union of India, Ministry of Corporate Affairs under Section 221, 222, 241, 242, 246 and 339 of the Companies Act, 2013 against the Corporate Debtor seeking directions for recovery of amounts in the financial fraud as set out in the Company Petition. This Tribunal *vide* Order dated 23.02.2018 passed an *ex parte*

Injunction Order whereby the Corporate Debtor was enjoined from removal, transfer or disposal of funds, assets.

5. The Resolution Professional intimated various authorities about his appointment as the RP and also requested the authorities to provide the details, access to the properties, assets, stocks and records of the Corporate Debtor in possession with these authorities so as to enable the Applicant to proceed with the CIRP and to appoint valuers, to prepare Information Memorandum and to publish the invitation of Expression of Interest.
6. As the properties, assets of the Corporate Debtor were under the control and custody of the authorities, the Applicant was unable to carry out various actions such as preparation of information memorandum, appointment of registered valuer, invitation of expression of invitation, etc.
7. The CoC of the parent company of the Corporate Debtor i.e. Gitanjali Gems Limited decided to file liquidation application for Gitanjali Gems Limited as the said Company did not have a running business and all the assets of the parent company and other group companies were seized/attached by Enforcement Directorate and other government agencies. Similarly, the CoC of the Corporate Debtor decided that since there was no ongoing operations, also the assets of the Corporate Debtor were attached by the Enforcement Directorate, the possibility of getting a Resolution Plan was also less and release of the assets would be a time consuming process as a result, the members of CoC decided

to opt for liquidation of the Corporate Debtor instead of continuing CIRP.

8. In the 4th CoC meeting held on 31.05.2019, the Applicant was called to discuss/deliberate the future course of action of the CIRP of the Corporate Debtor. Upon deliberations by the members of CoC, it was decided that as the Corporate Debtor Company does not have running business and as all assets of the Corporate Debtor are seized/attached by various government agencies, the possibility of getting a Resolution Plan is remote, therefore it was decided by the CoC, to take approvals from appropriate authority for liquidation instead of continuing CIRP and accordingly the following Resolution was put to vote :-

The Resolution was passed in the following manner: -

“RESOLVED THAT pursuant to section 33 of the Insolvency and Bankruptcy Code, 2016, approval of the Committee of Creditors be and is hereby accorded for making an application to the Adjudicating Authority for liquidation of Nakshatra Brands Limited before the expiry of the insolvency resolution process period.

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to take such steps as may be necessary, in relation to the above if required and to settle all matters arising out of and incidental thereto and sign and execute all applications, documents and writings that may be required and generally to do all acts, deeds and things that may be necessary,

proper, expedient or incidental for the purpose of giving effect to the aforesaid Resolution.”

9. Hence, as per the results of e-voting, the members approved the Resolution for making an Application to the Adjudicating Authority for liquidation of the Corporate Debtor with 70.47% votes.
10. It is further submitted that the Applicant does not wish to act as the Liquidator of the Corporate Debtor due to personal reasons. However, the Applicant undertakes to continue to discharge his duties and shall extend all co-operation in relation to the CIRP till appointment of the new liquidator.
11. This Bench, therefore, hereby orders as follows: -
 - a. Upon perusal of the documents, records made available and submissions of the Counsel for the RP and as per the e-voting results declared on 04.06.2019 with majority of 70.46% approved to Liquidate the Corporate Debtor and directed the RP to file an application under section 33 (2) of the IBC for liquidation of the Corporate Debtor.
 - b. In view of the decision of the CoC, we are inclined to admit the IA 2391/2019 in CP 4062/2018 to initiate liquidation process against the Corporate Debtor. Accordingly, the Adjudicating Authority Orders for initiation of Liquidation of the Corporate Debtor.
 - c. Further an IA No. 3743 of 2019 was filed by the Financial Creditor/Applicant for recommending Mr. Santanu T Ray

as the Liquidator for the Corporate Debtor. The CoC by majority of votes 97.87% recommended to appoint Mr. Santanu Ray as the Liquidator of the Corporate Debtor.

- d. In view of the above this Bench hereby appoints Mr. Santanu T Ray as Liquidator having [Reg. No. IBBI/IPA-002/IP-N00360/2017-2018/11055], having his office at A-301, BESL Tech Park, Sector 30A, Vashi, Navi-Mumbai-400705 [Email: santanutr@aaainsolvency.com; mobile: -9167086977], as Liquidator in terms of section 34(1) of the Code from the panel of names made available by the Insolvency and Bankruptcy Board of India (IBBI); Accordingly, **IA 3743 of 2019 is disposed off.**
- e. The Fees payable to the Liquidator shall be in compliance with Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- f. Further if there is no recovery of assets by the liquidator, then the liquidator expenses and all other Miscellaneous expenses will be borne by the Financial Creditor.
- g. The Applicant/RP shall forthwith hand over possession of the Corporate Debtor, its assets and all documents in his possession, to the newly appointed Liquidator;
- h. The Liquidator shall initiate the liquidation process as envisaged under Chapter-III of the Code and the Insolvency

and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

- i. Whenever the Liquidator issues any publication in the newspapers, the said shall be published in widely circulated newspapers in the State in which the Registered office of the Company is incorporated.
- j. Public Notice shall be issued in two newspapers, *viz.*, in *Times of India/Business Standard* (English) and *Navshakti* (Marathi), stating that the Corporate Debtor is in liquidation, as required in terms of section 33(1) of the Code;
- k. All the powers of the Board of Directors and key managerial persons of the Corporate Debtor shall cease to exist. All these powers shall henceforth be vest with the Liquidator;
- k. 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;
- l. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso;

- m. 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;
- n. The Court Officer shall forward a copy of this Order to – (i) the Applicant/ RP, (ii) the Liquidator Mr. Santanu T Ray, and (iii) the Registrar of Companies, Maharashtra, Mumbai, immediately upon pronouncement of this Order; and
- o. A copy of this order shall additionally be served by the Applicant/ RP on the Registrar of Companies, Maharashtra, Mumbai, within whose jurisdiction the Corporate Debtor has been registered, for updating the Master Data of the Corporate Debtor.
- p. Both the IA's **2391 of 2019 & 3743 of 2019** are allowed.
File to be consigned to records.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**ASHOK KUMAR BORAH
(MEMBER JUDICIAL)**