

## Ravindranath N Vs

**Court:** National Company Law Tribunal, Bengaluru Bench

**Date of Decision:** Dec. 22, 2021

**Acts Referred:** Insolvency & Bankruptcy Code, 2016 " Section 7, 12, 19, 30(6), 31, 33(1), 33(2), 33(5), 34(1), 52, 56 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 " Regulation 32, 39B, 39C, 39D

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 " Regulation 4(2), 12

**Hon'ble Judges:** Ajay Kumar Vatsavayi, Member (J); Manoj Kumar Dubey, Member (T)

**Bench:** Division Bench

**Advocate:** Ravindranath Narayana Rao,

**Final Decision:** Disposed Of

### Judgement

Ajay Kumar Vatsavayi, Member (Judicial)

I.A No.152/2021

1. , This application has been filed by Mr. Ravindranath Narayana Rao, the Resolution , , Professional , , of , M/s. , , Alpine , Wineries

, , Private , Limited (Corporate , , Debtor) , , under , , Section 33(2) , , of , the , , Insolvency , , and Bankruptcy, Code, 2016

for, passing, an, order, of, Liquidation, in, the matter, of Alpine, Wineries, Private, Limited (Corporate, Debtor) and, to

appoint the Liquidator for initiation of, Liquidation process of, the Corporate Debtor etc.

2. , CP (TB), No.286/BB/2019, filed under Section 7, of the, Insolvency and Bankruptcy, Code, 2016, by, ""M/s. Pridhvi, Asset,

Reconstruction, and Securitisation , , Company , Limited"" , , to , initiate , , Corporate , Insolvency Resolution, Process,in ,( short

`CIRP') against, M/s. Alpine, Wineries Private, Limited, was, admitted, on 17th, December 2019 and Mr.Ravindranath.N, was,

appointed, as, Interim, Resolution, Professional (IRP).

3. , The facts of the case, briefly stated, are that, the public announcement was made in, Form A on 19.12.2019, (Annexure, B), in,

English, and, in Kannada newspapers and the Committee of Creditors was constituted by the IRP with Operational Creditors of the corporate

Debtor.

4. The members of the Committee at the first meeting held on 10.01.2020 confirmed the appointment of Interim Resolution Professional (IRP), as

Resolution Professional (RP). Subsequently, RP, appointed registered valuers, for the determination of liquidation value of the

Corporate Debtor in accordance with provisions of the code.

9. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar v. VSL Securities Pvt. Ltd., in CA No.1/2020, in CA No.308/2000, dated

09.06.2020, observed as under:-

Likewise, the decision of the COG recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with

no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COG which is not amenable to judicial

review".

10. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

11. The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

33. Initiation of liquidation.-

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted, for completion of the corporate insolvency resolution

process, under section 12, or the fast track corporate insolvency resolution process, under section 56, as the case may be, does not receive a

resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the noncompliance of the requirements specified therein, it shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority, with which the corporate debtor is registered

5. At the second meeting of CoC held on 7.02.2020, the RP, invited Expression of Interest (EOI) in Form G by publishing in

Financial Express (English) and Hosadiganta (Kannada) on 27.02.2020. In response to the publication of Form G, RP received two

Expressions of Interest(s) till the date of submission of EOI.

6. At the fifth meeting held on 15.06.2020, the COC decided to consider extension of time for submission of plan and to ratify the Expression

incurred by RP. Further, in the sixth meeting held on 11.09.2020, the COC members decided to consider extension of time for submission of plan

and to ratify the Expenses incurred by RP, exclusion of time for High Court Stay 84 days and exclusion of time for Lock Down period of 77 days.

7. At the 11th meeting held on 22.12.2020, the RP updated the members of the COC, that he had received, further, three

Expressions of Interest (EOI). Further, at the 14th meeting held on 23.02.2021, the Resolution Professional informed the COC

members about taking over the possession of the plant of the Corporate Debtor in the Malavalli Taluk. At the 15th meeting held on

12.3.2021 the COC accepted the claims of VAT department and BESCOM Department. Further, this Tribunal ordered additional 60

days and gave a deadline to complete the CIRP on 20.04.2021.

8. At the 16th meeting held on 20.04.2021 the members of the COC decided to liquidate the Corporate Debtor and further

ratified the fee payable to Valuers and also ratified the expenses of RP. Copy of the minutes of the 16th COC meeting is

attached as Annexure I to the application. Further, in the 17th meeting held on same day, i.e. 20.04.2021 the COC

passed a resolution to appoint the RP as Liquidator of the Corporate Debtor. Copy of the minutes of the 17th COC meeting

is attached as Annexure - J to the application

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of

resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating

Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

12. Prescribed period for filing application- In the present case, the application under Section 7A of the Insolvency and

Bankruptcy Code, 2016 was admitted on 17.12.2019 and the period of 180 days were completed on 14.06.2020. Further,

from the CIRP period of the Corporate Debtor, 161 days were excluded on account of stay granted by the Hon'ble High Court and on account of

lockdown due to COVID-19 and also further 90 days of extension was granted by this Adjudicating Authority vide Order dated 27.11.2020 in IA.

No 476/2020, therefore the time limit for completion of CIRP stood extended to 20.02.2021. The IA.N0.47/2021 filed by the Resolution

Professional seeking to extend the CIRP period by 60 days more was dismissed by this Adjudicating Authority on 19.02.2021.

Further, as per the order dated 19.03.2021 in IA.N0.81/2021 this Adjudicating Authority excluded the time of the CIRP,

in, respect, of the Corporate Debtor, by, 60 days, therefore, after, excluding, 60 days' time period, the CIRP has expired on 20.04.2021

and the present application is filed, on 14.06.2021, i.e., after the, expiry of the, CIRP period. Hence, this application shall be considered

under Section 33 (1), but not under Section 33 (2).

13. Appointment, of Liquidator - Section, 34, (1), of the, Code, provides that where, the, Adjudicating Authority, passes,

an, order, for, liquidation, of the Corporate Debtor under Section 33, the Resolution Professional appointed for the, CIRP, shall, subject

to, submission, of written, consent, act, as the Liquidator for the purpose of Liquidation. Shri Ravindranath Narayana Rao,

Resolution, Professional, with, Registration, No, 'BI/PA-min view of the satisfaction of the conditions provided under Section 33 (1) of

the Code, the Corporate Debtor M/s. Alpine Wineries Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the

Code. Some of the directions are noted as under:

i. That as per Section 33 (5) of the Code and subject to Section 52 of the, code, no, suit or, other, legal, proceedings, shall, be,

instituted against the corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the

Adjudicating Authority;

ii That the provisions of sub-section, (5), of Section, 33, of the, Code shall, not, apply, to, legal, proceedings, in

, relation, to, such transactions, as, may, be, notified, by, the, Central, Government, in consultation with any financial

sector regulator; and

iii That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of

the Corporate Debtor, except when the business of, the Corporate Debtor is continued during the liquidation process by the Liquidator; and

iv. That, all, the, 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, in, the Liquidator; and

v. That, the personnel of, the Corporate Debtor shall extend all, assistance and cooperation to the Liquidator as may be required by, him,

in, managing, the affairs, of, the Corporate, Debtor and provision, of, Section 19 of the, Code, shall, apply, in, relation, to

voluntary, liquidation, process, as, they, apply, in, relation, to liquidation process with the substitution of, refereno-, 'o the liquidator

for references to the Interim Reso 001/2017-2018/IPA-P00645/11099, has filed, the, written, consent dated 04.05.2021. The Law

Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, Shri

Ravindranath Narayana Rao is appointed as the Liquidator.

14. Regulation 39B, 390 and 39D in the Insolvency and Bankruptcy Board of India, (Insolvency Resolution Process for Corporate Persons),

Persons), Regulations, 2016, have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects, in

this, respect, are, examined hereunder

a. Liquidation Cost, concern, [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation

2016] - The liquidation cost shall be met as per Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations

2016.

b. Assessment of, Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016

The Liquidator shall follow the Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016, while, selling, the, assets, of the

Corporate Debtor, if no compromise or arrangement succeeds or sale as going concern fails.

c. Fees of, the, Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process)

Regulations, 2016. The fee payable to the Liquidator is, as per, Regulations 4(2) of the IBBI (Liquidation

Process) Regulation, 2016

15. Pending applications, if any, and its effects - The Learned Counsel for the Applicant has stated that there is no pending application re any

Tribunal of law or any other authority or any other Tribunal

vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy

Board of India, (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this

order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date, for, submission, of

claim, which, shall, be, 30, days, from, the liquidation commencement date.

vii. That, the, announcement, shall, be, published, in, accordance, with Regulation 12(3) of the Insolvency and Bankruptcy Board of

India (Liquidation Process) Regulation 2016.

viii. That, in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process),

Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as

per Regulation 15 every fortnightly thereafter.

17. Thus I.A No. 152 of 2021 stands disposed of.

18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru, forthwith.

The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address,-