

(202) 07 NCLT CK 0007

National Company Law Tribunal, Mumbai Bench Court II

Case No: IA 971 of 2021 In CP (IB) 1427/MB/C-II/2019

Hirfal Interiors

APPELLANT

Vs

Salasar Enterprises Private
Limite

RESPONDENT

Date of Decision: July 29, 0202

Acts Referred:

- Insolvency and Bankruptcy Code, 2016 - Section 9, 33, 33(1), 33(2), 33(5), 34(1), 52

Hon'ble Judges: P.N. Deshmukh, Member (J); Shyam Babu Gautam, Member (T)

Bench: Division Bench

Advocate: Yahya Batatawala

Final Decision: Allowed

Judgement

P.N. Deshmukh, Member Judicial

1. It is an Application filed u/s 33 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as Code) by Mr. Nishi Jain, Resolution

Professional (RP) of Salasar Enterprises Private Limited seeking Liquidation Order and appointment of the Applicant/RP as liquidator, based on the

resolution passed by the CoC in its 5th meeting held on 15.03.2021 with a requisite majority as contemplated under the Code.

2. This Adjudicating Authority vide its order dated 15.10.2020 on a Petition filed by Hirfal Interiors (Operational Creditor) under section 9 of the

Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Ms. Nishi Jain as the

Interim Resolution Professional (IRP) of the Corporate Debtor.

3. The Applicant submitted that during the course of CIRP as many as 5 CoC meeting were held. Pursuant to the initiation of CIRP, a public announcement in Form A was published on 17.10.2020 in Financial Express (English) and Navkaal (Marathi).
4. Thereafter, in the 1st CoC meeting held on 10.11.2020, the Applicant received one claim from one Operational Creditor. The Applicant sent a communication to the Company for the submission of the books of accounts and other records. The CoC in the said meeting proposed the IRP to continue as the Resolution professional (RP) of the Corporate Debtor.
5. In the 2nd CoC meeting held on 28.11.2020, the Applicant placed a proposal for appointment of Registered Valuers to get the valuation of the assets of the Corporate Debtor. The CoC approved appointment of Mr. Bhavesh Rathod and Ms. Neelam Modi as the Registered Valuers. In the said meeting, publication for the invitation of Expression of Interest (EoI) from the prospective Resolution Applicants was discussed and decided to be called.
6. The Expression of Interest (EoI) was issued on 23.12.2020 inviting prospective Applicants to submit EoI in Form G in Free Press Journal (English) and Navrashtra (Marathi).
7. In the 3rd CoC meeting held on 07.01.2021, valuation report of the Registered Valuer and placed before the CoC. The Applicant also apprised the members of the CoC about two responses received from EoI.
8. In the 4th COC meeting held on 12.02.2021, wherein the Applicant informed the CoC that the Letter of Undertaking had been forwarded to the prospective Applicants but had not received any response for the Information Memorandum and Letter of Undertaking from the two responses as received from EoI published. Hence, it was decided and agreed by the members of the CoC as there being no prospect of any Resolution Plan, it would be viable to liquidate the Corporate Debtor Company.
9. Thus, in the 5th CoC meeting held on 15.03.2021, the CoC with 100% voting share passed a Resolution for liquidation of the Corporate Debtor and to appoint the Applicant Ms. Nishi Jain, to act as liquidator. Further, the fees of the Liquidator will be paid as approved by the CoC. The relevant

extract of the resolution passed in its 5th CoC meeting are as follows :-

“RESOLVED THAT consent of the Members of the CoC of the Corporate Debtor be and is hereby accorded to proceed for Liquidation of the Corporate

Debtor i.e. Salasar Enterprises Private Limited under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, subject to the approval of the Adjudicating

Authority.”

“RESOLVED FURTHER THAT an Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, before the Adjudicating Authority for

liquidation of the Corporate Debtor i.e. Salasar Enterprises Private Limited be filed by the Resolution Professional/Liquidator and the RP/Liquidator be and is

hereby authorized to do all such deed(s)/act(s)/action(s) to give effect to it.”

10. Looking at the Application and averments, we are of the considered opinion that this is a fit case for liquidation, therefore, we hereby order for

liquidation of the Company with following directions :-

a. Upon perusal of the documents, records made available and submissions of the Counsel for the RP in the fifth CoC meeting held on 15.03.2021, the

CoC decided to Liquidate the Corporate Debtor and directed the RP to file an application under section 33 (2) of the Code for liquidation of the

Corporate Debtor.

b. In view of the decision of the CoC, we are inclined to admit the IA 971/2021 in CP 1427/2019 to initiate liquidation process against the

Corporate Debtor. Accordingly, the Adjudicating Authority Orders for initiation of Liquidation of the Corporate Debtor.

c. In view of the above this Bench hereby appoints Ms. Nishi Jain as Liquidator having [Reg. IBBI/IPA-001/IP-P01662/2019-20/12664], having its

address at A-102, Krishna Tower, Ashok Nagar, Kandivali East, Mumbai - 400101, as Liquidator in terms of section 34(1) of the Code.

d. The fees of the liquidator to be paid as approved by the CoC.

e. 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;

f. 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.

g. 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;

h. 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. A copy of this order shall 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. IA 971 of 2021 is allowed. File to be consigned to records.