

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- II)

Item No. 225
IB-89(ND)2018
IA-973/2023, IA-5761/2022

IN THE MATTER OF:

M/s. Gozoop Online Pvt. Ltd.

... **Applicant/Petitioner**

Versus

OM Pizzas and Eats India Pvt. Ltd.

... **Respondent**

Under Section: 9 of IBC, 2016 (Liq)

Order delivered on 08.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Liquidator : Adv. Honey Satpal, Adv. Nandini Choudha, Adv.
Yash Dhyani

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-5761/2022: The prayer made in the application reads thus:

- "A. To accept this application as Interlocutory Application on the records of this Hon'ble Tribunal.*
- B. To approve sale of Sundry Receivables of the Corporate Debtor to Mr. Bala Subrahmanyam for an amount of Rs. 25,500/- as private sale pursuant to Regulation 33(2)(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016."*

On 24.04.2023, we passed the following order:-

"IA-973/2023 & IA-5761/2022: *When as per by the stand taken by the Liquidator himself the liquidation value of the assets which he proposed to sell to one individual Mr. Bala Subrahmanyam is Rs. 14,22,110.50/- he has agreed to sell the same at a meagre sum of Rs. 25,500/- only.*

We are unable to appreciate the approach and attitude of the Liquidator to run the affairs of the CD in such manner. In the wake, we deem it to appropriate to refer to matter to IBBI to take an appropriate view and appoint a supervisor qua the further liquidation process. IBBI would also examine and take a view regarding any other action required to be taken in the matter.

Ld. Counsel for the Liquidator is directed to make a copy of this order available to IBBI. The Court Officer is also directed to send a copy of the order to the Chairman IBBI.

List on 05.06.2023.”

Nevertheless, the IBBI, though issued notice to Liquidator calling upon him to explain his affairs, but regarding appointment of the supervisor it took a stand that the law does not provides for any such mechanism. In the wake we passed the following order on 26.09.2023:-

“IA-5090/2023 & IA-5092/2023: *The applications are filed on behalf of IBBI for recalling the order dated 24.04.2023. Ld. Counsel appearing for the applicant/IBBI submitted that in terms of the order dated 24.04.2023, an investigation has been completed and a show cause notice is likely to be issued to the concerned Liquidator. She further submitted that there is no requirement for the appointment of a supervisor to supervise the affairs of the Liquidator, as there is no procedure in this regard. Having submitted so, she prayed for a short adjournment. At her request, the hearing is deferred to 04.10.2023 at 2:30 PM.*

In the meantime, the investigation report referred to by Ld. Counsel appearing for the applicant be filed before this Tribunal.”

Finally, on 16.01.2024, we passed the following order:-

“IA-5092/2023:- *Ld. Counsel appearing for the Applicant/liquidator submitted that the IBBI has examined the issue and has prepared a report that the procedure followed by the liquidator is in accordance with the extant procedure. Let the report of IBBI be placed on record, within two weeks.*

*Ld. Counsel appearing for the applicant submitted that there is no such law which provides for appointment of supervisor by IBBI qua any liquidation process. Having submitted so she pressed IA-5092/2023 for recalling order dated 24.04.2023 passed in IA-973/2023 and IA-5761/2022. In view of the averments made in the application and the submissions put fourth by the Ld. Counsel for the applicant, the order dated 24.04.2023 is modified to the extent that the IBBI would not be required to appoint supervisor qua the liquidation process in the matter, **the Application stands disposed of.***

IA-973/2023 and IA-5761/2022 List the IAs on 04.03.2024.”

Today Ld. Counsel for the Liquidator placed before us the copy of the report of investigation conducted qua the RP and submitted that the IBBI did not find any infirmity in the procedure followed by the Liquidator. Para 15 to 17 of the report reads thus:

15. Before examining the conduct of the IP based on the observation of AA vis-à-vis reply of IP, the important timelines in the CIRP/liquidation of the CD are as follows:

Date of commencement of CIRP	-	16 th March 2018
Approval of Resolution plan by CoC	-	8 th January 2019 (in 8 th CoC)
Rejection of resolution plan by AA	-	3 rd January 2020
Approval for filing for liquidation	-	27 th January 2020 (9 th CoC)
Liquidation order	-	14 th February 2020 (IP has stated to have received the same on 30 th July 2020)

16. It is observed that except for trade receivables, other assets of the CD have been realised by the IP. As informed by the IP, the amount realised by him is to the tune of Rs. 91,83,741/-. However, realisation against trade receivables is only Rs. 19020/- against its value of Rs. 14,22,110/-. In response to public announcement issued by the IP on 27th July 2022 for sale of remaining sundry receivables, he received a query from one Mr. Bala Subrahmanyam who after verification of records of the CD offered Rs. 25,500/-. SCC with 90.82% voting share approved selling of other sundry trade receivables for Rs. 25,500/-. IP filed an IA before Hon'ble AA for allowing him to sell the trade receivables for Rs. 25,500/- to Mr. Bala Subrahmanyam, however, Hon'ble AA directed him to publish the notice for sale of trade receivables in two national newspapers which the IP followed but still did not get any response. IP informed the factual position to AA. However, it seems that AA was not convinced about the efforts made by the IP in this regard and directed the IBBI to appoint a supervisor qua the liquidation process of the CD and also directed to examine if any other action is required to be taken by the Board in this matter. The matter regarding appointment of Supervisor for the liquidation process of the CD has been forwarded to Liquidation Division for further action.

17. With regard to IP's efforts for realisation of trade receivables, IP seems to have taken adequate steps as he issued six public announcements seeking bids, but he did not receive any bids. In response to sixth public announcement, he received an enquiry and post verification of details of trade receivables, received an offer for Rs. 25,500/- but permission for the same was not accorded by AA. Later, he followed AA's direction also but still he did not receive any other offer. Hence, efforts made by the IP for realisation against trade receivables seem satisfactory.

As has been noted hereinabove, by way of the captioned application, the Liquidator has espoused that this Tribunal should approve the sale of sundry receivables of the Corporate Debtor to Mr. Bala Subrahmanyam for an amount of Rs. 25,500/-. As can be seen from the provisions of Section 35 of IBC, 2016, subject to the directions of this Adjudicating Authority the Liquidator has power and duties to inter alia to apply to this Tribunal for such orders and directions as may be necessary for the Liquidation of the CD and to report the progress of the Liquidation process in a manner as may be specified by the board. Section 35(1)(n) of IBC, 2016 reads thus:

“35. Powers and duties of liquidator. –

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board.”

It is not the spirit of the provisions of Section 35 that after negotiating with a particular buyer and determining the sale price, the Liquidator would seek the approval of this Adjudicating Authority. In order to perform the sale of the assets, the Liquidator would resort the process laid down in Regulation 33 of IBBI (Liquidation Process) Regulations, 2016 and would follow the procedure laid down under Schedule 1 to the Regulation. In the process, the Liquidator is supposed to either to follow the process of auction or to conduct the private sale. By following the fair and transparent process as stipulated in Regulation 33 read with schedule 1 to the Regulation, the Liquidator would be entitled to disposed

of the assets referred to in the application. Before doing so the Liquidator would also explore the possibility to recover the summary debts by resorting to his other powers and duties. Subject to the aforementioned observations and directions, **the IA is disposed of.**

IA-973/2023: Let the IA be listed for consideration on 30.09.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)