

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

IA(IBC)No. 630/JPR/2022
In CP No. (IB)-20/10/JPR/2022

IN THE MATTER OF:

M/S BALAJI LIFESTYLE TECHNOLOGIES PRIVATE LIMITED

...Corporate Applicant/Debtor

MEMO OF PARTIES

IA(IBC)No. 630/JPR/2022:

JAI PRAKASH RAWAT

Resolution Professional for M/s Balaji Lifestyle Technologies Private Limited

22-B, New Colony, Chandni Chowk,
Jhotwara, Jaipur, Rajasthan-302012

...Applicant

FOR THE APPLICANT:

Amol Vyas, Adv.

Vani Vyas, Adv.

Jai Prakash Rawat, RP present in person

Order Pronounced On: 16.03.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application bearing *IA(IBC) No. 620/JPR/2022* is filed by the Resolution Professional, of Corporate Debtor namely M/s Balaji Lifestyle Technologies Private Limited ('Applicant'/ 'RP') under Section 33(2) of the

Insolvency and Bankruptcy Code, 2016 ('Code') for passing an order of Liquidation against the Corporate Debtor.

2. It is seen that the Corporate Debtor itself had filed an application under Section 10 of the Code seeking initiation of Corporate Insolvency Resolution Process ('CIRP'). This Adjudicating Authority vide order dated 01.06.2022 admitted the said application and appointed Mr. Tara Chand Sharma as the Interim Resolution Professional ('IRP').
3. In compliance with the provisions of the Code, the IRP constituted the Committee of Creditors ('CoC'). The CoC constituted of 4 Financial Creditors i.e. UCO bank having 83.71% voting share; Tata Capital Financial Services Limited having 5.27% voting share; Bajaj Finance Limited having 5.60% voting share and Aditya Birla Finance Limited having 5.42% voting share and the 1st meeting of CoC was held on 29.06.2022 wherein IRP proposed for appointment and confirmation of the IRP as RP, however, the CoC rejected the proposal vide 88.98% votes. The 2nd meeting of the CoC was held on 02.08.2022 wherein the agenda to appoint Mr. Jai Prakash Rawat as RP in the CIRP of the Corporate Debtor was placed and the same was approved with 83.71% voting in favour. Pursuant to the same, an Application was moved under Section 27 of the Code seeking replacement of the RP by one of the CoC members; the same was allowed vide Order dated 22.08.2022.
4. The 3rd meeting of the CoC was held on 12.08.2022. The erstwhile IRP had

published Form-G on 14.08.2022 inviting Expression of Interest ('EOI') but no applications were received stating interest in submission of Resolution Plan for the Corporate Debtor till the last date of submissions i.e. 30.08.2022. Thereafter, the RP was directed by CoC, in accordance with the resolution approved in 4th meeting of CoC, to publish Form-G (1st Extension) under regulation 36(A) on 05.09.2022. As per Form-G (1st Extension), the RP received 1(One) formal EOI, however the Prospective Resolution Applicant failed to submit their refundable process participation fee.

5. It is submitted that the RP issued a provisional list of Prospective Resolution Applicant on 30.09.2022 to the members and the Applicant who had expressed his interest. Further an email was also preferred to the Prospective Resolution Applicant to provide clarification/information/documents in respect to the formal EOI along with relevant documents and participation fees by 11.10.2022 at 17:00, whereas no response was received. Hence, the said Prospective Resolution Applicant is ineligible for submission of Resolution Plan. The RP issued a final list declaring the Prospective Resolution Applicant ineligible to submit the Resolution Plan on 14.10.2022.
6. Meanwhile, the Committee of Creditors was re-constituted and the Report for re-constitution was placed on record vide IA(IBC) No. 565/JPR/2022 as per which there are 5 Financial Creditors. The said report was taken on

record vide Order dated 10.11.2022. The report of 2nd re-constitution of CoC was filed by the RP vide IA(IBC) No. 07/JPR/2023 which was taken on record vide Order dated 17.01.2023.

7. Thereafter, the RP convened the 5th meeting of the CoC on 01.11.2022 wherein the members of the CoC having voting share of 89.39% votes and approved for liquidation of the Corporate Debtor in accordance with Section 33(2) of the Code. Mr. Jai Prakash Rawat, RP herein was appointed as Liquidator to carry out the Liquidation Process of the Corporate Debtor. The members of the CoC having voting share of 92.27% voted, approved and ratified the assessment of sale as a going concern.
8. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provision of Section 33 of IBC, 2016 is 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 non-compliance of the requirements specified therein, if 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.

- (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 creditor approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of sub-Section (1)."*

9. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:

"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review".

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

10. ***The prescribed period for filing Application***— In the present case, the Application under Section 10 of the Code was admitted on 01.06.2022, and the RP filed the present Application on 08.12.2022. Hence, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code.
11. ***Appointment of Liquidator and fee to be paid***— 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 Corporate Insolvency Resolution Process

shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows: -

“(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”.

12. The CoC in its 5th meeting dated 01.11.2022 has resolved by 89.39% voting that Mr. Jai Prakash Rawat having registration No. IBBI/IPA-001/IP-P-01969/2020-21/13039 to act as Liquidator and Mr. Jai Prakash Rawat has also given his consent letter dated 28.11.2022 which is at page 65 of the application. It is noted that liquidation proceedings herein, at the instance of the resolution passed by the CoC, are automatically initiated due to prescription of statute. Therefore, Mr. Jai Prakash Rawat is appointed as the Liquidator.
13. It is also seen that Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (‘CIRP Regulations’) have been inserted by notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

14. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** - The CoC has not decided on the estimated liquidation cost. Therefore, it is directed that the liquidation costs will be taken on an actual basis which will be approved by the stakeholders' committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs. The Liquidator is directed to place on record the valuation reports along with the status report of the assets owned by the Corporate Debtor within two weeks of this order.
15. ***Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** — The CoC shall consider/discuss the selling of the Corporate Debtor as a going concern, if not already resolved to, as the first option or selling the business(s) of the Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations. The Liquidator shall submit a report regarding the same before this Authority.
16. ***The fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)*** – The CoC in its 5th meeting resolved that the fee of the Liquidator will be decided in the 1st SCC meeting post commencement of Liquidation Process. Taxes and expenses like out of pocket expenses, publications expenses,

valuations, travelling expenses, advocate charges, court fees, conveyance expenses and other inter connected expenses, that will be extra, will be paid on actual basis.

17. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor namely M/s Balaji Lifestyle Technologies Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -

- I. 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 by or against the Corporate Debtor;
- II. Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of Corporate Debtor, with the prior approval of the Adjudicating Authority;
- III. The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- IV. This order of liquidation under Section 33 of Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;
- V. 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 an effect and shall be vested in the Liquidator;

VI. 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 provisions of Section 19 of the Code shall apply concerning liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;

VII. The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (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 stakeholders 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;

VIII. Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

18. In view of the foregoing, *IA(IBC)No. 630/JPR/2022* is disposed of.

Copy of this order is supplied to the counsel for the Applicant, the Liquidator and the Registrar of Companies forthwith. The Registry

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

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**