

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

IA. No. 1281/2021

**In
CP(IB)No.3589/MB/CII/2018**

*Application filed under section 33(2) of Insolvency
and Bankruptcy Code, 2016 and Rule 11 of the
National Company Law Tribunal Rules, 2016.*

**CA Ajay Agrawal, IRP of
Borkar Colorpacks Private Limited**

...Applicant

In the matter of

Shree Agencies.

...Petitioner

V/s

Borkar Colorpacks Private Limited.

...Respondent/Corporate Debtor

Order Pronounced on :- 12.2.2024

Coram:

**Anil Raj Chellan
Member Technical**

**Kuldip Kumar Kareer
Member Judicial**

Appearances:-

For the Applicant

: Counsel, Hafeez Patanwala

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This is an Application filed u/s 33(2) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) by CA Ajay Agrawal, Interim Resolution Professional (‘IRP’) of Borkar Colorpacks Private Limited (‘Corporate Debtor’) seeking liquidation order based on the resolution passed by the Committee of Creditors (CoC) **in its 4th meeting held on 01.04.2021.**
2. The averments made in the Application and submissions made by the Counsel for the Applicant are as follows:
 - a) This Adjudicating Authority vide its order dated 31.08.2020 admitted the Petition, filed by the Petitioner i.e. Shree Agencies for initiation of Corporate Insolvency Resolution Process (“CIRP”) under Section 9 of the Code against Corporate Debtor, Borkar Colorpacks Private Limited and appointed Mr. Ajay VijayKumar Agrawal as the Interim Resolution Professional (“IRP”) of the Corporate Debtor.
 - b) The IRP made public announcement regarding initiation of CIRP against the Corporate Debtor and invited claims from the creditors of the Corporate Debtor on 13.10.2020. After verifying the claims received, the IRP constituted the Committee of Creditors (‘CoC’) with one financial creditor i.e. Saraswat Co-operative Bank Ltd vide report dated 02.11.2020.

- c) In the 1st CoC meeting held on 2.11.2020, it was resolved that IRP will not be appointed as Resolution Professional and resolved to appoint Mr. Mangesh Kekre as Resolution Professional. However, IRP was requested to carry on with the duties of RP in the CIRP till such time the Adjudicating Authority appoints the Resolution Professional.
- d) The Financial Creditor and sole member of CoC informed that it took over the Corporate Debtor under SARFAESI Act before initiation of CIRP against the Corporate Debtor and that at the time of takeover, no assets, machinery or stocks of the Corporate Debtor were found. Though an FIR had been filed by the financial creditor, no information/progress could be made. Further, the suspended directors, who were present at the CoC meeting, had been asked by the IRP about the items missing from the list of assets but did not receive any information from the Suspended directors for the same.
- e) The IRP informed the CoC that financial information relating to Corporate Debtor and location of plant and machinery were not made available. IRP, therefore, filed an application u/s. 19(2) of the Code before this Tribunal wherein Mr. Atul Borkar, who is one of the suspended directors of the Corporate Debtor agreed to provide the required information to IRP latest by 12/01/2021.
- f) In the CIRP process, IRP prepared Information Memorandum (IM), finalized the names of valuers and published Form-G on 15.01.2021 in two newspapers for inviting Expression of Interests

from the Prospective Resolution Applicants (“PRAs”) and the last date for submission of the Resolution Plan was 18.03.2021. Pursuant to the Publication of EoI, one person expressed his interest in submission of Resolution Plan.

- g) The IRP had sent Request for Resolution Plan (‘RFRP’) & revised Information Memorandum (‘IM’) to the sole PRA via email dated 15.02.2021.
- h) Further, the sole PRA enquired about the details and description of the assets of the Corporate Debtor and the available details were provided by the IRP to the PRA.
- i) Subsequently, Siemens Financials Services Private Limited had submitted its claim as a Financial Creditor since it had leased the machinery on capital basis. Then, one of the representatives of Saraswat Bank stated in the CoC that they had no objection to consider Siemens Financials Services Private Limited as a Secured Financial Creditor.
- j) The Applicant has also filed an application under section 66 of the Code against the Suspended Directors of the Corporate Debtor.
- k) Later, the PRA visited the premises of the Corporate Debtor and found that the assets as provided by the IRP to the PRA were not available at the premises of the Corporate Debtor and hence, the PRA expressed his unwillingness to submit the Resolution Plan.

- 1) Since the PRA, expressed his unwillingness in submitting the Resolution Plan, the members of the CoC decided not to invite any fresh EOI and concluded that initiation of liquidation process would be the best course of action.
3. In the 4th CoC meeting held on 01.04.2021, the members of the CoC resolved to liquidate the Corporate Debtor and approved to appoint Mr. Mangesh Vitthal Kekre as the Liquidator of the Corporate Debtor and accordingly, passed the following resolution:

“RESOLVED THAT the consent of members be and is hereby accorded to appoint Mr. Mangesh Vitthal Kekre having registration No. (IBBI/IPA-001/IP-P00539/2017-2018/10964) as the Liquidator of the Company and the Liquidator’s fee will be as per Regulation 4(2)(b) of the of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

4. A written consent has been given by Mr. Mangesh Vitthal Kekre to act as Liquidator of Corporate Debtor.
5. Since the CoC with requisite voting as specified under section 33(2) of the Code has approved liquidation of Corporate Debtor, this Tribunal has very limited scope of judicial review and therefore, this Bench allows the present application and pass order for liquidation of Corporate Debtor.
6. Looking at the application and averments made therein, we are of the considered opinion that this is a fit case for liquidation.

Therefore, we hereby order the liquidation of the Corporate Debtor within the following terms:

- a. The **Mr. Mangesh Vitthal Kekre**, holding Registration No. **IBBI/IPA-001/IP-P00539/2017-2018/10964**, is appointed as the Liquidator in terms of Section 34 of the Code;
- b. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- c. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- d. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- e. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- f. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation

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of steps for recovery of dues of the Corporate Debtor if any as per law.

- g. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
 - h. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.
 - i. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India.
7. The **IA-1281/2021** filed by the IRP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)