

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

I.A. 1111/2020
IN
C.P. No. (IB)-1411(ND)/2019

IN THE MATTER OF:

M/s Ambe Agrofoods Private Limited **...Operational Creditor**

Versus

M/s U V Exports Private Limited **...Corporate Debtor**

AND IN THE MATTER OF:

Mr. Rajesh Kumar Gupta
M/s Eshal Foods Private Limited
F-43 Dilshad Colony
East Delhi-110095 **...Interim Resolution Professional/Applicant**

Judgement Delivered on: 11.03.2020

Section: 33(2) of the IBC, 2016.

CORAM:

MR. L. N. GUPTA
HON'BLE MEMBER (T)

CH. MOHD. SHARIEF TARIQ
HON'BLE MEMBER (J)

PRESENT:

For the Applicant : Mr. Manish Devan, Advocate for IRP
 Mr. Rajesh Gupta, IRP
For the Respondent : None



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JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

This is an application filed by Mr. Rajesh Kumar Gupta, the Interim Resolution Professional of M/s U V Exports Private Limited under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for seeking the following main reliefs :

- "(b) Pass an appropriate Order to commence the Liquidation proceeding of the Corporate Debtor i.e. M/s. U V Exports Private Limited;*
- (c) Appoint Mr. Rajesh Kumar Gupta, the Interim Resolution Professional to act as Liquidator of the Corporate Debtor i.e. M/s. U V Exports Private Limited and as per the resolution passed by the CoC, the Liquidator shall be entitled to fee as prescribed in the fee table under Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016.*
- (d) Pass an appropriate Order that the Order of Liquidation is a notice of discharge to the employees, officials, workmen etc...."*

2. Facts of the case in brief are that the Operational Creditor, M/s Ambe Agrofoods Private Limited filed an application bearing No. IB-1411/(ND)/2019 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s U V Exports Private Limited. The said application was admitted by



this Tribunal vide Order dated 19.09.2019 and Mr. Rajesh Kumar Gupta was appointed as Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a Public Announcement in Form-A on 17.10.2019. The Public Announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted a Committee of Creditors (CoC) initially comprising of Indian Bank, Drip Capital Inc., Electronica Finance Limited. The first meeting of the CoC was held on 15.11.2019. It is further submitted by the IRP that in the first meeting of CoC, he was confirmed as RP.

5. It is submitted by the Ld. IRP :

“10. That the Second meeting of Committee of Creditors was held on 02.12.2019. However, in the Second meeting of CoC the members of the Committee with major voting share i.e. Indian Bank having voting share 78.12% and Electronica Finance Limited having voting share 1.35% proposed the liquidation against the Corporate Debtor and provided their consent as well. It was decided to go for liquidation as there are no chances of revival of Corporate Debtor as per their point of view. However, the official of Drip Capital opted E-voting method to cast vote. They cast their vote against the resolution. Therefore the resolution as given below is passed by 78.42%. Therefore the resolution as given below is passed to initiate the procedure of Liquidation against the Corporate Debtor.”



6. It is submitted by the IRP that the following resolution was put to vote in the Second Meeting of CoC held on 02.12.2019

“RESOLVED THAT the consent of Indian Bank and Electronica Finance Limited through their authorized persons be and is hereby granted to initiate the procedure of Liquidation against the Corporate Debtor.”

7. It is submitted by the IRP that the aforesaid resolution was passed 78.42% votes. The result of voting is reproduced below :

S. No	Name of Creditor	Voting Right in CoC	Yes	No
1	Indian Bank	77.07%	77.07%	-
2	Electronica Finance Limited	1.35%	1.35%	-
3	Drip Capital Inc. (Through E--Voting	21.58%	-	21.58%
Total		100%	78.42%	21.58%

8. It is stated by the IRP that in the third Meeting of CoC held on 18.01.2020 the following resolution was put to vote regarding his confirmation as the Liquidator :

“RESOLVED THAT Mr. Rajesh Kumar Gupta, an Insolvency Professional (Reg No. IBBI/IPA-003/IP-N00198/2018-19/12308) be and is hereby appointed as the Liquidator in the matter of liquidation process of M/s U V Exports Private Limited at a fee calculated as per Regulation 4 of IBBI (Liquidation Process), 2016.”



9. That the Ld. IRP has annexed the E-voting results of the third Meeting of CoC held on 18.01.2020. The E-Voting result is reproduced below :



Right2Vote

U V Exports Private Limited

Created By: Rajesh Kumar Gupta
Start Time: 21 Jan 2020, 12:00 pm (IST)
End Time: 23 Jan 2020, 12:00 pm (IST)

To consider the appointment of Mr. Rajesh Kumar Gupta as liquidator of the Corporate Debtor at a fee calculated as per regulation 4 of IBBI (Liquidation Process), 2016

Approve



Votes 2995
96 %

Reject



Votes 120
4 %

Abstain

Votes 0
0 %

2 voter(s) having total vote value of 910 have not voted.

10. In the circumstances, basing on the resolution made by the CoC and there being no other alternative, this Bench is inclined to order Liquidation of the Corporate Debtor. The consent of the IRP Sh. Rajesh Kumar Gupta to act as a Liquidator is on record.

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11. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s U V Exports Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a. Mr. Rajesh Kumar Gupta, IBBI Registration No. IBBI/IPA-003/IP-N00198/2018-19/12308, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016
- b. The Liquidator, is directed to issue public announcement stating that the corporate debtor is in Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. 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;
- d. 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;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.



- f. 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.
- g. The Registry is directed to communicate a copy of the Order to the Operational Creditor, the Corporate Debtor and Liquidator at the earliest but not later than 25.03.2020. A copy of this Order be also sent to the ROC for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within 30 days.
- h. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi and Haryana and to the Insolvency and Bankruptcy Board of India;
12. I.A. 1111/2020 filed in C.P. No. (IB)-1411(ND)/2019 is disposed-off in the aforesaid terms.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Ch. Mohd. Sharief Tariq)
Member (J)