

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI
COMPANY PETITION NO. 786(PB) of 2018**

IN THE MATTER OF:

Anurag Chandra **Petitioner**

Vs.

Affinity Beauty Salon Pvt. Ltd. **Corporate Debtor**

AND IN THE MATTER OF

CA No. 1401 of 2020

**Mr. Rohit Sehgal
(Resolution Professional)
Affinity Beauty Salon Pvt. Ltd.** **Applicant**

Vs.

Anurag Chandra and Others **Respondents**

AND IN THE MATTER OF

CA No. 2685 of 2019

**Mr. Rohit Sehgal
(Resolution Professional)
Affinity Beauty Salon Pvt. Ltd.** **Applicant**

CA No. 2969 of 2020

AND IN THE MATTER OF:

Sansar Chand Sharma and Another **Resolution Applicant**

Vs.

Rohit Sehgal and Another

..... Respondents

Order Delivered on : 28.08.2020

Coram :

**SHRI. B.S.V PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT**

**SHRI. HEMANT KUMAR SARANGI
HON'BLE MEMBER(TECHNICAL)**

Order Pronounced on: 21.08.2020

PRESENT:

For the Applicant

Ms. Ranjana Roy Gawai, Mr. Pervinder
Chatrapati & Mr. Vinit Kumar, Advs.

For the Kotak Mahindra

Mr. Mahip Datta, Mr. Dhruv Gupta & Ms. Sanya
Lamba, Advs.

For the HDFC

Mr. Rahul Malhotra & Ms. Himanshi Madan,
Advs.

For the Ex. Director &
Resolution Applicant

Mr. Anand Agarwal & Mr. Tushar John, Advs.
Mr. Lalit Valicha & Mr. Tushar Anand,

For the FC

Ms. Manisha Chaudhary & Mr. Mansumyer Singh,
Advs.

ORDER

PER - B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT

It is CA-1401/2020 filed by the Resolution Professional based on the resolution passed by Financial Creditor on 12.02.2020 seeking for withdrawal of CA-2685/2019, which was filed for approval of this Bench over the plan approved by CoC on 06.11.2019. The reason for asking

withdrawal is, Ex-Directors, who filed this plan, failed to furnish performance Bank Guarantee (PBG) of ₹ 3.6 Crore (10% of the Plan) despite CoC extended time for filing Performance Bank Guarantee up to 30.01.2020 though time given for furnishing PBG is 21.11.2019. As the Resolution Applicant failed to furnish PBG by 30.01.2020, in 2nd CoC Meeting held on 12.02.2020, it has passed another resolution for liquidation and the closure of the outlets. In the last para of the Application, the RP has prayed this Bench to consider this application as application for seeking liquidation order as well.

2 As against this application, Resolution Applicants (R22&23) replied that it is true that they failed to furnish PBG for ₹3.6Crore despite extension has been given. Subsequent thereto, they submit that for they furnished PBG on 20.03.2020, wherever Resolution Plan is feasible and viable, the Corporate Debtor should not be sent into liquidation. He has further stated that though liquidation value of the company shown as below ₹10Crore, the Resolution Applicants made a provision for an amount of ₹36Crore in their plan, if this plan is ignored

and liquidation order is pronounced, it will not maximise the value of the Corporate Debtor.

3 Re-joining to the earlier submissions, the RP has stated that the time for inviting fresh Expression of Interest, the CIRP period is over by 09.11.2019, the only option left to the Company is to proceed with the liquidation.

4 Adding to the submissions of the Resolution Professional, one of the Financial Creditors (HDFC) counsel has submitted that though liquidation value of the company is shown as less, these ex-directors have given collaterals to realize their debt from the security other than the assets of the Corporate Debtor.

5 Indeed, the Corporate Debtor is indebted to pay more than ₹100Crore to the Creditors, now these ex-directors who could not generate one tenth of the Resolution Plan amount even after lapse of six months; the Resolution Professional counsel says that it is doubtful whether this person could be in a position to raise any money after approval of the plan. Another important point to be considered is, the plan applicants are none other than promoter directors who defaulted in

repaying loans and brought this company to this pass. Now, they have sneaked into through this Resolution Plan holding themselves out as covered by MSME, for which also, the CoC agreed to the Plan of them, but till date, they could not generate PBG, leave of putting cash into the Company.

6 Since it is a mandatory condition to furnish PBG before approval of the plan, the same not being furnished despite time for furnishing PBG was extended beyond the time mentioned in the Resolution Plan, no merit to get into the plan to examine it under Section 31 of the Code.

7 In view of these reasons, the only option available to the company is, for withdrawal of the resolution plan pending before this Bench and to opt for liquidation of the company to allow the Creditors to receive whatever that is remained as a residue in the company and any of the Financial Creditors have any additional Securities/Collaterals against the loan provided to the Corporate Debtor, at least they could proceed against guarantors to realize their monies.

8 For the CIRP period being expired, if full-fledged plan is not before this Bench, this Tribunal on its own can pass an order for

liquidation u/s 33(1) of the IBC, Code, because as and when CIRP period is over, it is obvious that liquidation order is to be passed by this Bench.

9 Duty of this Bench is to ensure process is adherent to the timelines given in the Code and to ensure that the procedural aspects set out in the Code are complied with. Duty of the CoC is to take a call in its wisdom what is best to it to maximise the value of the company. Since it is promoter directors, the plan value might have been increased for their own reasons. When they could not generate even PBG from a Bank, how could it be believed that they would fulfil the terms of the plan.

10 Since CIRP period has not been extended, since CoC is not in existence, it cannot even go for issuing fresh Expression of Interest inviting bidders. Since, the liquidation value of the Company is far less than the liabilities, if the company goes into liquidation, presuming the company realizes liquidation value, the Creditors will suffer, but not these ex-directors who could not even generate ₹3.6Crore within the time provided to them. Moreover there is no material to say it is a company doing business and generating money, indeed the Resolution

Professional has filed an application for closure of outlets because the company is not in a position to pay rentals and running in losses.

11 When the Creditors themselves opt for liquidation, knowing full well how much they get, this Bench cannot go beyond the mandate of the Code saying company should be restructured by way of Resolution violating the mandate that is given under IBC. Besides this, majority of the financial creditors filed individual affidavits expressing their approval for liquidation.

12 As to withdrawal of the Resolution Plan, when plan is conditional and when that condition is not fulfilled before approval by the Adjudicating Authority, the plan is otherwise to be rejected and to proceed with the liquidation. It could not be said that since no provision is set out in IBC for withdrawal of plan by the CoC/Resolution Professional, it shall be construed that plan has to be approved under Section 31 of the Code. For the Resolution Applicant failed to provide performance Bank Guarantee, the plan is hereby rejected and ordered for liquidation as set out u/s. 33 of the Code.

13 As to consent of the RP to continue as liquidator, the RP has not raised any objection to continue as liquidator, therefore he has been appointed as liquidator to discharge his functions as liquidator.

14 With regard to the Application filed by Anurag Chandra, one of the Financial Creditors asking for replacement of the Resolution Professional, he has along with his group people has only 11.17% voting share in the CoC. Moreover he may be having his own grievance for his plan has not been taken in for approval, in this backdrop, we hold that there is no merit in the contention of him; therefore that IA filed by him is hereby rejected.

15 As to IA 2969/2020 filed by the Resolution Applicants seeking leave of 12 days to furnish requisite PBG, leaving timelines and everything aside, if the date of filing this application i.e., on 23.07.2020 is taken into consideration, they ought have furnished PBG within 12 days, that has also not happened. In view of the same, we have not found any merit in this application; hence this application is hereby **dismissed**.

16 For the reasons aforementioned, this CA-1401/2020 is hereby disposed of by rejecting CA 2685/2019 and liquidation is hereby ordered with the directions as mentioned below:

1. In the result the application CA-1401/2020 is disposed of by ordering liquidation of the corporate debtor, namely M/s Affinity Beauty Salon Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

a. Mr. Rohit Sehgal, holding Registration No.

IBBI/IPA-001/IP-P00528/2017-2018/10953, Email:

iamrs101@gmail.com, rohit.sehgal@aaainsolvency.

com, Mobile: 9810185184 is appointed as the

Liquidator in terms of Section 32(1) of the Code;

b. Registry is directed to communicate this Order to

the Registrar of Companies, NCT of Delhi &

Haryana and to the Insolvency and Bankruptcy

Board of India;

- 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. 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.

- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine any undervalued and preferential transactions etc;
- 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. 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;

- i. The notice is to be given to the ex- directors of the company to attend the next COC meeting;
- j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

Sd/-
(BSV PRAKASH KUMAR)
ACTNG PRESIDENT

Sd/-
(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)