

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

C.A. 2826 (PB) / 2019

IN

Company Petition No. (IB) - 547 (PB) / 2018

In the matter of:

Mr. Rohit Sehgal

Applicant/Resolution Professional

AND

In the matter of:

HBN Daries & Allied Limited

Corporate Debtor

*Under Section 33(1)(a) of the Insolvency and Bankruptcy Code,
2016 for liquidation of the corporate debtor*

Order pronounced on: 31.01.2020

Coram:

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

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the Petitioner:

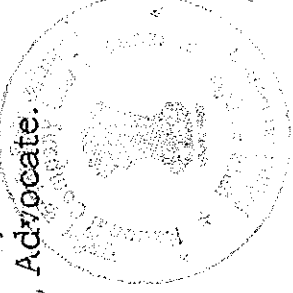
Mr. Prateek Kushwaha, Ms. Mrinali Prasad, Advs.
Mr. Rohit Sehgal, RP, Mr. Sumendha Prasad Bhatt,
A.R., Mr. Sameer Rastogi, A.R. Mr. Pankaj Khaitan,
A.R. for Resolution Professional applicant.

For the Respondent: Ms. Lakshmi Gurung, Adv Sr. Standing Counsel &

Mr. Dinesh Sharma, Advocate for I.T. Department.

For the R-9 SEBI:

Mr. J.D. Baruah, Advocate.



ORDER

S. K. Mohapatra, Member

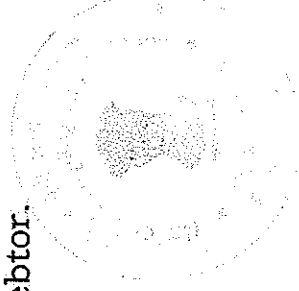
1. This is an application filed by the Resolution Professional under Section 33 (1) (a) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s. HBN Daries & Allied Limited.
2. The facts in brief are that some of the financial creditors, Mr. Bhanu Ram & Ors, had filed an application under Section 7 of the Code bearing number IB-547(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 14.08.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. HBN Daries & Allied Limited and there in appointed Mr. Rohit Sehgal, as the Interim Resolution Professional.
3. After the commencement of Corporate Insolvency Resolution Process, the Interim Resolution Professional made public announcement in FORM-A in Financial Express (English) and Jansatta (Hindi) on 18.08.2018 in



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terms of Regulation 6 *inter alia* inviting the claims from the creditors of the Corporate Debtor.

4. It is submitted that as the financial creditors in the matter belonged to a class of creditors and were anticipated to be numbering in some lakhs and spread across the country, the IRP decided to divide these classes into four categories based on the scheme under which they had invested their money with the corporate debtor. The Interim Resolution Professional gave choice of three Insolvency Professionals for each such category (total twelve Insolvency Professionals for selection of four Authorized Representatives) in the Public Announcement and based on the FORM-CA received by him, the Adjudicating Authority appointed four different Insolvency Professionals as Authorized Representatives of the creditors belonging to these classes. After the appointment of these Authorized Representatives, the Interim Resolution Professional constituted the Committee of Creditors. In the first meeting of Committee of Creditors held on 25.09.2018 the IRP, Mr. Rohit Sehgal, was appointed as the Resolution Professional ("RP") in respect of the corporate debtor.

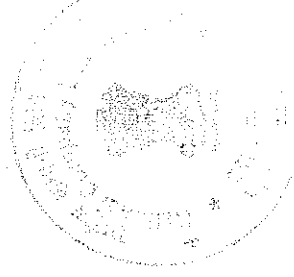


5. With the approval of Committee of Creditors, the resolution professional filed application before this tribunal for further extension of 90 days period beyond 180 days of CIRP period, which was allowed vide order dated 13.02.2019 passed in CA-220(PB)/2019.
6. It is submitted that since SEBI and Income Tax Department had attached almost all the assets of the Corporate Debtor and its subsidiaries, the resolution professional filed an application under Section 60(5) of the Code being CA-359(PB)/2019 before this Tribunal for its de-attachment and for handing over of the title deeds to the resolution professional.
7. The aforesaid application was allowed on 30.04.2019 by this Tribunal and SEBI was directed to de-attach the assets of the corporate debtor and hand over the possession to the Resolution Professional along with all records so as to enable the Resolution Professional to conduct the Corporate Insolvency Resolution Process expeditiously in accordance with the time line given in the Code.



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8. The order dated 30.04.2019 was challenged before the Hon'ble NCLAT but was dismissed. Subsequently, SEBI challenged the order of de-attachment and the order of Hon'ble Appellate Tribunal vide SLP(Civil) No. 13678 of 2019 and Civil Appeal No. 5089/2019 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court on 17.06.2019 granted interim stay on the aforesaid order of de-attachment as well as directed SEBI not to alienate the properties of the Corporate Debtor, while directing the applicant (RP) to continue with the Corporate Insolvency Resolution Process of the Corporate Debtor. The SLP and Civil Appeal preferred before the Hon'ble Supreme Court are still pending for final adjudication.
9. Meanwhile with the approval of Committee of Creditors, the resolution professional published public advertisement on 30.03.2019 inviting expression of interest in Form G from prospective Resolution Applicants to submit their Resolution plans.
10. *However, it is stated that despite publication, no expression of interest was received by the applicant (RP) till date.*



11. In the factual background of the case the Committee of Creditors deliberated that as there is no expression of interest received by the Resolution Professional for submitting the Resolution Plan and that there were no operations of the corporate debtor currently going on, the corporate debtor may be liquidated.

12. It is further stated that the Insolvency Resolution Process period of the Corporate Debtor has come to an end on 27.11.2019 and as the applicant (RP) has not received any resolution plan from any prospective resolution applicant, the Resolution Professional has filed the instant application under Section 33(1)(a) of the Code for initiation of liquidation proceedings against the Corporate Debtor i.e., HBN Dairies and Allied Limited.

13. It is appropriate to mention here that the Committee of Creditors is a decision-making expert body and is the competent authority to decide and recommend for liquidation of the corporate debtor especially when no resolution plan has been received despite public notice. Moreover, there is no dispute that Insolvency Resolution Process period in the instant matter has already expired.

14. Time is the essence of the Code and therefore steps have to be taken under the Code in time. When no resolution plan was received within the available Insolvency Resolution Process period, Committee of Creditors has unanimously recommended in favour of liquidation of the Corporate Debtor. Upon failure of resolution process and as Corporate Insolvency Resolution Process period has expired; Liquidation of the Corporate Debtor remains the only option.

15. In the case of *Sanjay Kumar Ruia Vs Catholic Syrian Bank Ltd. & Anr.* passed in Company Appeal (AT) (Insolvency) No. 560 of 2018 decided on 03.01.2019 Hon'ble NCLAT has held that:

“In absence of any ‘Resolution Plan’, the Adjudicating Authority is bound to pass order under Section 33 by initiating liquidation proceeding against the ‘Corporate Debtor’.”

16. It is also pertinent to refer to the statutory provisions provided in Section 33 (1) (a) of the Code which mandates that:



“where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter.”

17. Therefore, upon failure of resolution process there being no resolution plan and on completion of the statutory Corporate Insolvency Resolution Process period; Liquidation has to follow. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequence.

18. In the factual background and in the absence of any approved resolution plan and for want of time beyond statutory Corporate Insolvency Resolution Process period; there is no other alternative left but to order in conformity with the decision of the Committee of Creditors for liquidation of the corporate debtor under Section 33 (1) (a) of the Code.

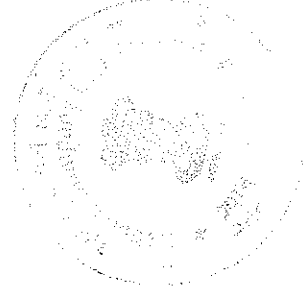


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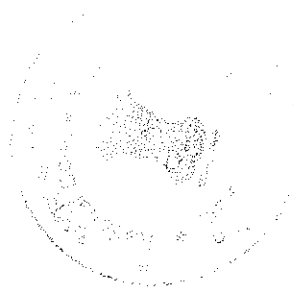
19. The applicant Resolution Professional has filed its written consent dated 26.11.2019 to act as liquidator in respect of the corporate debtor.

20. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. HBN Dairies & Allied 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 having Registration No. IBB1/IPA-001/IP-P00528/2017-18/10953, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b. Mr. Rohit Sehgal, 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 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;



- d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f. The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (1) of the Code.
- g. The liquidator shall also follow up the pending applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

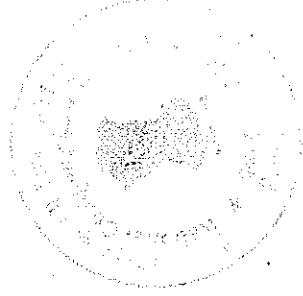


h. It is submitted in the application that huge sums are recoverable from the subsidiaries of the corporate debtors and others. The liquidator shall take necessary expeditious steps for recovery of the dues of the corporate debtor.

i. 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.

j. C.A. 2826 (PB) /2019 filed in IB 547 (PB)/2018 is disposed of in the aforesaid terms.

Let copy of this order be sent to the parties including the Liquidator.



[Signature]

**(B.S.V. PRAKASH KUMAR)
ACTING PRESIDENT**

[Signature]

**(S. K. MOHAPATRA)
MEMBER (T)**

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05/2/2026

Secretary
Insolvency and Bankruptcy Board of India
C-10, Ring Road, Connaught Place, New Delhi - 110029