

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

I.A. 2037 OF 2020

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Filed by

Mr. Ram Ratan Kanoongo

Interim Resolution Professional

...Applicant

In the matter of

C.P. No. 2019 of 2019

Corporation Bank

Overseas Branch, CI, West Core
Tower No. 3, Bharat Diamond Bourse
Complex, G Block, BKC Off, Bandra
Kurla Link Road, Bandra (East),
Mumbai-400 051

...Financial Creditor

versus

Firestar International Limited

2001 & 2002, 20th Floor, Peninsula
Business Park, Tower B, Ganpatrao
Kadam Marg, Lower Parel,
Mumbai 400 013

...Corporate Debtor

Order delivered on: 10.08.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Resolution Professional: Adv. Pulkit Sharma

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. It is an application filed by Resolution Professional, Mr. Ram Ratan Kanoongo seeking liquidation of Firestar International Limited (hereinafter referred as Corporate Debtor) under Section 33(1) read with Section 60 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:
 - a. *That this Hon’ble Tribunal, in exercise of its powers under Section 33 of the Code, be pleased to pass a liquidation order as provided under sub clauses (i), (ii) and (iii) of clause (a) of sub-section (1) of Section 33 of the Code thereby requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016;*
 - b. *That this Hon’ble Tribunal be pleased to appoint Mr. Santanu T Ray having IBBI registration number IBBI/IPA-002/IP-N00360/2017-2018/11055 as liquidator of the Corporate Debtor as per the provisions of Section 34 of the Insolvency and Bankruptcy Code, 2016;*
 - c. *That this Hon’ble Tribunal be pleased to direct the Corporate Debtor and its personnel, employee, staff, agents etc. to extend all assistance and co-operation to the liquidator as may be required in discharging his functions as Liquidator of the Corporate Debtor as specified under provisions of the Insolvency and Bankruptcy Code, 2016;*
 - d. *Such other and further order/directions in accordance with the Insolvency and Bankruptcy Code, 2016 as may be deemed fit by this Hon’ble Tribunal;*

- e. Such other and further reliefs as may be deemed fit by this Hon'ble Tribunal in the facts and circumstances of the present matter.*
2. The counsel for the Applicant submitted that this Tribunal vide an order dated 18.11.2019 in Company Petition No. 2019 of 2019 admitted the petition under Section 7 of the Code, filed by Corporation Bank (hereinafter referred to as the "Financial Creditor") and Corporate Insolvency Resolution Process (CIRP) was initiated against Firestar International Limited (hereinafter called as the "Corporate Debtor"). The applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by the said Order. Upon his appointment, he published a public announcement in 'Form A' under interalia calling upon the creditors of the Corporate Debtor to submit a proof of their claims on or before 31.03.2020 to the applicant, and the same was also updated on the specified website of IBBI.
3. Thereafter, a Committee of Creditors (CoC) was constituted by the applicant and two meetings of the CoC were held with the dates thereof being 26.06.2020 and 15.07.2020. The CoC in its first meeting held on 26.06.2020 had proposed for confirming the IRP i.e. the applicant herein to be the Resolution Professional (RP) of the Corporate Debtor and for fixing his fees. It was further proposed to ratify the cost incurred till date in the said CIRP. But the required voting majority was not achieved and thus the above resolutions were not passed. Further pursuant to the Regulation 19(2) of IBBI (CIRP) Regulations, 2016 and the relevant provisions of the Code, the CoC granted authority to the IRP to hold meetings

of the CoC by giving notice period of not less than Forty-Eight hours. This resolution was passed by the CoC with a majority of 87%.

4. During the second CoC meeting held on 15.07.2020, the CoC informed the IRP that based upon the decision taken by the CoC members in their Joint Lenders Meeting, they want to take the Corporate Debtor into liquidation in line with Section 33(2) of the Code and thus do not wish to appoint any RP. The CoC had made the following observations for taking the Corporate Debtor into liquidation without going through the Resolution Plan:
 - i. There are no business prospects with the Corporate Debtor;
 - ii. There is no substance in chasing the legal suits and cases for recovery;
 - iii. There is no point in spending good money to make efforts to recover bad money, having very remote chance of recovery;
 - iv. The assets with the Corporate Debtor are not sufficient to repay the amounts of creditors;
 - v. Any resolution plan is not possible, which could enable the company to pay the entire debts.

5. Later, E-Voting was concluded on 30.07.2020 on resolutions put to vote after Second meeting of the CoC and a resolution for liquidation of the Corporate Debtor was passed by a voting share of 93.31%. Pursuant to this, the present application is being filed by the applicant seeking for liquidation of the Corporate Debtor.

ORDER

We have heard the Applicant and perused all the documents submitted by him. The applicant has also submitted a written consent of the proposed liquidator.

The reasons assigned by the applicant in the application with respect to taking the decision of liquidation of the Corporate Debtor by the CoC appears to be genuine and convincing considering the financial conditions and assets of the company. It is observed from the minutes of the 2nd CoC meeting that the CoC has, with 93.31% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the CoC, we hereby allow this Miscellaneous Application bearing Number I.A. 2037 of 2020 with the following observations and directions:

- a. **Mr. Santanu T Ray**, having Registration No. IBBI/IPA-002/IP-N00360/2017-2018/11055 and having office at: 301, BSEL Tech Park, Sector 30A, Opposite Vashi Railway Station, Vashi, Navi Mumbai – 400 703, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency &

Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- d. The Liquidator appointed under section 34(1) of the Code. Will have all 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 effect and shall be vested with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the

Corporate Debtor continued during the liquidation process
by the Liquidator.

With the above directions, this application i.e. I.A. No.
2037 of 2020 is hereby allowed and disposed of.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)