

**ION THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

I.A. 528 OF 2021

Under Section 33(1) of Insolvency &
Bankruptcy Code, 2016

Mr. Santanu T. Ray

A-301, 'A' Wing, BSEL Tech Park, Sector
30A, Opp. Vashi Railway Station, Vashi,
Navi Mumbai-400 705

Resolution Professional/
...Applicant

In the matter of

C.P.(IB) No. 3580/MB/2018

Fairdeal International

Operational Creditor

Vs.

Sacos Indigo Private Limited

Corporate Debtor

Order delivered on: 28.01.2022

Coram:

Mr. Rajesh Sharma

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP

:

Mr. Shyam Kapadia

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The above application is filed by Mr. Santanu T. Ray Applicant/ Resolution Professional, seeking liquidation of Sacos Indigo Private Limited, (hereinafter referred as Corporate Debtor) under Section 33(1) (a) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”).
2. **The brief facts of the Application are as follows:**
 - A. That this Tribunal vide an order dated 26.05.2020 in Company Petition No. 3580 of 2018 admitted the petition under Section 9 of the Code, filed by Fairdeal International (hereinafter referred to as the “Operational Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against Sacos Indigo Private Limited, (hereinafter called as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order. The applicant was confirmed as Resolution Professional in the First CoC meeting held on 06.07.2020.
 - B. The Applicant submits that according to the agenda passed by the Members of CoC through e-voting of the second CoC meeting, the RP has accordingly published the Form-G on 26.09.2020 in the newspapers namely: Business Standard (All India Edition) in English Language, Navshakti (Mumbai

Edition) in Marathi Language and Raj Express (Indore Edition) in Hindi Language.

- C. The Applicant submits that the RP apprised the members of CoC that, according to the Form-G published by the RP, the last date for submission of the EOI was 12.10.2020. The RP informed the Members of CoC that though the office of the RP has not received any EOI from any of the applicants, but the RP had received several enquires from the interested Resolution Applicants, thereafter the Members of CoC extended the last for submission of EOI by 10 more days i.e. from 12.10.2020 to 22.10.2020.
- D. That the second round of EOI was decided to publish in the 5th CoC meeting. Pursuant to the said publication, the office of the RP received following 3 EOI namely:-
- I. Arjit Business Corporation Private Limited
 - II. Ingeo Contractor Private Limited
 - III. Nanofil Technologies Private Limited

However, only the one Resolution Plan was received by the RP i.e. Nanofil Technologies Private Limited. As the non-compliance of Resolution Plan by the said Resolution Applicant. The CoC decided to liquidate the Corporate Debtor.

- E. The Applicant submits that in the 6th (Sixth) CoC meeting held on 22.01.2021, he apprised the members conditional and non-complied plan which was submitted by Nanofil

Technologies Private Limited. Even after publishing two rounds of EOI, the plan submitted was not as per the code, the CoC Members therefore decided to liquidate the Corporate Debtor and the same was passed with a 91.30% voting in favour to liquidate the Corporate Debtor and to appoint the Applicant/RP as the Liquidator. It was resolved in the 6th CoC meeting as under:

“RESOLVED THAT Mr. Santanu T. Ray, Resolution Professional of Sacos Indigo Private Limited is recommended to be appointed as the Liquidator of the Corporate Debtor i.e. Sacos Indigo Private Limited”

“FURTHER RESOLVED THAT the fees of the Liquidator will be as per Regulation 4 (2)(b) of IBBI Regulation (Liquidation Process) 2016, with a discount of 50% as per chart given in said regulation during the entire period of Liquidation Process.”

“FURTHER RESOLVED THAT pursuant to Regulation 39B Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016 the Committee of Creditors hereby approved the estimate Liquidation Cost of Rs. 19,20,000/- plus GST.”

- F. The RP apprised the Members of CoC that, concerning the agenda passed by the Members of CoC in the 3rd CoC meeting, appointing MDMS and Associates as the Chartered Account firm for preparing the Books of Accounts for the Corporate Debtor.

G. The valuers were appointed by the RP. The final valuation reports submitted by the valuer is as under:-

Sr No	Particulars							Average Value	
		Fair Value	Liquidation Value	Name of the Valuer	Fair Value	Liquidation Value	Name of the Valuer	Fair Value	Liquidation Value
1	Plant & Machinery	5,72,00,000	4,58,00,000	Manish Pathak	5,96,20,000	4,70,00,000	Bijay Kumar Agarwala	5,84,10,000	4,64,00,000
2	Financial Assests	-	-	Ishwar Lal Kalantri	-	-	Navin Khandelwal		
	Total Amount	5,72,00,000	4,58,00,000		5,96,20,000	4,70,00,000		5,84,10,000	4,64,00,000

H. The Applicant submits that the fees of the Liquidator will be as per Regulation 4 (2) (b) of IBBI Regulation (Liquidator Process) 2016, with a discount of 50% as per chart given in said regulation during the entire period of Liquidator Process.

I. Heard the arguments of the counsel appearing for the Applicant and perused the material available on record. It is observed from the minutes of the 6th CoC meeting dated 22.01.2021 that the COC has, with 91.30% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby passing the following order:

ORDER

- a. I.A. 528/2021 filed by the Applicant for the Liquidation of Sacos Indigo Private Limited.

- b. Mr. Santanu T. Ray, having Registration No. IBBI/IPA-002/IP-N00360/2017-2018/11055 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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.

- h. 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.
- i. 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.
- j. 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, the application being I.A. No. 528 of 2021 is hereby **allowed and disposed of**.

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)

/skd/

Sd/-

RAJESH SHARMA
Member (Technical)