

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

IA No. 5293/2023

In

C.P. (IB) No. 527/MB/C-II/2022

*Application filed under section 33 (1) (a) of the
Insolvency and Bankruptcy Code, 2016.*

**Mr. Vijaykumar V. Iyer, Resolution
Professional of Future Retail Limited**

Having address at : Deloitte India Insolvency
Professional LLP, One International Centre,
Tower 3, 32nd Floor, Senapati Bapat Marg,
Elphinstone Road (West), Mumbai- 400013

.... Applicant

In the matter of

Bank of India.

..... Financial Creditor

V/s

Future Retail Limited

.....Corporate Debtor

Order Delivered on :- 29.07.2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Rishabh Jaisani a/w
Adv. Harit Lakhani

ORDER

Per: - Coram

1. The present application is filed u/s 33 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) by Mr. Vijaykumar Iyer, Resolution Professional (RP) of Future Retail Limited (“the Corporate Debtor”) seeking liquidation order based on the resolution passed by the Committee of Creditors (CoC) in its meeting held on 26.10.2023.
2. On perusal of this application, it emerges that CP No. (IB)-527 (MB)/2022 was admitted by this Tribunal and Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on 20.07.2022 and the Applicant herein was appointed as Interim Resolution Professional (IRP). The IRP in compliance with section 13,

15 and other applicable sections of the Code, published From A issuing public announcement on 23.07.2022 inviting claims from the Creditors of the Corporate Debtor on or before 03.08.2022. In response to the public announcement, the Applicant received various claims from the creditors which were verified and collated by the Applicant.

3. In the 1st Committee of Creditors (CoC) meeting held on 18.08.2022 CoC passed a Resolution confirming the IRP as the Resolution Professional (RP) of the Corporate Debtor and vide Order dated 02.12.2022 the said appointment was confirmed by the Tribunal.
4. The Applicant published Form G dated 04.10.2022 in Financial Express newspaper (English Edition) and Jansatta (Hindi Edition) inviting the Prospective Resolution Applicants (PRAs) to submit Expression of Interest (EOI) on or before 20.10.2022. Further, on request of the PRAs the members of the CoC in the 4th meeting held on 20.10.2022 extended the time to submit the EOI till 03.11.2022.
5. The Applicant had received 13 EOIs and the provisional list of the PRAs was issued by the Applicant on 10.11.2022. The Applicant published the Request for Resolution Plan (RFRP) to the PRAs on 15.11.2022 and the last date for submission of the Resolution Plan was 15.12.2022.

However, the Applicant received request from the PRAs to extend the timeline for submission of the Resolution Plans. Further, as the 180 days timeline of the CIRP of the Corporate Debtor was due to expire on 16.01.2023, the members of the CoC in their 6th CoC meeting held on 06.12.2022 decided to seek extension of the CIRP period by further 90 days and the said extension was granted by the Tribunal vide Order dated 13.01.2023. The period of the CIRP was extended by further 90 days till 16.04.2023 and also the last date for submission of the Resolution Plan was extended from 16.01.2023 till 06.02.2023 and subsequently till 20.02.2023.

6. However, the Applicant did not receive any Resolution Plan from the PRAs till 20.02.2023 Hence, in the 10th and 11th CoC meeting held on 21.02.2023 and 24.02.2023(reconvened on 03.03.2023) respectively, the members of the CoC decided to publish fresh Form-G and invitation for EoI, inviting for the Resolution Plans. Accordingly, fresh Form-G was published on 23.03.2023 and the last date for submission of EOI was 07.04.2023. The Applicant received 49 EoIs. A RFRP was published on 14.04.2023 inviting the Resolution Plans by 15.05.2023. Pursuant to the same, the Applicant received 6 Resolution Plans and the same was informed to the members of the CoC.

7. Meanwhile, the members of the CoC decided to seek exclusion of 90 days and further 33 days and vide Order dated 13.04.2023 and 17.07.2023 this Tribunal allowed exclusion of 90 days respectively and in view of the exclusion, the CIRP period stood extended till 15.07.2023 and later till 17.08.2023.
8. Further, out of 6 Plans received by the Applicant, two Applicants had withdrawn their interest from the process and one Applicant did not submit a financial proposal and hence was not considered by the members of the CoC. Finally, three Resolution Plans were left for consideration and the PRAs were called for discussions and in pursuance to the discussions, the PRAs revised their Resolution Plans.
9. In the 20th CoC meeting held on 13.07.2023, the members of the CoC decided to consider one Resolution Plan for further consideration as it proposed the Resolution of the Corporate Debtor as a going concern while the other Resolution Applicants submitted their bids for one or more assets of the Corporate Debtor.
10. Further, the Applicant filed an Application for exclusion of 29 days and vide Order dated 07.09.2023 this Tribunal excluded the period of 27 days and hence the period of CIRP stood extended till 15.09.2023.

Meanwhile, the Applicant received requests from the members of the CoC to extend the timeline on the voting of the Resolution Plan and in view of the above, agenda to seek an exclusion of 15 days was approved by majority voting share of the members of the CoC and an Application seeking exclusion for 15 Days from the CIRP period was filed. Vide Order dated 15.09.2023, the said Application was allowed and resultantly, the last date of the CIRP was extended till 30.09.2023.

11. Further, the only Resolution Plan which was considered by the members of the CoC, was put to vote but it failed to secure the requisite voting percentage. In view of the same, the members of the CoC in a subsequent meeting held on 26.10.2023, decided to liquidate the Corporate Debtor.
12. Accordingly, the following agenda items were put to vote by the members of the CoC:

Agenda 3: To approve exploring compromise or arrangement as referred to under sub-regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 (as per Regulation 39BA(1) and 39BA(2) of the CIRP Regulations)

Agenda 4: To approve that the liquidator may first explore the sale of the Corporate Debtor as a going concern under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of business of the Corporate Debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under Section 33 of the Code.

Kindly note that in the event the CoC approves sale as a going concern during liquidation, the CoC shall be required to identify and group the assets and liabilities, which according to the CoC's Commercial considerations, ought to be sold as going concern under clause (e) or clause(f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (as per Regulation 39C of the CIRP Regulations).

13. The members of the CoC voted on the above agenda with 64.11% and 51.92% respectively.
14. Further, pursuant to the meeting of the members of the CoC, a joint lenders meeting was held on 09.11.2023 comprising of lenders

constituting 77.37% voting share of the CoC) wherein it was unanimously resolved and recommended Mr. Sanjay Gupta to be appointed as the liquidator of the Corporate Debtor. The Written consent to act as the Liquidator of the Corporate Debtor has been placed on record vide Affidavit dated 13.12.2023.

15. As per Section 33(1) of the Code, where the Adjusting Authority does not receive a Resolution Plan within the timelines specified in Section 12 of the Code, the Adjudicating Authority shall pass an order requiring the Corporate Debtor to be liquidated in the manner laid down therein. Thus, the Adjudicating Authority is bound to order liquidation of the Corporate Debtor in the facts and circumstances of the case.
16. Looking at the application and averments made therein, it is evident that the maximum period of the CIRP has expired and no Resolution Plan has been approved by the CoC. We are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order the liquidation of the Corporate Debtor with the following terms:
 - a. The **Mr. Sanjay Gupta**, holding **Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354**, is appointed as the Liquidator in terms of Section 34 of the Code;

- b. To maximise the value of the Corporate Debtor, the Liquidator shall endeavour the sale of the Corporate Debtor as a going concern under Regulation 32A clause (e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.
- c. The Liquidator Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board India;
- d. 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;
- e. 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;
- f. 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.

- g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.
- 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. Copy of the order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.
17. The IA No. 5293/2023 filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)