NATIONAL COMPANY LAW TRIBUNAL COURT ROOM NO. 1, MUMBAI BENCH

Item No. 9

IA (DIS.)/71/2024 (NEW IA) in C.P. (IB)/1661(MB)2018

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 13.12.2024

NAME OF THE PARTIES: **DEEPAK ADVERTISING AND MARKETING VS GOURMET**

RENAISSANCES PVT LTD

Section 54(1) & 9 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA (DIS.)/71/2024 (NEW IA) in C.P. (IB)/1661(MB)2018

- 1) Mr. Avinash Khanolkar, Ld. Counsel for the Applicant is present.
- 2) This is an Interlocutory Application filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 by the Applicant, Ms. Vaishali Arun Patrikar who is the Liquidator of the Corporate Debtor, M/s. Gourmet Renaissance Private Limited, seeking dissolution of the Company, M/s. Gourmet Renaissance Private Limited.
- 3) Record reveals that this Bench/Adjudicating Authority *vide* its order dated 11.03.2019, on a Petition filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016, initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz M/s. Gourmet Renaissance Private Limited, wherein Interim Resolution

- Professional was appointed in accordance with the relevant provisions of the Insolvency and Bankruptcy Code, 2016.
- 4) Thereafter, this Bench *vide* order dt. 05.08.2024, initiated Liquidation Process against the Corporate Debtor and appointed the Liquidator. It is submitted that the Liquidation order got communicated to the Applicant only on 13.08.2021 and hence, the Applicant could give effect to the Liquidation Process from that date. Thereafter the Applicant made Public Announcement inviting claims by the Stakeholders of the Corporate Debtor, in two Local Newspapers i.e. Daily Financial Express, Mumbai Edition (English) and Dainik Tarun Bharat, Mumbai Edition (Marathi) on 17.08.2021. The last date for submissions of claims was 12.08.2021.
- the Resolution Professional for the Corporate Debtor, however, submitted that those claims were not filed with the Applicant. Thereafter based on received claims in response to the Public Announcement and claims collated, the Applicant prepared a list of Stakeholders of the Corporate Debtor. The total admitted claims as on date are to the tune of Rs. 46,86,11,815/-.
- 6) The Applicant, in pursuance to Reg. 31A of the Liquidation Regulations, also formulated a Stakeholders Consultation Committee for the Corproate Debtor (hereinafter referred as **the SCC**), which consists of Three Unsecured Financial Creditors and Seven Operational Creditors. Applicant,

pursuant to the provisions of Reg. 34 of the Liquidation Regulations, prepared an Asset Memorandum for the Corporate Debtor on 26th October, 2021. Based thereupon the Applicant prepared a Preliminary Report, as enshrined by the provisions of the Reg. 13 of the Liquidation Regulations, on 26th October, 2021.

- 7) It is submitted that the Applicant had opened a Bank Account with Bank of India, Paud Road Branch, Pune, Maharashtra bearing A/c No. 052320110000856. However, subsequently that Account had to be closed due to operational reasons. The certificate of closure of the said Bank Account is annexed herewith as Annexure 6.
- 8) Further thereafter, the Applicant opened a Bank Account with The Nasik Merchants Co-operative Bank Limited, Nashik, Budhwar Peth Branch, Pune, Maharashtra bearing A/c No. 032100100000009. However, the said Bank was not providing a Net-Banking Facility to the Applicant and therefore for the convenience of the Transactions of the Liquidation Account the Applicant opened another Bank Account with ICICI Bank, Aundh Branch, Pune, Maharashtra bearing A/c No. 007305014585. It is however, submitted that the Applicant used both this accounts for the Transactions of the Liquidation Process.
- 9) Further, the Applicant proceeded with the Realisation of the Assets of the Corporate Debtor. However, as mentioned in the Asset Memorandum the Corporate Debtor did not have any fixed Assets and as far as Plant and Machinery are concerned the Last Balance Sheet of the Corporate Debtor reflects that there are certain Kitchen Equipments available with the Corporate Debtor. However,

when the Applicant took charge of the Affairs the Applicant could not locate these Assets. Later on, it was informed to the Applicant by the Directors (with Suspended Powers) of the Corporate Debtor that the said Assets were confiscated by certain Operational Creditors against their outstanding dues. However, since there was no supporting available to corroborate this and also, there is nothing on record to prove that the Corporate Debtor had taken any action against such Operational Creditors; the Applicant classified the said act of the Directors (with Suspended Powers) as Fraudulent Trading done and an appropriate Application has been moved by the Applicant under the provisions of Section 66 of the Insolvency and Bankruptcy Code, 2016.

- However, beside all this development, the Applicant, had tried for Sale of the Corporate Debtor as on-going concern basis, as at the time of commencement of the Liquidation process the Corporate Debtor was not carrying out any business activities; since the CoC had resolved for exploring this possibility, the Applicant had to undertake the same. Accordingly, the Applicant had called for Auction for the Sale of Corporate Debtor as on-going concern basis. However, it is stated that all these 3 auctions were un-successful and no person / entity shown interest in purchasing the Corporate Debtor on-going concern basis. Hence, the Applicant sought to realise the Assets of the Corporate Debtor segregating the same.
- 11) Further, beside the aforesaid Assets the Corporate Debtor had a Non-current investment in form of Shares of the Nasik Merchants Co-operative Bank Limited, Nashik to the tune of 62,510 number of Shares of ₹ 100/-. As per the Audited Financials as on 31st March, 2018, the tangible assets of the Corporate

Debtor consisted of Plant and Machinery (as stated *supra*), Furniture, Fixtures, Computers. The intangible assets consisted of Copyrights, Patents and other Intangible Property Rights (IPRs) in the form of capitalisation of Branding, Advertisement and other expenses.

- Process the Resolution Professional had conducted the Valuations of these Assets and as per the Valuer's reports the Liquidation Value of these Assets were considered as NIL. Accordingly, the Applicant sought to realise the said Shares and in that regard the Applicant met the officials of the NAMCO Bank. Furtherance thereto, the Applicant carried out the procedure for redemption of the said Shares and the amount of ₹ 62,51,000 has been realised by the Applicant on 31st March, 2022. Beside the realisation of the Shares held with the NAMCO Bank; there was no fruitful progress happened during the first year of the Liquidation Process.
- Debtor and the Statements of Accounts of the Corporate Debtor wherein the Applicant could identify certain transactions as doubtful transactions. Accordingly, the Applicant classified those transactions, including the act of Fraudulent Trading, and filed an Application being IA 2047 / 2023 against the Directors (with Suspended Powers) of the Corporate Debtor seeking contribution of the amount of 31,09,19,997/- which are claimed to be fraudulently diverted from the Corporate Debtor's funds.

- against one M/s. Nashik Silk Industries Private Limited on a premise that the Corporate Debtor made an advance amount of ₹ 35.75 Crore towards purchase of one Land from the said Company. However, the transaction could not be completed and thereafter the Corporate Debtor has been pushed to the Liquidation. And hence, the IA 2638 / 2023 has been preferred seeking refund of the said amount from the said Company. During pendency of the said Application the Applicant was not able to close the Liquidation Process and thereby the Applicant was pursuing the said Application with a hope of recovery.
- Applicant states that due to time constraint, and the Applicant was not able to close the Liquidation process amid the pending Applications; the Applicant, during month of Sep. 2023 thought fit to assign the rights of the Applicant for the afore-said recoveries that is to say possible recoveries through IA 2047 / 2023 and IA 2638 / 2023 under the provisions of Reg. 37A of the Liquidation Regulations as Non-Readily Recoverable Assets (NRRA). In reference to the same the Applicant caused a Public Notice inviting the Expression of Interests (EoIs) for taking Assignment of NRRA on 8th October, 2023, which results into receipt of only one EoI by M/s. VRSA Consultancy LLP on 16th October, 2023. Accordingly, after deliberate discussions over the said EoI during the SCC meetings; the SCC passed a Resolution for the Assignment of NRRA in favour of M/s. VRSA Consultancy LLP. Accordingly, the Applicant and M/s. VRSA Consultancy LLP had entered into a Deed of Assignment of 27th January, 2024 by which NRRA stood assigned to M/s. VRSA Consultancy LLP as per the

terms of the said Deed. The copy of Deed of Assignment entered between the Applicant and M/s. VRSA Consultancy LLP is annexed herewith as **Annexure 8**.

- Directors (with Suspended Powers) of the Corporate Debtor as one entity namely M/s. Zomato deposited a TDS against PAN of the Corporate Debtor which given an impression to the Applicant that the Directors (with Suspended Powers) were running business of the Corporate Debtor without any intimation to the Applicant and thereby diverting the monies for their personal gains which were being paid by M/s. Zomato. Thereafter, once that Application was filed that was also stood assigned to M/s. VRSA Consultancy LLP as NRRA again since the Applicant could not estimate the required timelines for the adjudication of the said Application through a Deed of Assignment dated 7th June, 2024. The copy of said Deed of Assignment dated 7th June, 2024 entered between the Applicant and M/s. VRSA Consultancy LLP is annexed herewith as Annexure 9.
- 17) Since thereafter, no material thing was pending in the Liquidation Process; the Applicant taken steps for Distribution of the Amount realised during the process. Accordingly, as enshrined under the provisions of Section 53(1)(a) of the Code; the Applicant first distributed the amounts towards the CIRP Cost and the Liquidation Cost. Thereafter, the Balance Payment has been distributed amongst the Stakeholders' in terms of the S. 53 (1) of the Code.
- 18) Thereafter the Applicant closed the Liquidation Accounts held with ICICI Bank and NAMCO Bank respectively. The copies of Certificates depicting closure of the said Accounts are annexed herewith as **Annexure 10 (Colly)**. It is also

being stated and submitted that beside the Account held with Bank of India and Liquidation Accounts; there is no other Bank Account of the Corporate Debtor is in operation or was being in operation. Accordingly, once the Liquidation Accounts got closed, the Applicant put forth the statements of the Liquidation Accounts for Audit.

- Final Report as enshrined under the provisions of Reg. 45 of the Liquidation Regulations and also prepared a Compliance Report in Form H. The Final Report, along-with the Form H, before Dissolution of the Corporate Debtor is annexed herewith as **Annexure 12**. The said Final Report has been sent to the Insolvency and Bankruptcy Board of India by way of an E-mail dated 22/10/2024 by the Applicant. Further, the Final Report is filed with the Registrar of Companies, Mumbai by way of GNL 2 by the Applicant on 22/10/2024.
- 20) Accordingly, it is being stated and submitted that the affairs of the Corporate Debtor are completely wound up as on date and therefore, the Applicant is preferring this Application seeking Dissolution of the Corporate Debtor as per the provisions of S. 54 (1) of the Code.
- This Bench notices that the interest of the Stakeholders' will be protected in light of the Resolution passed by the SCC for taking over assignment of recoveries, and therefore, no *pre-judice* will be caused to any Stakeholders' if the Corporate Debtor is dissolved at this juncture. Further, the distribution of the recoveries, if any, happens after the adjudication of IA 2047 / 2023 and IA 2638 / 2023 and from other assets referred in assignment agreement will be made

- amongst the Stakeholders' in terms of Clause 4 of Deed of Assignment dated 27th January, 2024.
- 22) Hence, it is only pragmatic that proceedings for initiation of dissolution of the Corporate Debtor shall be initiated in terms of Section 54 of the Code.
- At this juncture, it is appropriate to read Section 54 of the Insolvency& Bankruptcy Code, 2016. The said Section is quoted below for the Convenience and ready reference:

"Section 54: Dissolution of corporate debtor.

- (1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.
- (2) The Adjudicating Authority shall on application filed by the liquidator under subsection (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
- (3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered".
- Having considered the submissions and upon perusal of averments made in the Application, this Bench is of the considered view the the present Interlocutory Application is in consonance with Section 54 of the Insolvency

- and Bankruptcy Code, 2016. Accordingly, we direct that the Company shall be dissolved from the date of this order.
- Professional Ms. Vaishali Arun Patrikar is discharged from her duties and responsibilities as the Liquidator of the Corporate Debtor, viz. M/s. Gourmet Renaissance Private Limited.
- The Applicant is further directed to serve a copy of this order upon the jurisdictional Registrar of Companies, with which the company is registered, within Fourteen days of receipt of this order. The Registrar shall take necessary action upon receipt of a copy of this order.
- 27) The Insolvency Resolution Professional shall preserve physical or electronic copy of the Reports, Registers, and Books of Account for at least eight years after the dissolution of the Corporate Debtor, either with himself or with an information utility.
- 28) With the aforesaid observations and directions, the Interlocutory Application bearing IA (Dissolution) No. 71 of 2024, is disposed of as Allowed.
- 29) Needless to say, Successful Buyer, M/s. VRSA Consultancy LLP, who has stepped into the shoes of the Corporate Debtor herein, shall take steps to file an Application seeking substitution in Applications, which are arising out of the present Company Petition and pending for adjudication before this Bench and shall make best efforts to dispose of those

Applications. However, this Bench makes it clear that the Proceeds received from those Applications after disposing the same, will be distributed amongst the Stakeholders' in terms of Clause 4 of Deed of Assignment dated 27th January, 2024. Liquidator shall apprise the Stakeholders' committee at interval of Six Months on the status of recovery and the amount received therefrom.

- Application bearing IA (Dis.) No. 71 of 2024, is disposed of. Registry shall list the main Company Petition bearing CP (IB) No. 1661 of 2018, on Board on the date when pending Applications arising out of the present Company Petition are listed.
- There will, however, be no order as to costs. Ordered Accordingly.Sd/-

PRABHAT KUMAR MEMBER (TECHNICAL) JUSTICE VIRENDRASINGH BISHT MEMBER (JUDICIAL)

Vedant Kedare