

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**CA No.940 of 2019
IN
CP (IB) No.136/Chd/Pb/2018
(Admitted matter)**

**Under Section 33 (1) (a) of the
Insolvency and Bankruptcy
Code, 2016.**

In the matter of:

UCO Bank

....Financial Creditor.

Versus

M/s Oswal Spinning and Weaving Mills Ltd.

....Non Applicant / Corporate Debtor.

And in the matter of:

CA No.940 of 2019:

Hemanshu Jetley,
Resolution Professional,
M/s Oswal Spinning and Weaving Mills Ltd.
(Corporate Debtor).

....Resolution Professional-Applicant.

Order delivered on:13.12.2019.

CORAM: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)

For the Applicant:

Mr. G.S. Sarin, Practising Company Secretary

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

CA No. 940/2019:

The instant application is filed under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional (**RP**), praying, inter-alia, for an order that M/s Oswal Spinning & Weaving Mills

Limited (Corporate Debtor) be liquidated in the manner provided under the Insolvency and Bankruptcy Code, 2016 (**Code**).

2. It is stated that vide order dated 30.10.2018, the Adjudicating Authority admitted the petition under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of the corporate debtor and appointed Mr. Hemanshu Jetley as the Interim Resolution Professional (**IRP**). The appointment of Shri Hemanshu Jetley as RP was made by the CoC in its 1st meeting held on 28.11.2018. It is submitted that Form G was published on 08.01.2019 inviting Expression Of Interest (**EOI**) and interest was received from one applicant namely Prudent ARC Limited, but no resolution plan was received by the Resolution Professional till the last date i.e. 09.03.2019. A fresh Form G is stated to have been published on 07.03.2019 and another Form G was again published on 25.06.2019. The last date for submission of the Expression of Interest (**EOI**) in the last Form G was given as 05.07.2019. It is submitted that no resolution plan has been received by the Resolution Professional.

3. It is stated that vide order dated 02.05.2019, extension of the CIRP period by another 90 days was allowed and the CIRP period has expired on 26.07.2019.

4. The Resolution Professional filed an application (C.A.No.539/2019) under Section 60(5) of the code, before this tribunal for seeking exclusion of time consumed in litigation and the same was dismissed.

5. The CoC in its 6th meeting dated 04.09.2019, considered that no resolution plan was received during the CIRP of 270 days despite invitation

of EOI issued thrice and observed that the process cannot be withheld much longer. The CoC thereupon resolved that after the dismissal of exclusion of time application by the tribunal, the corporate debtor will have to be liquidated. It was further resolved by the CoC that the RP may file the appropriate application for an order of liquidation of the corporate debtor as per the provisions of the Code / Regulations and the RP is authorized for the same. It is submitted that this resolution was passed with 100% vote share.

6. It is stated that the approval of the estimated liquidation costs as per Regulation 39 B and 39 D of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process for Corporate persons) Regulation, 2016 (**CIRP Regulations, 2016**) read with Regulation 2 (1) (ea) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [**(Liquidation Process) Regulations, 2016**] was examined and the resolution passed with 100 % vote share for the Liquidator's fee for the first three months and thereafter in accordance with the Regulation 4 and the Liquidator's fee for the period used for sale under clause (a) and (d) of Regulation 32 of the (Liquidation Process) Regulations, 2016 as well as the were approved.

7. It is further stated that the CoC recommended with 100% vote share that the Liquidator may first explore the sale of the corporate debtor as a going concern under clause (e) of Regulation 32 of the (Liquidation Process) Regulations, 2016.

8. It is stated that during the 6th meeting of the CoC, it was also decided to propose the name of Shri Hemanshu Jetley, Insolvency

Professional (IBBI Registration No. IBBI / IPA-001 / IP-P00219 / 2017-18 / 10457) as Liquidator.

9. It is prayed that an order be passed requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code; public announcement be issued stating that the corporate debtor is under liquidation; an order be passed requiring sending the liquidation order to the authority with whom the corporate debtor is registered.

10. I have heard the learned counsel for the applicant and considered the arguments and have also carefully perused the records.

11. The provisions of Section 33 (1) of the Code reads as follows:

“33. Initiation of liquidation. –

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of Section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

It shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation;

and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.”

12. In the present case, the CIRP period is stated to have been

expired on 26.07.2019 and no resolution plan under Section 30 (6) of the Code was received by the Adjudicating Authority before that date. In fact, an application is received from the RP for liquidation of the corporate debtor, since despite invitation for EOI being issued thrice, no resolution plan was received. Therefore, the order is being passed requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code and the directions for issue of public announcement stating that the corporate debtor is in liquidation and requiring such orders to be sent to the authority with which the corporate debtor is registered, are being issued.

13. As discussed above, the CoC with 100% vote share has resolved that Shri Hemanshu Jetley be appointed as a Liquidator. The relevant minutes of the 6th meeting of the CoC dated 04.09.2019 (Annexure 22) are as follows:-

“Mr. Hemanshu Jetley, Resolution Professional being eligible to act as Liquidator, gave his consent to be appointed as Liquidator in the matter of Oswal Spinning and Weaving Mills Ltd. subject to the approval of Adjudicating Authority.”

14. Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, the RP appointed for the CIRP shall subject to submission of written consent by the RP to the Adjudicating Authority in specified form shall act as Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under Section 34 (4) of the Code.

15. RP Shri Hemanshu Jetley has submitted his written consent to act as a Liquidator and the same is part of the record. .

16. Sub-section (7) of Section 34 of the Code says that the

Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as liquidator.

17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Hemanshu Jetley and there is nothing adverse against him. In view of the above, we appoint Mr. Hemanshu Jetley, Registration No. IBBI/IPA-001/IP-P00219/2017-18/10457, S.C.O. 131, 2nd Floor, MDC, Sector 5, Panchkula, Mobile No.9041700000 E-mail i.d. hejetley@gmail.com, as the Liquidator.

18. Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No.IBBI/2019-20/GN/REG/048 dated 25.07.2019. These regulations are as follows:-

“39B. Meeting liquidation cost.

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation.-For the purposes of this regulation, ‘liquidation costs’ shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

39C. Assessment of sale as a going concern.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore 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 the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
and

(c) the balance period of liquidation.”

19. As discussed above, the RP has stated that the Liquidator’s fee in terms of Regulation 39 D of the CIRP Regulations, 2016 has been approved by the CoC. Further, the CoC has also recommended that the Liquidator may first explore the sale of the corporate debtor as a going concern in accordance with the Regulation 39 C. It is also stated in the minutes of the 6th meeting of CoC that since the corporate debtor is not a going concern, the sale of assets of corporate debtor shall be in accordance with clause (a) to (d)

of the Regulation 32 and was approved by the CoC. It is also stated in the minutes of the 6th meeting that the total estimated cost is Rs. 45,23,821/- and the same was approved by the CoC through e-voting. In relation to the best estimate of the value of liquid assets of the corporate debtor, it is stated that the plant of the corporate debtor has been lying closed since August 2015 and therefore no liquid assets are available to meet the liquidation costs.

20. In the circumstances and in view of the compliances made, the Bench is satisfied that the Corporate Debtor Company is required to be liquidated and accordingly, it is ordered that the Corporate Debtor shall be liquidated.

21. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 shall be strictly complied with. Some of the directions are as under:-

- i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

- ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

- iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator;
- iv) That all the 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 in the Liquidator; and
- v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the Liquidator for references to the Interim Resolution Professional.

22. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 2016 Regulations and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

23. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

- “(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*
- (b) on the website, if any, of the corporate debtor; and*
- (c) on the website, if any, designated by the Board for this purpose.”*

24. In accordance with Regulation 13 of the 2016 Regulations, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the 2016 Regulations every fortnightly thereafter.

25. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

26. The Liquidator shall take into his possession the assets of the Corporate Debtor.

27. Thus, CA No.940/2019 stands disposed of.

Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, Punjab and Chandigarh. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

Sd/-
Ajay Kumar Vatsavayi
Member (Judicial)

December 13th, 2019
Ashwani