

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

**CP (IB) No.08/Chd/CHD/2017
(Admitted)**

Under Section 33 IBC, 2016

In the matter of :

Super Multicolour Printers Pvt.Ltd.
Plot No.104, Industrial Area Phase-I,
Chandigarh.

.. Corporate Debtor

And

In the matter of:

Mr.Rajiv Khurana

..Applicant-Resolution Professional

Order delivered on 23.05.2018

Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)

For the Applicant : 1.Mr. Arora Vishwas Kumar, Advocate for RP.
2. Mr.Rajiv Khurana, RP in person.

For Sunil Guglani, : Ms.Niharika Sohal, Advocate
Promoter Director

Per: Pradeep R.Sethi, Member (Technical)

ORDER

The corporate debtor filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) to initiate the corporate insolvency resolution process (hereinafter referred to as CIRP). The application was admitted by the order of this Tribunal passed on 07.04.2017 and Mr. Prakash Dev Sharma was appointed as Interim Resolution Professional. Subsequent to public announcement in newspapers on 10.04.2017 and after collation of claims, the Interim Resolution Professional (IRP) constituted

the Committee of Creditors comprising of 4 members. Shri Prakash Dev Sharma was confirmed as Resolution Professional (RP) in the first meeting of COC held on 04.05.2017. Consequent to decision in the 4th meeting of COC held on 24.08.2017, the RP was replaced with Shri Rajiv Khurana and the replacement was approved by order dated 19.09.2017. In the 5th meeting of COC held on 25.09.2017, detailed presentation of resolution plan was made by Mr.Sunil Guglani, Promoter Director of the suspended Board of Directors of the corporate debtor. The financial creditors disapproved the resolution plan and suggested that the amount offered by the Promoter Director be upwardly improved and the term of the plan be reduced. In the same meeting, the members of the COC unanimously decided to make application for extension of time of CIRP beyond 180 days which was expiring on 03.10.2017. This application was allowed by order dated 03.10.2017 and extension of CIRP period for 90 days beyond 180 days was allowed. Consequent to direction of the COC, the RP on 13.12.2017 published expression of interest inviting potential investors and in pursuance thereof, resolution plan by Aravali Publishers Pvt.Ltd. was received and was found compliant by the resolution professional and circulated to the COC. However, in the 8th meeting of COC held on 29.12.2017, the members of the COC unanimously disapproved the resolution plan.

2. Shri Sunil Guglani filed CWP No.30072/2017 in the Hon'ble High Court of Punjab & Haryana, inter alia, challenging the vires of certain provisions of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (hereinafter referred to as the Ordinance). The Hon'ble High Court on 29.12.2017 issued notice of motion for 25.01.2018 and directed the Tribunal not to pass the final order. The RP filed CA No.04/2018 seeking further directions from the Tribunal in view of

the fact that the extended period of 90 days has expired. In the order dated 09.01.2018, it was noted that the learned counsel for the respondent (Mr.Sunil Guglani) submits that since the final order cannot be passed in view of the interim direction of the Hon'ble High Court, the order of liquidation cannot also be passed by the Tribunal despite the expiry of 270 days of the commencement of CIRP. It was directed that the matter be listed for 15.02.2018 and as not disputed by the learned counsel for the parties, the resolution process shall continue and the resolution professional shall continue to function as such and keep sending regular progress reports. CA No.04/2018 was disposed.

3. On 15.02.2018, on the submissions that the CWP No.30072/2017 is pending before the Hon'ble High Court, the matter was adjourned to 02.04.2018 and on the same grounds, the matter was again adjourned to 25.04.2018. On 25.04.2018, the authorised representative of Shri Sunil Guglani, the Director of the suspended Board of Directors stated that CWP No.30072/2017 before the Hon'ble High Court of Punjab & Haryana was withdrawn and dismissed on 24.04.2018. The matter was thereupon listed on 07.05.2018 when the learned counsel for the applicant sought time to place on record copy of the minutes of the last meeting of the COC and the matter was listed for arguments on 23.5.2018. The minutes of the 12th meeting of the COC held on 03.05.2018 were placed on record by diary No.1569 dated 15.05.2018.

4. During the course of arguments, the learned counsel for the resolution professional contended that all requirements of law were followed by the resolution professional in preparing the information memorandum, publication for calling of Expression of Interest (EOI) and one person namely Aravali Publishers

Pvt.Ltd. had shown EOI and the resolution plan was also filed but was not approved in the 8th meeting of the COC held on 29.12.2017. It was further submitted that the maximum period of 270 days for completion of CIRP had expired on 02.01.2018 but in the meanwhile, there was a stay order from the Hon'ble High Court of Punjab and Haryana which has since been withdrawn on 24.4.2018 as per copy of the order placed at Annexure A-1 of diary No.1569 dated 15.05.2018 (supra). It is further stated that in the 12th meeting of COC held on 03.05.2018, it was unanimously decided to liquidate the corporate debtor. It is therefore pleaded that in view of the decision of the COC in the 8th meeting held on 29.12.2017 and 12th meeting held on 03.05.2018, the Liquidation Order be passed. No submissions were made by the learned counsel for Mr.Sunil Guglani, Promoter Director of the suspended Board of Director of the corporate debtor.

5. We have carefully considered the submissions of the learned counsel for the resolution professional and perused the records of the case.

6. We find that a resolution plan was submitted by Shri Sunil Guglani, Promoter Director of the suspended Board of Directors of the corporate debtor. However, in the 5th meeting of COC held on 25.09.2017, all the financial creditors disapproved the resolution plan and subsequently, consequent to the Ordinance and the insertion of Section 29A in the Code, Mr.Sunil Guglani, Promoter Director became ineligible to present the resolution plan. Thereafter, Expression of Interest was published by the RP on 13.12.2017 and one resolution plan of Aravali Publishers Pvt.Ltd. was received, but was unanimously disapproved by the COC in its 8th meeting held on 29.12.2017. In CWP No.30072/2017 filed by Shri Sunil Guglani, Promoter Director of the suspended Board of Directors of the corporate

debtor before the Hon'ble Punjab and Haryana High Court challenging the vires of certain provisions of the Ordinance, the Hon'ble High Court on 29.12.2017 issued notice of motion and directed this Tribunal not to pass the final order. CA No.04/2018 was filed by the resolution professional stating that the period for completion of CIRP has expired on 02.01.2018 and seeking further directions from the Tribunal in view of this fact. It was directed by order dated 09.01.2018, that as not disputed by the learned counsel for the parties, the resolution process shall continue and the resolution professional shall continue to function as such and keep sending regular progress reports. Consequent to the withdrawal on 24.04.2018 of CWP No.30072/2017 filed before the Hon'ble High Court of Punjab and Haryana (supra), the 12th COC meeting was convened for 03.05.2018. In this meeting (agenda No.12.05), the COC unanimously decided for liquidation of the corporate debtor. In view of these facts and the provisions of Section 33 of the Code, we pass an order requiring the corporate debtor M/s Super Multicolour Printers (P) Ltd. to be liquidated in the manner as laid down in Chapter III of the Code is passed.

7. We appoint Shri Rajiv Khurana presently Resolution Professional as the Liquidator for the purpose of liquidation. His appointment will take effect from the date of receipt of copy of this order. All the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

- (i) Subject to Section 52 of the Code, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted against the corporate debtor [Section 33 (5) of the Code];

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) However, in terms of sub-section (6) of Section 33 of the Code 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) The order for 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) 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) 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.

8. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 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.

9. 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.”*

10. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the ‘Liquidator’ shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 and every fortnight thereafter.

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

12. Copy of this order be supplied to the counsel for the liquidator as well as to the Registrar of Companies, Punjab and Chandigarh immediately.

Sd/-

(Justice R.P. Nagrath)
Member (Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

May 23, 2018
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