

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

**CA No.274/2018
Under Section 33 of IBC, 2016
IN
CP (IB) No. 91/Chd/Pb/2018**

In the matter of:

SECL Industries Pvt.Ltd.

...Petitioner-Corporate Debtor

And

In the matter of:

Amandeep Singh, Resolution Professional

...Applicant

Order delivered on : 24.07.2018

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

For the Applicant : Mr.Pulkit Goyal, Advocate

Per: R.P.Nagrath, Member (Judicial)

ORDER

Petition was filed by SECL Industries Pvt. Ltd. (hereinafter referred to as corporate debtor) for initiating the corporate insolvency resolution process (CIRP) under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code). The petition was admitted vide order dated 25.10.2017, moratorium was declared and thereafter, order was passed on 03.11.2017 appointing Mr.Alok Kaushik as Interim Resolution Professional. He was replaced by Mr.Amandeep Singh who was appointed as Resolution Professional (RP) vide order dated 29.12.2017.

2. The instant application has been filed by the Resolution Professional with a prayer to pass Liquidation Order under Section 33 of the Code. It is submitted that the suspended directors of the corporate debtor were not cooperating with the RP and as such, the corporate insolvency resolution process could not be completed within 180 days i.e. upto 23.04.2018 and further extension of 90 days upto 22.07.2018 was sought and allowed vide order dated 04.05.2018.

3. It is stated that the corporate debtor is not an on-going concern and it is not left with any alive contractual agreements to carry on construction work on contractual basis and rather its construction work has come to a halt as no business activity is being carried on by the corporate debtor. It is stated that some of the assets of the corporate debtor have already been sold by the financial creditor under securitisation proceedings. It is submitted that an attempt was made by inviting resolution plan but nobody came forward for the revival of the business of the corporate debtor as expected. It is submitted that since no resolution plan was received, the meeting of the Committee of Creditors (COC) was called on 19.07.2018 to discuss and decide the further course of action of the CIRP of the corporate debtor and it was unanimously resolved that since there is no business activity being carried on by the corporate debtor and practically there are no chances of revival of the business of the corporate debtor, so the corporate debtor be liquidated and liquidation process of the corporate debtor be initiated.

4. It is submitted that Shri Amandeep Singh, RP wishes to continue as liquidator and his consent is appended as Annexure A-5.

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

6. Section 33(2) of the Code states that where the RP, at any time during the CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the COC approved by not less than 66% of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Code.

7. In the present case, item No.3 of the minutes of the meeting of the COC held on 19.07.2018 (Annexure A-4 of the application) relates to discussion and decision regarding the further course of action of CIRP of the corporate debtor as no resolution applicant has come forward to participate in the resolution process. The COC took into consideration that the corporate debtor is not an on-going concern and is not left with any alive contractual agreements to carry on construction work on contractual basis and since its construction work has come to a halt and no business activity is being carried on by the corporate debtor and the process of invitation of resolution plan was duly followed and Form G was got published in the newspaper inviting prospective resolution applicants but to no result as no prospective investor/buyer/resolution applicant came forward. The COC unanimously resolved that since there is no business activity being carried on by the corporate debtor and practically there are no chances of revival of the business of the corporate debtor, the corporate debtor may be liquidated and the liquidation process of the corporate debtor be initiated.

8. We are of the view that the conditions provided for by Section 33(2) of the Code are satisfied in the present case. As regards the appointment of the liquidator, the written consent by the Resolution Professional Shri Amandeep Singh for acting as the Liquidator has been filed as Annexure A-5 of the application. It has been stated therein that Shri Amandeep Singh is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency and that the processes in hand with him are only as liquidator of M/s Oasis Agro Infra Ltd.

9. We, therefore, order the liquidation of the corporate debtor SECL Industries Pvt.Ltd. and appoint Shri Amandeep Singh to act as a Liquidator for the purpose of liquidation of the corporate debtor in terms of Section 33(2) of the Code. His appointment will take effect from the date of receipt of copy of this order.

10. 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.

11. 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.

12. 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.”

13. 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.

14. 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.

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)

July 24, 2018
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