

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (EXERCISING THE POWERS OF ADJUDICATING AUTHORITY
 UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016)**

**CA No.81/2019
 IN
 CP (IB) NO.41/Chd/Pb/2018
 Under Section 33 (2) and 34
 (1) of the Insolvency &
 Bankruptcy Code, 2016**

In the matter of:

Oriental Bank of Commerce.Petitioner-Financial Creditor.

Vs.

Sadhbhawana Impex Pvt Ltd.Corporate Debtor.

And

In the matter of:

Sanjay Kumar Aggarwal,
 Resolution Professional ...Applicant.

Versus

Ashwani Kumar Garg & Ors.Respondents.

Order delivered on: 13.02.2019

**Coram: HON'BLE MR. JUSTICE R.P. NAGRATH, MEMBER (JUDICIAL)
 HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Applicant/
 Resolution Professional:

- 1) Mr.Yogesh Goel, Advocate
- 2) Mr.Sanjay Kumar Aggarwal,
 Resolution Professional

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

ORDER (Oral)

CA No.81/2019:

This application has been filed by the Resolution Professional
 under Sections 33 (2) and 34 (1) of the Insolvency and Bankruptcy Code, 2016

(for short to be referred here-in-after as the 'Code') read with IBBI (Liquidation Process) Regulations, 2016 (for brevity the 'Regulations') with a prayer for order of liquidation against the corporate debtor.

2. The petition filed by Oriental Bank of Commerce, the Financial Creditor bearing CP (IB) No.41/Chd/Pb/2018 against Sadhbhawana Impex Private Limited, the Corporate Debtor was admitted under Section 7 of the Code on 21.08.2018 and declaring the moratorium and also appointing Mr.Sanjay Kumar Aggarwal as the Interim Resolution Professional with necessary directions.

3. It is stated that the public announcement was made by the Resolution Professional inviting the claims and on collation of the claims, the Committee of Creditors (CoC) was constituted which comprised of Oriental Bank of Commerce, the only Financial Creditor. In the first meeting of the CoC, Mr.Sanjay Kumar Aggarwal was confirmed as the Resolution Professional. It is stated that there is no operation of the Corporate Debtor and only the machines are available at the factory premises, which are not in working condition. There is also no stock of raw materials and finished goods at the factory premises nor is there any employee on the roll of the Corporate Debtor. The Annual Returns for the financial year ending on 31.03.2018 have been filed with the Ministry of Corporate affairs. For the purpose of CIRP process, the Resolution Professional has also appointed two registered Valuers for determining the liquidation value. The Resolution Professional had been sending regular progress reports to the Adjudicating Authority.

4. It is further stated that there is also an arbitration matter pending against the Steel Authority of India Limited, which is stated to have illegally terminated the contract and those arbitration proceedings are still pending.

5. In the CIRP process, the invitation for the resolution plans was published in Form G as required by sub-regulation (5) of Regulation 36A of the IBBI (CIRP) Regulations, 2016 in two newspapers, but no resolution plan was received from any of the prospective applicant.

6. Sixth meeting of the CoC was convened on 22.01.2019 which was held at the office of Oriental Bank of Commerce and the said meeting was attended by only Financial Creditor constituting the CoC and four Directors of the suspended Board of Directors and the attendance sheet in this respect is at page 47 of the paper book.

7. Having deliberated on the issues, the CoC took the following decisions:-

“ 8(b) As there is no any resolution plan submitted by any prospective resolution in this matter till the last date of submission of resolution plan. Hence, the Committee of Creditor of the Corporate Debtor namely Sadhbhawana Impex Private Limited, hereby decides with 100% voting power in favour of Resolution Yes:

a) That the Corporate Debtor namely Sadhbhawana Impex Private Limited be liquidated and the decision of the Committee of Creditors to liquidate said the Corporate

Debtor namely Sadhbhawana Impex Private Limited, be intimated by way of application to the Adjudicating Authority i.e. Hon'ble National Company Law Tribunal, Chandigarh Bench, Chandigarh in terms of sub-section (2) of Section 33 of the Insolvency & Bankruptcy Code, 2016.

- b) That it is resolved and decided with 100% voting power by the Committee of Creditors that Mr.Sanjay Kumar Aggarwal, (Regn No.IBBI/IPA-002/IP- N00126/2017-18/10295), Resolution Professional, who has placed/submitted his consent in prescribed form to act as Liquidator of the Corporate Debtor namely Sadhbhawana Impex Private Limited, is not replaced and decided further with 100% voting power that he is proposed to be appointed to act as Liquidator in terms of Section 34 (1) of the IBC, 2016, for the purposes of liquidation of the corporate debtor, subject to the approval of the liquidation order and/or approval of his appointment as Liquidator by the Adjudicating Authority i.e. Hon'ble National Company Law Tribunal, Chandigarh Bench, Chandigarh (AA).*
- c) That it is decided unanimously with 100% voting power by the CoC that in terms of order dated 16.11.2018 passed by the Hon'ble NCLT, Chandigarh Bench, Chandigarh in CA 524/2018, Sh.Sanjay Kumar Aggarwal, IBBI/IPA-*

002/N-00126/2017-18/10295, Resolution Professional, proposed to be appointed as Liquidator, shall continuously represent/act and exercise the entire rights for the benefit and on behalf of the corporate debtor, before the Sole Arbitrator in the Arbitration Proceedings between Steel Authority of India Limited Vs. Sadhbhawana Impex Private Limited (Corporate Debtor)."

8. The period of 180 days for completion of the insolvency resolution process is expiring on 16.02.2019 and the decision of the CoC was taken in this respect in the meeting held on 22.01.2019. The last date for receiving the Expression of Interest was 19.11.2018, but no resolution plan was received.

9. We have heard the learned counsel for the Resolution Professional and carefully perused the record.

10. Section 33(1) & (2) reads as under:-

"33. (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.*
- (2) *Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty six percent of the voting share] to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order, as referred to in sub clause (i), (ii), and (iii) of Clause (b) of sub- section (1).*

11. The learned counsel for the Resolution Professional also referred to Section 34(1) of the Code which provides that the resolution professional appointed shall act as a Liquidator unless replaced by the Adjudicating Authority under sub-section (4).

Sub-section (1) of Section 34 of the Code read as under:-

“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under[Chapter II, shall subject to submission of a written consent by the resolution professional to the Adjudicating

Authority in specified form] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4)].

12. The learned counsel for the Resolution Professional submits that this application has been filed by the Resolution Professional on the basis of the resolution of the CoC recommending the Resolution Professional as Liquidator and a reference is made to the resolution to this effect at page 46 of the paper book. The instant application was filed on 29.01.2019. The Resolution Professional has also furnished his consent in Form AA at Annexure 7 with the application for being appointed as the Liquidator in terms of Section 34 (1) of the Code. He has given all the necessary particulars as required and perusal of the Form, we find the same to be in order.

13. In view of the above, we order the liquidation of the corporate debtor M/s Sadhbhawana Impex Private Limited and appoint Mr. Sanjay Kumar Aggarwal, Resolution Professional as the Liquidator for the purposes of liquidation of the corporate debtor in terms of Section 33 (2) of the Code. His appointment as such will be with effect from the date of receipt of copy of this order.

14. It is further observed that 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) 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 by or against the corporate debtor;

Provided that a suit or other legal proceeding 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 proceeding 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.

15. 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.

16. 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.”*

17. 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 every fortnightly thereafter.

18. 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.

Copy of this order be supplied to the authorised representative of the Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh immediately. Registry is also directed to send copy of this order to the Liquidator at e-mail address.

Consequently, CA No.81/2019 stands disposed of.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

February 13, 2019.
Ashwani