

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No. 530/2018
In
CP (IB) No.52/Chd/Pb/2018**

**Application under Section 60(5) of
the Insolvency and Bankruptcy
Code, 2016.**

Daljit Singh & othersPetitioners

Versus

M/s SMD Infra Ventures Pvt. Ltd. ...Respondent

And in the matter of:

Deepak Gupta
Resolution ProfessionalApplicant

Order delivered on: 25.01.2019

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

For the Resolution Professional : (1). Mr. Arora Vishwas Kumar,
Advocate
(2). Mr. Deepak Gupta, Resolution
Professional in person

Per: Pradeep R. Sethi, Member (Technical)

ORDER

The present application is filed by the Resolution Professional (RP) for ratifying the expenses incurred by the Interim Resolution Professional (IRP)/Resolution Professional during the Corporate Insolvency Resolution Process (CIRP) of M/s SMD Infraventures Pvt. Ltd. (Corporate Debtor) and for seeking liquidation of the corporate debtor pursuant to Section 33(1) of the Code. The application is made under Section 60(5) Code.

2. It is stated that consequent to application filed by the financial creditor the CIRP was initiated in the case of the corporate debtor under Section 7 of the Code on 03.04.2018 and on 11.04.2018, Shri Deepak Gupta (applicant) was appointed as IRP. It is stated that on 14.04.2018, public announcement was published in two newspapers in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations) read with Section 13(1)(b) and 15 of the Code. It is submitted that on 27.04.2018, after collating claims from the creditors, the IRP constituted the Committee of Creditors (COC) with 436 members in accordance with Section 21 of the Code and the first meeting of the COC was convened on 09.05.2018 but due to incomplete quorum and unparliamentarily and hostile behaviour of the COC Members, the meeting was adjourned to the next date when 32% of voting share were present in consonance with Regulation 22(3), and refused to accept Shri Deepak Gupta as Resolution Professional.

3. It is further stated that CA 211/2018 was filed by the applicant seeking replacement of the IRP with a new Resolution Professional and that the Tribunal disposed of the application on 28.08.2018 and refused to accept the replacement of IRP with new RP. It is submitted that upon disposal of CA 211/2018, the applicant immediately appointed registered valuers and obtained the valuation report but could not complete the information memorandum as the books of accounts were not handed over to the RP and the financial statements of the corporate debtor for the year 2015-16, 2016-17 and 2017-18 were not prepared/submitted to Registrar of Companies. It is submitted that the second meeting of the COC took place on 29.09.2018 when members with 36.87% of the total voting share of COC were present and unanimously decided for the liquidation of the corporate debtor and also decided that the fee of IRP and RP and other insolvency process costs to be paid will be decided by the Adjudicating Authority, which shall be acceptable to all the members of the COC. The consolidated expense sheet is stated to be enclosed as Annexure A-3 of the application in which the IRP/RP has proposed his fee @ ₹1,00,000/- per month.

4. It is also stated that the period of 180 days of CIRP expired on 30.09.2018 and that in the absence of books of account, the applicant/RP cannot verify the claims received and cannot consequently prepare the information memorandum and therefore, the corporate debtor may be liquidated. It is submitted that the liquidation value of the assets is arrived at ₹1,11,58,000/- by the registered valuers and that the total claims received from the financial creditors by the RP amount to ₹7,08,96,574/-. It is prayed that the

expenses and fee of the IRP/RP be ratified and order of liquidation of the corporate debtor passed in accordance with Section 33(1) of the Code and appoint some other Insolvency Professional apart from the applicant.

5. We have carefully considered the arguments of the learned counsel for the RP and have also perused the records.

6. The RP has reported that the period of 180 days of CIRP expired on 30.09.2018. We note that as per Section 33(2) of the Code, the decision of the COC to liquidate the corporate debtor is required to be approved by not less than 66% of the voting share. In the present case, it is stated that in the second meeting of the COC held on 29.09.2018, only 36.87% of the total voting share of COC were present and unanimously decided for liquidation of the corporate debtor. The decision of the COC to liquidate the corporate debtor does not therefore, have the approval of the required percentage of the voting share.

7. We however, note that Section 33(1)(a) of the Code inter alia states that where the Adjudicating Authority, before the expiry of the CIRP, does not receive a resolution plan under Section 30(6) of the Code, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in Chapter 3 of the Code. In the present case, no such resolution plan has been received.

8. We may add here that the RP has explained that the information memorandum could not be completed since the books of accounts was not handed over to the RP and the financial statements of the corporate debtor for the year 2015-16, 2016-17 and 2017-18 were not prepared/submitted to the

Registrar of Companies. We find that CA No.210/2018 was filed under Section 19(2) of the Code seeking directions from the Tribunal against the Directors of the Suspended Board i.e. Shri Sandeep Kumar Jindal, Shri Jatinder Jain and Shri Mohammad Mughni Usmani to provide the necessary information/relevant documents and to cooperate in the CIRP. Vide order dated 08.06.2018, notice of the application was given to the three Directors for 20.07.2018 with directions to appear in person and show cause as to why they were not cooperating with the IRP. Vide order dated 28.08.2018, it was noted that Mr. Jatinder Jain and Mr. M.M. Usmani, Directors of Suspended Board of Directors state that the entire record of the corporate debtor is in the possession of Shri Sandeep Kumar Jindal, Managing Director and they have filed their respective affidavits dated 27.08.2018 in this regard. As regards Shri Sandeep Kumar Jindal, Managing Director of the Suspended Board of Directors, the notice was not delivered and he was not personally present also Bailable warrants were ordered to be issued.

9. The order dated 18.10.2018 states that SI Ramandeep Singh for SP City Sangrur is present and filed report that the bailable warrants issued against Shri Sandeep Kumar Jindal have not been executed and that Shri Sandeep Kumar Jindal is also an accused in a case under Section 420, etc. of Indian Penal Code and he has not been arrested so far and is absconding. In view of the affidavits of Shri Jatinder Jain and Mr. M.M. Usmani, Directors of Suspended Board of Directors and the Managing Director Shri Sandeep Kumar Jindal being absconding and despite application under Section 19(2) of the Code, the RP could not obtain the required information and has therefore,

stated in the present application that in the absence of required information, the information memorandum could not be submitted.

10. Taking into consideration the above discussion and the provisions of Section 33(1)(a) of the Code (supra), we order that the corporate debtor be liquidated in the manner as laid down in Chapter III of the Code.

11. The prayer has also been made in the present application for ratifying the expenses and fee of IRP/RP during the CIRP. We find that vide order dated 20.11.2018, it is noted that so far as the claim with regard to expenses of RP is concerned, the learned counsel for the RP submits that the same would be made part of the liquidation cost or the cost of Corporate Insolvency Resolution Process and therefore, the prayer presently is confined only with regard to the liquidation of the corporate debtor for which the COC has taken a decision on 29.09.2018.

12. It has been stated in the instant application that some other insolvency professional apart from the applicant be directed to act as liquidator in the aforesaid matter. We find that the written consent by the Resolution Professional to the Adjudicating Authority in the specified form for acting as Liquidator has not been filed by the present applicant Shri Deepak Gupta, RP. The provisions of Section 34(4)(c) of the Code provide that the Adjudicating Authority shall by order replace the resolution profession, if the Resolution Professional fails to submit written consent under Section 34(1) of the Code. Therefore, Shri Deepak Gupta, Resolution Professional is being replaced as below.

13. Vide letter File No.IBBI/IP/EMP/2018/02 dated 25.12.2018 of Insolvency and Bankruptcy Board of India, New Delhi (Board), it is inter alia noted that for the purposes of clause (c) of Section 34(4) of the Code, the Adjudicating Authority may direct the Board to propose the name of another Insolvency Professional(IP) to be appointed as a Liquidator and the Board is required under Section 34(6) to propose the name of another IP within 10 days of the direction issued by the Adjudicating Authority and that following the practice the Board issued “Insolvency Professionals to act as Interim Resolution Professionals and liquidators (Recommendation) (Second) Guidelines, 2018 on 30.11.2018 and has prepared a common panel of IPs for appointment as IRPs and Liquidators and the Adjudicating Authority may pick up any name from the Panel for appointment as Liquidator for a liquidation process. From the Bench wise panels of IPS valid for six months from 01.01.2019 to 30.06.2019, Shri Kuljeet Singh, IP registration No. IBBI/IPA-002/IP-N00411/2017-2018/11203, email ID: kuljeet381@gmail.com and Mobile No. 98880-10359 is picked up and appointed as liquidator for the liquidation process of the corporate debtor.

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 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.

- (vi) Shri Deepak Gupta, RP shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to Shri Kuljeet Singh, Liquidator.

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 every fortnightly thereafter

14. 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 learned counsel for 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.530 of 2018 stands disposed of.

Pronounced in open court

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

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

January 25, 2019
Yashpal