

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

**CA No.120/2019
 IN
 CP (IB) No.70/Chd/Hry/2018**

**Under Section 33 (1) and 33
 (2) of the Insolvency &
 Bankruptcy Code, 2016**

In the matter of:

Ashapura Perfoclay Limited

...Petitioner/Operational Creditor.

Vs.

Mahabir Techno Limited

...Respondent/Corporate Debtor.

And

In the matter of:

Vinod Kumar Mahajan,

...Applicant/Resolution Professional

Versus

Om Parkash Khurana & Ors.

...Respondents.

Order delivered on: 22.02.2019

**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.Saurabh Bhardwaj, Advocate
 2) Mr.Vinod Kumar Mahajan,
 Resolution Professional

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

ORDER (Oral)**CA No.120/2019:**

This application has been filed by the Resolution Professional under Sections 33(1)(b) (i), (ii), (iii) and 33 (2) of the Insolvency and Bankruptcy Code, 2016 (for short to be referred here-in-after as the Code) seeking order of liquidation in respect of the corporate debtor Mahabir Techno Limited.

2. The petition under Section 9 of the Code at the instance of M/s Ashapura Perfoclay Limited against the corporate debtor was admitted on 30.10.2018 declaring the moratorium and also appointing Mr. Vinod Kumar Mahajan as the Interim Resolution Professional with necessary directions.

3. The Resolution Professional made public announcement inviting the claims and on collation of the claims, the Committee of Creditors (CoC) was constituted. In the first meeting of the CoC held on 29.11.2018, Mr. Vinod Kumar Mahajan was confirmed as the Resolution Professional and he took over the management of the affairs of the corporate debtor. On site visit, it was found that the machinery and stocks were removed by the corporate debtor even before Union Bank of India took physical possession of the factory land and building under SARFAESI Act. The walls and roofs of the sheds were broken, apparently to take out the heavy machinery. With regard to the non-co-operation by the Directors of the suspended Board of Directors, the application under Sections 19(2) and 19(3) of the Code was filed and the same is statedly pending.

4. It is further stated that the business of corporate debtor has been closed and even the balance sheet of the corporate debtor is not available after 31.03.2017.

5. In the second meeting of CoC held on 11.01.2019, it was resolved for making publication in performa of Form G inviting Expression of Interests at least seven days before the meeting of CoC. Minutes of the meeting are at Annexure RP-1. CoC being of the view that company was closed and there was no business activity therefore, the calling of the resolution will not serve any purpose. The CoC thereafter resolved that the corporate debtor be liquidated with 100% voting share.

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

7. 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).*

8. 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)].

9. In this case the Resolution Professional has furnished his consent as at Annexure RP-2 giving all the necessary particulars and has shown his willingness to be appointed as Liquidator.

10. In view of the above, we order the liquidation of the corporate debtor M/s Mahabir Techno Limited and appoint Mr. Vinod Kumar Mahajan, 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.

11. 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.

12. 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.

13. 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.”*

14. 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.

15. 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. Registry is also directed to send copy of this order to the Liquidator at e-mail address.

Consequently, CA No.120/2019 stands disposed of.

Sd/-

(Pradeep R. Sethi)
Member (Technical)

Sd/-

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

February 22, 2019.
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