

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

**IA No.945/2020
In
CP (IB) No.3/Chd/Pb/2019
(Admitted Matter)**

**Under Section 33(2) read with
Section 60(5) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:-

Gurdev Singh

....Petitioner/Operational Creditor

Vs.

DPD Industries Limited.

...Respondent/Corporate Debtor

And in the matter of IA No.945/2020:-

Gautam Mittal

having its registered office at

E-10A, Kailash Colony, Greater Kailash-1,
Delhi-48

...Applicant-Resolution Professional

Vs.

DPD Industries Limited
Through its Directors
Moti Bazar, Outside Hira Mandi,
Ferozpur-152002

...Respondent(s)

Order delivered on: 20.04.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:-

For the RP in IA No. 945/2020

: Mr. Manish Jain, Advocate
Ms. Divya Sharma, Advocate

IA No.945/2020

In

CP (IB) No.3/Chd/Pb/2019
(Admitted Matter)

For Respondent in IA No. 945/2020 : Mr. Dharam Paul Garg, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 945/2020

The present Application is being filed by Mr. Gautam Mittal, Resolution Professional (RP) of DPD Industries Limited (Corporate Debtor) under section 33(2) read with Section 60(5) of Insolvency and Bankruptcy Code, 2016 ('IBC'), for initiation of liquidation of the corporate debtor.

2. It is prayed by the applicant to issue an order for liquidation in terms of Section 33(2) of the Code be passed; to issue a public announcement stating that the corporate debtor is in liquidation; to sent an order to the Registrar of Companies at New Delhi; to pass an appropriate direction with regards to the protection of the actions taken in good faith by the RP in terms of Section 233 of the Code; and to pass an appropriate direction with regards to liquidation fees of the liquidator.

3. It is submitted that the CIRP of the corporate debtor commenced from 06.11.2019 in pursuance to the order of even date passed by this Tribunal.

4. The Interim Resolution Professional has constituted the Committee of Creditors with one sole financial creditor i.e. Axis Bank Limited holding 100% voting share. The Interim Resolution Professional was confirmed as Resolution Professional in 1st meeting of CoC.

IA No.945/2020

In

CP (IB) No.3/Chd/Pb/2019
(Admitted Matter)

5. It is further submitted that in pursuance to the resolution passed by the CoC in its 3rd meeting, the Resolution Professional had filed an application vide I.A. No. 352/2020 u/s 12(2) of the IBC before this Tribunal for exclusion of time period lost due to Covid-19 and for extension of CIRP period by 90 days. The said application was allowed by an order dated 04.09.2020 granting 90 days extension along with exclusion from 25.03.2020 to 31.07.2020.

6. It is submitted that the Resolution Professional had issued Form-G dated 25.02.2020 in "Financial Express" (English) and "Jagbani" (Punjabi) on 26.02.2020. However, no EOI has been received. The revised Form G was published in "Hail Today" (English) and Rozana Spokesman (Punjabi Edition) on 21.03.2020. The copies of Form-G published on 25.02.2020 and 21.03.2020 are attached as Annexures A-2 & A-3 of the application.

7. The applicant received two EOI(s) pursuant to the publication of Form G on 21.03.2020. However, the promoter of the corporate debtor who submitted the EOI(s) did not fulfil the net worth criteria, and his Expression of Interest was rejected. Another PRA, i.e. Saatvik Rice Export Limited and Mr. Deepak (in consortium) submitted the Resolution Plan on 30.05.2020. The RP sent an email dated 13.06.2020 asking the Resolution Applicant to submit the revised Resolution Plan as it had various deficiencies. In the 4th CoC meeting held on 20.07.2020, the Resolution Plan of the Resolution Applicant was discussed, and Resolution Applicant agreed to submit the revised Resolution Plan.

8. The revised Resolution Plan, as submitted by the PRA, was rejected by the CoC. The copies of the minutes of the 4th meeting of the CoC dated 20.07.2020,

IA No.945/2020

In

CP (IB) No.3/Chd/Pb/2019
(Admitted Matter)

along with voting rights, are attached as Annexure A-5 of the application. The CoC has further resolved to republish Form-G in the 5th meeting of the CoC held on 13.08.2020, which was re-published on 19.08.2020. Once again, the expression of Interest was received from two PRA's, i.e. Sh. Devinder Pal Dhawan, Sh. Surinder Pal Dhawan and Sh. Sarbjeet Dhawan (Suspended Directors of corporate debtor) and Saatvik Rice Private Limited, and Mr. Deepak Mittal (in consortium).

9. However, Sh. Devinder Pal Dhawan could not deposit the EMD amount of INR 25 Lakhs, the only Resolution Plan that was put up for consideration was of another PRA, i.e. Saatvik Rice Private Limited and Mr. Deepak Mittal.

10. After deliberations and discussions, the Resolution Plan received by PRA on 23.11.2020 was put for consideration, and it was again rejected by CoC with a 100% voting share. The CoC has resolved to liquidate the corporate debtor in the 6th CoC meeting, which is attached as Annexure A-8 of the application.

10. After discussion, the sole member of the CoC, namely, Punjab National Bank with 100% voting right, passed the following resolution in agenda item No. 4 in the 6th CoC meeting for liquidation of the Corporate Debtor:

"RESOLVED THAT in pursuant to Section 33(2) of IBC,2016 and the rules made thereunder, the consent of members of the COC be and is hereby accorded to approve the initiation of liquidation of Corporate Debtor and to appoint the existing RP, who also has given consent to act as liquidator, as the liquidator of the CD".

A copy of the minutes of the 6th CoC meeting held on 11.11.2020 with the attendance sheet with voting rights is attached as Annexure A-8 of the application.

11. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and the relevant provision is reproduced below:

"Section 33(2): Initiation of liquidation

(1)

(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 clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. - For the purpose of this sub-section, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

12. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. before the expiry of the Insolvency Resolution Process period;
- ii. before the expiry of 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;
- iii. If no resolution plan is received under sub-section (6) of Section 30; and
- iv. after the CoC approval of the proposal for the liquidation with not less than sixty-six per cent of the voting share.

13. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

14. The Liquidator's Fee shall be structured in the manner as ratified in the 6th Meeting of CoC held on 11.11.2020 which is reproduced below:

“RESOLVED FURTHER THAT the members of COC have fixed following fees which would be payable to the liquidator in case the liquidation order passed by Hon'ble NCLT:

a. The fees of Liquidator be same as of Resolution Professional fees for that period which is used for any scheme for compromise or arrangement received by the liquidator under section 230 of the Companies Act, 2013.

b. The liquidator fees For the balance period, if the Secured Financial Creditor relinquishes their security interest then the liquidator will be entitled to fee as per Regulation 4(2)(b) of the Liquidation Regulations, 2016 and if the Secured Financial Creditor decides not to relinquish their security interest then liquidator will be entitled to fee at the same rate as the resolution professional was entitled during the corporate insolvency resolution process.”

15. The Coc ratified the sale of the corporate debtor as a going concern and also the liquidation cost in it's 6th CoC meeting held on 11.11.2020, which is reproduced below:

“RESOLVED FURTHER THAT the estimate of the liquidation cost of Rs.22 lacs plus applicable GST other than liquidator fee, be and is hereby approved, in case the of liquidation order passed by Hon'ble National Company Law Tribunal and COC, the Committee of creditors will make contribution towards the estimated Liquidation Cost.

RESOLVED FURTHER THAT Corporate Debtor would be kept as a going concern during liquidation process and the liquidator be and is hereby authorized to explore sale of the Corporate Debtor as a going concern under Regulation 32 (e) or 32 (f) of liquidation Process Resolution”.

16. In the 6th meeting of CoC held on 11.11.2020, the present Resolution Professional has been resolved to be appointed as Liquidator. The consent of Mr.

Gautam Mittal in Form AA dated 07.12.2020 is attached as Annexure A-9 of the present application.

17. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, i.e. **DPD Industries Limited**, is directed to be liquidated in the manner as laid down in Chapter III of the Code.

18. Accordingly, by exercising our power under Section 33(2) pass the following order:-

- I. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- II. Mr. Gautam Mittal bearing Registration No. IBBI/IPA-001/IP-P01331/2018-19/12058, Mobile No. 9876002405, e-mail: mittalgautam@yahoo.com is hereby appointed as liquidator;
- III. Mr. Gautam Mittal, Shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations
- IV. Mr. Gautam Mittal, is directed to file his written consent along with affidavit within 7 days, stating therein that no disciplinary proceedings have been initiated against him by the Board or the insolvency professional agency;
- V. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under

Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

- VI. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect, and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- VII. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- VIII. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- IX. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;
- X. The Liquidator shall take necessary legal action to recover the trade receivables and other credits, such as loans and advances from the parties, which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.

- XI. On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the Liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
- XII. 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;
- XIII. 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
- XIV. The liquidator will be entitled to the protection of action taken in a good faith as per the provisions of Section 233 of the Insolvency and Bankruptcy Code 2016
- XV. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;
- XVI. A copy of this order be sent by the Registry to the concerned Registrar of Companies (RoC) for updating Master Data. After updating Master Data,

RoC shall send a compliance report to the Registrar, NCLT, within a period of 30 days.

- XVII. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.
- XVIII. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

19. Thus, IA No. 945/2020 stands allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

April 20, 2023
SA/PB