

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

**CA No. 726/2019
In
CP (IB) No.124/Chd/Pb/2018
(Admitted)**

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

In the matter of:-

M/s Satnam Agri Products Limited

...Petitioner-Corporate Debtor

And in the matter of:-

Mahesh Bansal, Resolution Professional

CA No.726/2019

...Applicant

Order delivered on 01.11.2019

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

Present: Mr. Harsh Garg with Mr. Pulkit Goyal, Advocates, for the
Applicant/Resolution Professional
Ms. Parmeet Kaur with Ms. Jyoti Sareen, Advocates, for the
Suspended Board of Directors

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

This instant application i.e. CA No.726/2019 has been filed by the Applicant-Resolution Professional of M/s Satnam Agri Products Ltd., under Section 33(1) and (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as the '**Code**'), seeking liquidation of the corporate debtor in pursuance of the resolution passed in the Eleventh Meeting of the Committee of Creditors ('**COC**'), held on 28.08.2019.

2. On perusal of the documents, it is evident that CP (IB) No.124/Chd/Pb/2018 ('**CP**') was admitted and moratorium was declared and Mr. Yogender Pal Singhal, was appointed as the Interim Resolution

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Professional, by order dated 05.10.2018. Vide order dated 28.11.2018 passed by this Tribunal, Mr. Mahesh Bansal, the applicant herein, was appointed as Resolution Professional.

3. It is stated that on 02.02.2019, the Resolution Professional conducted 5th Meeting of COC, wherein the Resolution Professional had apprised about the publication of Form-G and interest shown by two parties, to the COC. It is further stated that on 25.03.2019, the Resolution Professional conducted the 7th Meeting of COC, wherein it was resolved that application for extension of Corporate Insolvency Resolution Process ('CIRP') period of the corporate debtor be filed, as the period of 180 days was expiring on 03.04.2019 and certain new parties had shown their interest in filing the Resolution Plan. Thus, application for extending the CIRP period was filed and vide order dated 11.04.2019 passed by this Tribunal, extension of 90 days' period was granted.

4. It is stated by applicant that in the 8th Meeting of the COC, held on 10.04.2019, the Resolution Professional apprised the COC about the publication of Form G, Evaluation Matrix, Invitation of Expression of Interest and that request for resolution plan prepared by Resolution Professional were approved. It is further stated that in the 9th Meeting of the COC held on 28.05.2019, the Resolution Professional had apprised the COC that revised Form G was published in two newspapers, after which five parties, had submitted their expression of interest. The Resolution Professional after receiving queries forwarded the information memorandum along with evaluation matrix to all the prospective resolution applicants, who had shown interest in the resolution of the corporate debtor.

5. It is stated that in the 10th Meeting of the COC held on 20.06.2019, wherein the agenda for exclusion of time period from the CIRP period of the corporate debtor was put forth in view of the litigation pending in matter before this Tribunal, the COC initially agreed in principal for moving the application for exclusion of the period before this Tribunal. Accordingly, the Resolution Professional filed application being CA No.454 of 2019 under Section 60(5) of the Code, for exclusion of time spent in litigation.

6. When this matter came up for hearing before this Tribunal, the COC objected to it, and stated that though in the 10th Meeting of the COC, they have authorized the Resolution Professional to file application for exclusion of time, however, due to change in the circumstances and in view of the non-receipt of any resolution plan within the time limit, they are not intending to continue with the CIRP, but are intending to hold a fresh meeting of the COC for approving the agenda for liquidation of the corporate debtor. Accordingly, this Tribunal keeping in view the circumstances and in view of the submissions made by the COC, vide order dated 23.08.2019, permitted the COC to hold a meeting and pass appropriate resolution for liquidation of the corporate debtor in accordance with law, within 10 days.

7. Consequently, in the 11th and final meeting of the COC, held on 28.08.2019, the COC resolved and approved the agenda for liquidation of the corporate debtor as no resolution plans were received and that the mandated period provided under the Code had also expired. Vide the same COC meeting, the name of Mr. Mahesh Bansal, Resolution Professional, was confirmed as Liquidator. Hence, the present application.

8. Section 33 of the Code 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 ¹[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).

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.]

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding 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.

(6) The provisions of sub-section (5) 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.

(7) The order for liquidation under this section 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.”

9. The matter was listed for re-hearing on 18.09.2019 as the voting pattern as well as the shareholding pattern was not filed and the Resolution

Professional was directed to file a proper table giving the details of voting pattern and shareholding pattern along with the details of the 11th Meeting of the Committee of Creditors with supporting affidavit.

10. In compliance of the above order, the affidavit of compliance was filed, vide Diary No.5108 dated 25.09.2019 with which the Minutes of the 11th Meeting of the Committee of Creditors were attached. Agenda Item No.5 states that ***“RESOLVED THAT since no resolution plans were received and the mandated period has expired, COC hereby recommends that Corporate Debtor should be liquidated u/s 33 of IBC, 2016 and RP be and is hereby authorized to file an Application before Hon’ble NCLT to obtain necessary orders.”***

11. It is stated that the total percentage of members who voted in favour of the agenda of liquidation were 65.25% of the members present. A table showing the voting pattern for agenda of liquidation is as follows:-

Sr.No	Name of the Financial Creditors	Voting Share Percentage	Voting Pattern for Liquidation
1.	State Bank of India	42.13%	Voted in Favour
2.	Indian Overseas Bank	34.75%	Abstained from Voting
3.	NABARD	23.12%	Voted in Favour

12. Since, though, under Section 33(2) of the Code, the Committee of Creditors in its 11th Meeting passed a Resolution to liquidate the corporate debtor, but the said Resolution was not passed by the COC Members, having

not less than 66%, and since no Resolution Plan under sub-section (6) of Section 30 was received, the corporate debtor is required to be liquidated under Section 33(1) (a) and in the manner as laid down in Chapter III of the Code, but not under Section 33(2). Consequently, the decisions taken and resolutions passed by the COC, have no relevance, since the order is being passed under Section 33(1)(a) of the Code. Accordingly, in the circumstances and in view of the necessary compliances made, the corporate debtor is ordered to be liquidated.

13. Section 34(1) of the Code states that the Resolution Professional appointed for the CIRP shall, subject to submission of a written consent by the Resolution Professional to the Adjudicating Authority in specified Form, act as a Liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub section (4) of Section 34 of the Code. In the present case, Mr. Mahesh Bansal, Resolution Professional with IBBI Registration No.IBBI/IPA-001/IP-P00785/2017-18/11341 (Enrolment No. IP/P-00785) has submitted his written consent dated 28.08.2019 to be appointed as Liquidator in connection with the liquidation process of the corporate debtor, which is at Annexure A-11. Therefore, Mr. Mahesh Bansal is appointed as the Liquidator.

14. It is directed 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 '**2016 Regulations**') shall be strictly complied with. Some of the directions are 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.

15. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 2016 Regulations 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 2016 Regulations, the ‘Liquidator’ shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the 2016 Regulations 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.

19. The Resolution Professional shall take into his possession the assets of the Corporate Debtor.

20. Thus, CA No.726/2019 stands disposed of.

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

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

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

November 1st, 2019
Mohit Kumar