

THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH

CA No. 910/2019  
In  
CP (IB) No.121/Chd/Pb/2018  
(Admitted)

Under Section 33 & 34 of  
Insolvency and Bankruptcy Code,  
2016

**In the matter of:-**

RPG Industrial Products Pvt. Ltd. ...Petitioner-Operational Creditor

Versus

M/s Sahil International Pvt. Ltd. ...Respondent-Corporate Debtor

**And in the matter of:-**

**CA No.910/2019**

Mahesh Chandra Purohit, Resolution Professional

...Applicant

Order delivered on 18.11.2019

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

Present: Mr. Mahesh Chandra Purohit, Applicant/Resolution Professional, in person

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**ORDER**

This instant application i.e. CA No.910/2019 has been filed by the Applicant-Resolution Professional of M/s Sahil International Pvt. Ltd., under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as the '**Code**'), seeking liquidation of the corporate debtor based on the 6<sup>th</sup> Meeting of the Committee of Creditors ('**COC**'), held on 15.10.2019.

2. On perusal of the documents, it is evident that CP (IB) No.121/Chd/Pb/2018 ('CP') was admitted and moratorium was declared and Mr. Mahesh Bansal, was appointed as the Interim Resolution Professional, by order dated 21.01.2019. On an application filed under Section 22 of the Code, vide order dated 29.03.2019 passed by this Tribunal, Mr. Mahesh Bansal, Interim Resolution Professional, was substituted with Mr. Mahesh Chandra Purohit and the latter was appointed as Resolution Professional.

3. It is stated that invitation for expression of interest (Form G) was issued for the first time on 19.04.2019, Annexure 3, the same was published in two newspapers 20.04.2019 and the last date for submission of the resolution plan was fixed on 19.06.2019. It is further stated that one expression of interest was received from prospective resolution applicant and information memorandum along with request for resolution plan and evaluation matrix was shared with the prospective resolution applicant on 19.05.2019, however, no resolution plan was received within the stipulated period.

4. It is stated that as the period of 180 days was expiring on 20.07.2019, the COC in its 4<sup>th</sup> Meeting held on 10.07.2019, decided to make one more attempt of resolution by inviting EOI again with suitable revision in eligibility criteria and evaluation matrix and considering the limited period available, decided for extension of CIRP period for further 90 days and instructed the Resolution Professional to file application before this Tribunal for extension of CIRP period.

5. This Tribunal, on an application filed by the Resolution Professional for extension of CIRP period, vide order dated 25.07.2019 extended the CIRP period by 90 days. Copy of order dated 25.07.2019 is at Annexure 4.

6. After extension of CIRP period, invitation for expression of interest (Form G) was issued once again on 26.07.2019 and the same was published in two newspapers on 27.07.2019 & 28.07.2019. The last date for submission of resolution plan was fixed on 24.09.2019. However, no EOI/resolution plan was received on re-issuance of invitation of expression of interest.

7. The last i.e. 6<sup>th</sup> Meeting of the COC of the corporate debtor i.e. Sahil International Pvt. Ltd. was held on 15.10.2019 and keeping in view that even after publishing two times Form-G, no resolution plan was received, the COC decided for liquidation of the corporate debtor. The COC passed the Resolution approving the liquidation by 100% majority. Copy of minutes of 6<sup>th</sup> Meeting dated 15.10.2019 along with voting sheets is at Annexure 6.

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 <sup>1</sup>[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).

<sup>1</sup>[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. Under Section 33(2) of the Code, the Committee of Creditors in its 6<sup>th</sup> Meeting passed a Resolution resolving that “pursuant to the provision of Section 33(2) of the Insolvency and Bankruptcy Code, 2016, consent of the member of committee of creditor of the corporate debtor be and are hereby accorded to liquidate the corporate debtor and Resolution Professional will file an application for the liquidation of the corporate debtor before the adjudicating authority.”

10. Section 34 of the Code reads as under:-

**“34. Appointment of liquidator and fee to be paid. -**

(1) 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 Adjudicatory Authority in specified form,] shall act as the liquidator for the

*purposes of liquidation unless replaced by the Adjudicating Authority under subsection (4).*

*(2) On the appointment of a liquidator under this section, all 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.*

*(3) 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 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.*

*(4) The Adjudicating Authority shall by order replace the resolution professional, if-*

*(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section*

*(2) of section 30; or*

*(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded 1 [in writing; or]*

*[(c) the resolution professional fails to submit written consent under sub-section (1).]*

*(5) For the purposes of 3 [clause (a) and clause (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose name of another insolvency professional to be appointed as a liquidator.*

*(6) The Board shall propose the name of another insolvency professional [along with written consent from the insolvency professional in the specified form] within ten days of the direction issued by the Adjudicating Authority under sub-section (5).*

*(7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.*

*(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.*

*(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53."*

11. 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 Chandra Purohit, Resolution Professional has not given his consent to act as liquidator.

12. Under sub-section (5) of Section 34 of the Code, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as liquidator.

13. Sub-section (6) of Section 34 says that the Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

14. Sub-section (7) of Section 34 says that the Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as liquidator.

15. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Mr. Harvinder Kumar Jatana appearing at Serial No.92 of the panel to be appointed as Liquidator.

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Harvinder Kumar Jatana and there is nothing adverse against him. In view of the above, we appoint Mr. Harvinder Kumar Jatana, Registration No. IBBI/IPA-002/IP-N00418/2017-2018/11193, Mobile No. 9814583727, E-mail: [hkj\\_jatana@yahoo.co.in](mailto:hkj_jatana@yahoo.co.in), as the Liquidator.

17. Regulations 39B, 39C and 39D in the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulation 2016**) have been inserted by Notification No.IBBI/2019-20/GN/REG/048 dated 25.07.2019. These regulations are as follows:-

**“39B. Meeting liquidation cost.**

*(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.*

*(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).*

*(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.*

*(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.*

**Explanation.**-For the purposes of this regulation, ‘liquidation costs’ shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

**39C. Assessment of sale as a going concern.**

*(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.*

*(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

*(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”.*

**39D. Fee of the liquidator**

*While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee*

payable to the liquidator, if an order for liquidation is passed under section 33, for –

- (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;
- (b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and
- (c) the balance period of liquidation.”

18. It is submitted that compliance of these regulations was made by the Committee of Creditors in the 6<sup>th</sup> Meeting held on 15.10.2019. It was thereby pleaded that the requirements of Regulation 39B, 39C and 39D of the CIRP Regulations 2016 are satisfied in the present case. In view of the insertion of Regulations 39B, 39C and 39D, the corresponding modifications have been also made in Form H, under Paragraph Nos. 15A to 15C, which read as under:-

**“15A.** The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost: Rs.....
- b. Estimated liquid assets available: Rs.....
- c. Contributions required to be made: Rs.....
- d. Financial creditor wise contribution is as under:

| Sl. No.      | Name of financial creditor | Amount to be contributed (Rs.) |
|--------------|----------------------------|--------------------------------|
| 1            |                            |                                |
| 2            |                            |                                |
| ..           |                            |                                |
| <b>Total</b> |                            |                                |

**15B.** The committee has recommended under regulation 39C as under:

- a. Sale of corporate debtor as a going concern: Yes/No
- b. Sale of business of corporate debtor as a going concern: Yes/ No

The details of recommendation are available with the resolution professional.

**15C.** The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.]”

19. In respect of the compliances required to be made by the COC, the following resolutions are passed, as per the Minutes of 6<sup>th</sup> Meeting of COC, held on 15.10.2019:-

**“Item No.9: To discuss and approve the liquidation cost as per Regulation 39B of CIRP Regulations**

*The chairman informed the members of COC that as per Regulation 39B of CIRP Regulations*

- (1) *While approving a resolution plan under sub-section (4) of Section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under Section 33.*
- (2) *The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).*
- (3) *Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.*
- (4) *The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.*

*The RP further explained the relevant provisions of the IBC, 2016 and the regulations to the members of the COC. The RP also suggested various expenses necessarily and likely to be incurred during the liquidation process.*

*The COC was requested to make an estimate of liquidation costs and value of liquid assets and make a plan providing for contribution for meeting the difference between the two in the event an order of liquidation is passed by the Adjudicating Authority under section 33 of IBC, 2016 pursuant to filing of liquidation application by RP to AA.*

*The COC, however, could not estimate the liquidation cost and the difference between liquidation cost and liquid assets and therefore the COC could not suggest/approve any plan for meeting the difference between the two.*

**Item No.10: To discuss and approve the assessment of sale as a going concern as per Regulation 39C of CIRP Regulations**

The chairman informed the members of COC that as per Regulation 39C of CIRP Regulations

- 1) While approving a resolution plan under Section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under Section 33.
- 2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 3) The resolution professional shall submit the recommendation of the committee under sub regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

The COC discussed and decided that it is not feasible to sale the corporate debtor as going concern and hence there is no need to explore first sale of Corporate Debtor as a going concern under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 and to identify and group the assets and liabilities which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

**Item No.11: to discuss and approve the fee of Liquidator as per Regulation 39D of CIRP Regulations**

Chairman informed the members of COC that as per Regulation 39D of CIRP Regulations

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under Section 33, for –

- (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;
- (b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and
- (c) the balance period of liquidation.

The RP further explained the relevant provisions of the IBC, 2016 and the regulations to the members of the COC. The COC after discussions decided not to fix any fee payable to the liquidator.

20. It is also useful to note the corresponding insertions/substitutions made to the relevant Regulations under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same are as under:-

**“Regulation 2(ea)**

*[(ea) “liquidation cost” under clause (16) of section 5 means-*

*(i) fee payable to the liquidator under regulation 4;*

*(ii) remuneration payable by the liquidator under sub-regulation (1) of regulation 7;*

*(iii) costs incurred by the liquidator under sub-regulation (2) of regulation 24;*

*(iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;*

*(v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;*

*(vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;*

*(vii) the amount repayable to contributories under sub-regulation (3) of regulation 2A;*

*(viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:*

*Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost.]*

**Regulation 2A**

*[2A. Contributions to liquidation costs.*

*(1) Where the committee of creditors did not approve a plan under sub-regulations (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor.*

*Illustration*

*Assume that the excess of liquidation costs over liquid assets is Rs.10, as estimated by the liquidator. Financial creditors will be called upon to contribute, as under:*

| <i>Sl. No.</i> | <i>Financial creditors</i>     | <i>Amount of debt due to financial creditors (Rs.)</i> | <i>Amount to be contributed towards liquidation cost (Rs.)</i> |
|----------------|--------------------------------|--|--|
| <i>(1)</i>     | <i>(2)</i>                     | <i>(3)</i>   | <i>(4)</i>   |
| <i>1</i>       | <i>Financial institution A</i> | <i>40</i>  | <i>04</i>  |
| <i>2</i>       | <i>Financial institution B</i> | <i>60</i>  | <i>06</i>  |

|       |                             |     |    |
|-------|-----------------------------|-----|----|
| 3     | Non-financial institution A | 50  | 00 |
| 4     | Non-financial institution B | 50  | 00 |
| Total |                             | 200 | 10 |

(2) The contributions made under the plan approved under sub-regulation (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or contributions made under sub-regulation (1), as the case may be, shall be deposited in a designated escrow account to be opened and maintained in a scheduled bank, within seven days of the passing of the liquidation order.

(3) The amount contributed under sub-regulation (2) shall be repayable with interest at bank rate referred to in section 49 of the Reserve Bank of India Act, 1934 (2 of 1934) as part of liquidation cost.

### **Regulation 2B**

*2B. Compromise or arrangement.*

(1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of section 33.

(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:

*Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.]*

### **Regulation 4**

*[Liquidator's fee.*

(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) In cases other than those covered under sub-regulation (1), the liquidator shall be entitled to a fee-

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:

| Amount of Realisation /Distribution (In rupees)        | Percentage of fee on the amount realised/distributed |                        |            |
|--|--|------------------------|------------|
|  | in the first six months                              | in the next six months | thereafter |
| Amount of Realisation (exclusive of liquidation costs) |  |                        |            |

|   |             |             |             |
|---|-------------|-------------|-------------|
| <i>On the first 1 crore</i>               | <i>5.00</i> | <i>3.75</i> | <i>1.88</i> |
| <i>On the next 9 crore</i>                | <i>3.75</i> | <i>2.80</i> | <i>1.41</i> |
| <i>On the next 40 crore</i>               | <i>2.50</i> | <i>1.88</i> | <i>0.94</i> |
| <i>On the next 50 crore</i>               | <i>1.25</i> | <i>0.94</i> | <i>0.51</i> |
| <i>On further sums realized</i>           | <i>0.25</i> | <i>0.19</i> | <i>0.10</i> |
| <i>Amount Distributed to Stakeholders</i> |             |             |             |
| <i>On the first 1 crore</i>               | <i>2.50</i> | <i>1.88</i> | <i>0.94</i> |
| <i>On the next 9 crore</i>                | <i>1.88</i> | <i>1.40</i> | <i>0.71</i> |
| <i>On the next 40 crore</i>               | <i>1.25</i> | <i>0.94</i> | <i>0.47</i> |
| <i>On the next 50 crore</i>               | <i>0.63</i> | <i>0.48</i> | <i>0.25</i> |
| <i>On further sums distributed</i>        | <i>0.13</i> | <i>0.10</i> | <i>0.05</i> |

*(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.*

*Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.]”*

21. It is submitted that compliance of these regulations was made by the Committee of Creditors in the 6<sup>th</sup> Meeting held on 15.10.2019. It was thereby pleaded that the requirements of Regulation 39B, 39C and 39D of the CIRP Regulation 2016 are satisfied in the present case.

22. In the circumstances and in view of the compliances made, we are satisfied that the corporate debtor-company is required to be liquidated and accordingly, we order for the same.

23. 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.

24. 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.

25. 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.”*

26. 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.

27. 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.

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

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

Copy of this order be supplied to the Applicant/Resolution Professional 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 18<sup>th</sup>, 2019  
Mohit Kumar