

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

I.A. 598 OF 2021

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

Filed by

Mr. Vijendra Kumar Jain

Resolution Professional of:

M/s Gajanan Industries Limited
1507, B Wing, One BKC, G-Block,
Bandra Kurla Complex, Bandra East,
Mumbai – 400051

...Applicant

In the matter of

C.P. No. 105 of 2019

Equitas Small Finance Bank Ltd.

4th Floor, Phase II, Spencer Plaza No.
769, Mount Road, Anna Salai,
Chennai – 400002

...Petitioner

versus

Gajanan Industries Limited

803, 8th Floor, The Capital, Plot No.
C-70, G-Block, Bandra Kurla
Complex, Bandra (E), Mumbai –
400051

...Corporate Debtor

Order delivered on: 09.07.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Resolution Professional: Mr. Ayush Rajani, PCA

Per: Shri Shyam Babu Gautam, Member

ORDER

1. It is an application filed by Resolution Professional, Mr. Vijendra Kumar Jain (hereinafter called as the 'applicant') seeking liquidation of Gajanan Industries Limited (hereinafter referred to as the 'corporate debtor'). This application has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:
 - a. *That this Hon'ble Tribunal be pleased to order and direct that the Corporate Debtor be ordered and directed to go under liquidation as per Section 33(2) of the Insolvency and Bankruptcy Code, 2016;*
 - b. *That this Hon'ble Tribunal be pleased to appoint the Applicant, Mr. Vijendra Kumar Jain, IBBI Registration Number IBBI/IPA-001/IP-P00721/2017-2018/11253 as the liquidator in respect of the Corporate Debtor, written consent of the Applicant is hereto annexed and marked as **Annexure - 19**;*
 - c. *For such other and further reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*
2. The counsel for the applicant submitted that this Tribunal vide an order dated 01.05.2019 in Company Petition No. 105 of 2019 admitted the petition under Section 7 of the Code, filed by Equitas Small Finance Bank Ltd. (hereinafter referred to as the "financial creditor") and Corporate Insolvency Resolution Process (CIRP) was initiated against the corporate debtor. One Mr. P. Shivan Raju was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Order. Upon his appointment, he published a public announcement on 02.05.2019 inviting claims

from creditors and other stakeholders of the corporate debtor with the last date of claims being announced as 14.05.2019.

3. The counsel for the applicant stated that the Committee of Creditors (CoC) was formed and the IRP has also filed a Report certifying the constitution of the CoC on 27.05.2019 under Regulation 13(2)(d) and 17(1) of the CIRP Regulations. The first CoC meeting was held on 03.06.2019 whereby the claims were admitted of the two financial creditors namely State Bank of India and Equitas Small Finance Bank Limited.
4. During the 2nd CoC meeting held on 28.06.2019, it was resolved that the present applicant would be appointed as the Resolution Professional (RP). Accordingly, application was filed before this Tribunal which was allowed vide an Order dated 15.07.2019 and the applicant was appointed as the RP.
5. Later, an application under section 19(2) was filed by the RP against the Suspended Directors for non-cooperation which is pending before this Tribunal. Four Registered Valuers namely Mr. Shri Harsh Khadilkar, Mr. Harshad Deshpande, Mr. Vinod Gandhi and Mr. Satyanarayan Samdhani (collectively called as 'valuers') were appointed to determine the fair value and liquidation value of the assets of the Corporate Debtor. The said valuers have submitted their valuation reports dated 16.08.2019, 25.11.2019, 30.11.2019 and 25.11.2019 wherein they have determined the fair value and liquidation value.
6. Expression of Interest (EoI) dated 22.08.2019 was published in Form G calling for prospective resolution applicants to submit

their EoI by 06.09.2019 and the last date of submission of a Resolution Plan was decided to be 12.10.2019. Subsequently to this, the RP had received EoIs from two prospective resolution applicants viz. Radiant World Asset Management Company Limited and the Ana ARC Private Limited.

7. The CoC in its 4th meeting resolved to extend the date of submitting EoI and for the extension of CIRP by 90 days. Accordingly, application was filed before this Tribunal bearing MA No.3305 of 2019 which was allowed by an Order dated 21.01.2020. Another MA filed for exclusion of 42 days was also allowed by this Tribunal.
8. During the 7th CoC meeting held on 03.01.2020, it was informed by the RP to the CoC that one resolution plan was received from Radiant World Asset Management Company Limited. The successful resolution applicant was present on the 8th CoC meeting held on 08.01.2020 and the CoC advised the successful resolution applicant to revise the resolution plan. Accordingly, the successful resolution applicant submitted a revised resolution plan dated 11.02.2020 and voting on this plan was held during 02.03.2020 and 03.03.2020 wherein 94.8% voted in favour of the revised resolution plan and approved it.
9. Subsequent to this, IA No. 1683 of 2020 was filed for approval by this Bench. During the course of hearing of this application, the counsel for the resolution applicant submitted that a Free Hold Land is shown in the provisional balance sheet as on 31.03.2019. He further submitted that he had taken a 7/12 search of the said property and it was found as per government records to be held

by the corporate debtor. The counsel for the resolution applicant then sought permission to withdraw the resolution plan upon which, this Bench had directed to file an application. Accordingly, an application was filed by the resolution applicant seeking refund of the Earnest Money Deposit and amount paid towards proposal performance deposit of Rs.25 Lacs. He also stated that if the free hold land is handed over to him, he is willing to implement the plan.

10. During the hearing of this matter, the counsel for the applicant had stated that the suspended management has agreed to handover the land as shown in the provisional balance sheet. A 12th CoC meeting was called for on 22.02.2021 and the CoC had asked the resolution applicant to revise the amount as additional land was being handed over to them. The representative of the resolution applicant sought a day's time and therefore, the CoC again gathered on 23.02.2021 wherein the representative of the resolution applicant responded that the decided amount was all they could have offered and now they are not in a position to increase the resolution amount. Therefore, now that the resolution applicant has withdrawn the resolution plan, the company has automatically come for liquidation.

ORDER

We have heard the Applicant and perused all the documents submitted by him. The reasons assigned in the application with respect to initiating liquidation of the corporate debtor appears to be genuine in the present market scenario and convincing. Apart from that the period of CIRP has already expired long back without

any resolution plan and therefore, there is no option other than liquidation of the corporate debtor although there was no voting of the CoC for liquidation of the corporate debtor. We therefore, allow this Interlocutory Application bearing Number IA 598/2021 with the following observations and directions:

- a. **Mr. Vijendra Kumar Jain**, having Registration No. IBBI/IPA-001/IP-P000721/2017-2018/11253 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. Will have 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 with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, 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.
- i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

It is pertinent to note here that there is an Interlocutory Application bearing No. 2342 of 2020 which was filed for preferential and fraudulent transactions by the RP and is hereby kept pending and we direct the Liquidator to pursue the same. This application is allowed with the above directions and observations.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)