

**NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**CP (IB) – 731(PB) /2018
IA (I.B.C/1603)(PB)/2021**

IN THE MATTER OF :

ICICI BANK LIMITED

... PETITIONER

VERSUS

PUNJ LLOYD

...RESPONDENT/CORPORATE DEBTOR

AND

MR. ASHWINI MEHRA

...APPLICANT/RESOLUTION PROFESSIONAL

**UNDER SECTION 33(1) OF THE INSOLVENCY AND BANKRUPTCY CODE,
2016 R/W RULE 11, NCLT RULES, 2016**

Order Pronounced on: 27/05/2022

AKS

CORAM:

SH. RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA

HON'BLE MEMBER, TECHNICAL

PRESENT:

For the RP : Mr Sunil Fernandes, Adv., Mr. Raghav Chadha Adv., Mr.
Darpan Sachdeva, Adv.

ORDER

PER SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (T)

1. This is an application filed by the Resolution Professional of **Punj Lloyd Limited, (CD)**, under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") r/w Rule 11 of NCLT Rules, 2016 for seeking directions for liquidation of the Corporate Debtor as a going together with granting permission for taking steps as per provisions of Section 230 of the Companies Act, 2013.

2. The facts in brief are:

- Financial Creditor i.e. ICICI BANK had filed an application under Section 7 of the Code, bearing number IB- 731 (PB)/2018, for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on **08.03.2019** initiating CIRP against the Corporate Debtor. The applicant herein was appointed as the Resolution Professional vide order dated **22.05.2019**.
- The Applicant thereafter issued a Request for Resolution Plan ('**RFRP**'). Initially, 10 potential Resolution applicants expressed their

interest in the resolution process of the Corporate Debtor. This was followed by interest from three other potential resolution applicants (PRAs). Accordingly, these 13 potential resolution applicants were granted access to the virtual data room after executing the Non-Disclosure Agreement.

- A final resolution plan was submitted by the consortium of Payard Investments Private Limited (“PIPL”) and Prudent ARC Limited on 21.01.2021. The said resolution plan was further amended by submitting addendums on the following dates:
First addendum submitted on 27.01.2021;
Second addendum submitted on 31.01.2021; and
Third addendum submitted on 05.02.2021.
- Further, the resolution plan was put to vote in the CoC meeting held on 16.02.2021. After extensions on various dates upon requests made by members of CoC, voting (e-voting) on the Resolution Plan concluded on **30.03.2021**. The e-voting on the above mentioned resolution plan was conducted as per Regulation 25(5) of the Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Persons) Regulations, 2016.
- There are 38 Financial Creditors of the Corporate Debtor which took part in the e-voting. List of Financial creditor is annexed as **Annexure A-3** of the application. Applicant has filed another document under clause (ca) of the sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The aforementioned document consists of summary of claims received and summary of claims admitted. In total, there are **1097 claims amounting to ₹133,863,364,182** which are admitted from various categories of creditors, namely secured financial creditors (other than financial creditors belonging to any class of creditors), unsecured financial creditors, operational creditors (workmen, employees, government dues) and other operational creditors **as per details below:**

ACS

S.NO	CATEGORY OF CREDITOR	SUMMARY OF CLAIMS		SUMMARY OF CLAIMS ADMITTED	
		NO. OF CLAIMS	AMOUNT	NO. OF CLAIMS	AMOUNT
1	Secured financial creditors (other than financial creditors belonging to any class of creditors)	31	122,949,792,772	31	115,743,106,501
2	Unsecured financial creditors (other than financial creditors belonging to any class of creditors)	12	7,795,553,741	12	7,260,128,350
3	Operational creditors (employees)	255	181,607,262	201	55,054,328
4	Operational creditors(Government dues)	17	7,270,800,928	11	476,273,424
5	Operational creditors(other than workmen and employees and government dues)	912	66,397,185,066	838	10,328,801,579
6	Other creditors, if any, (other than financial creditors and operational creditors)	11	32,855,199	4	-
TOTAL		1238	204,627,794,968/-	1097	133,863,364,182/-

AKS

- The voting percentage **“for” the resolution plan was “8.06%”** and **“against” the plan was 79.53%**, **“Abstained from voting on the Resolution” was 12.41%.** Resultantly, the plan was declared as **“failed”**. A copy of the voting results declared on 30.03.2021 is annexed as **Annexure A-1** to the application.
- Twenty Seventh (27th) CoC Meeting held on **30.03.2021**, discussed the way forward and based on the deliberations in the meeting, recommended to first go for selling of CD as a going concern under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016. Meeting also suggested that a scheme of arrangement under section 230 of the Companies act, 2013 should be run simultaneously, in the interest of time.
- It is submitted by the Applicant /RP that there was a discussion on estimated Liquidation expenses and creation of a corpus. It was decided that as per the estimates, no separate corpus was required to be formed by the CoC members, however the Resolution Professional mentioned that in case the actuals are different from the estimates leading to a shortfall, CoC members may subsequently be required to contribute to the corpus. Copy of the minutes of the meeting held on 30.03.2021 is annexed as **Annexure A-2** to the application.
- Applicant has made a reference of the case decided by Hon’ble NCLAT in Company Appeal (AT) (Insolvency) 495 & 496 of 2018 **i.e. Sekaran vs. Amit Gupta & Ors.,** wherein Hon’ble Tribunal allowed the ‘Liquidator’, to take steps in terms of Section 230 of the Companies Act, 2013. Applicant has submitted that in case the procedure under Section 230 of the Companies Act, 2013 does not fructify, then the Liquidator be permitted to take steps for liquidation of the Corporate Debtor as a ‘going concern’ as per the provisions of the Insolvency & Bankruptcy Code, 2016 (“Code”) since the resolution plan was not approved by the CoC.
- The Applicant is praying for the afore-stated directions for liquidating the Corporate Debtor as a ‘going concern’ in view of the fact that there are multiple EPC projects of the Corporate Debtor which are on-going.

Further, approx. 3000 employees are working in the Corporate Debtor.

- It is submitted that in case the Corporate Debtor is not liquidated as a 'going concern', there will be immense losses caused to the Corporate Debtor. Moreover, the Applicant/RP understands that maximization of the value of the Corporate Debtor will only be realized if the Corporate Debtor is liquidated as a 'going concern'.
- It is submitted that granting the reliefs as sought in the present application will not prejudice any person in any manner however refusal thereof will cause grave harm to the corporate debtor.
- The Resolution Professional apprised the CoC members that he is giving his consent to continue as the liquidator of the Corporate Debtor and further informed the members that the IBBI Disciplinary Committee had issued a direction last year in respect of another account wherein the Resolution Professional was involved, and that the order was duly adhered to and accordingly, the Resolution Professional is expecting that the Authorisation for assignment ("AFA") certificate will be issued to him shortly. Applicant/RP is seeking liberty from this Hon'ble Adjudicating Authority to file his written consent to act as the liquidator immediately after the receipt of AFA certificate.
- The Applicant/RP has subsequently submitted his AFA (Authorization for Assignment) dated **11.04.2022** issued by Indian Institute of Insolvency Professionals of ICAI, valid from **11.04.2022 to 10.04.2023**. Same is taken on record.

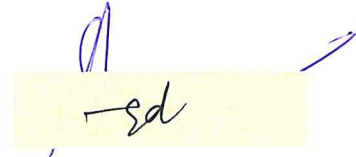
3. We have perused the application and submissions of the Applicant/RP in the matter. The application is **ALLOWED** by ordering **Liquidation of the corporate debtor, namely M/s Punj Lloyd 'as a going concern'** with the following directions:

- a. That we also grant permission to the Applicant for taking steps as per provisions of Sec 230 of the Companies Act, 2013 in addition to liquidate the Corporate Debtor as a going concern.

- b.** That Mr. Ashwini Mehra, Applicant/RP shall be the liquidator.
- c.** Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** 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;
- e.** This order shall be deemed to be notice of discharge to all the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- f.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- h.** The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i.** The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps;

4. I.A. 1603/2021 filed in IB- 731(PB)/2018 is disposed of in terms of the aforesaid terms.



RAMALINGAM SUDHAKAR
PRESIDENT



AVINASH K. SRIVASTAVA
MEMBER, TECHNICAL