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

CA No.1215 of 2019
IN
CP (IB) No.20/Chd/Pb/2018
(Admitted matter)

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

In the matter of:

Bank of India. ….Petitioner-Financial Creditor.

Versus

M/s Little Bee International Private Limited. ....Respondent-Corporate Debtor.

And in the matter of:

<u>CA No.1215 of 2019:</u>

Narinder Bhushan Aggarwal,
Resolution Professional, for
M/s Little Bee International Private Limited.
(Corporate Debtor).

….Resolution Professional-Applicant.

Order delivered on: 26.02.2019.

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

For the Applicant Resolution Professional:	1) Mr.Harsh Garg, Advocate. 2) Mr.Pulkit Goyal, Advocate
For the Corporate Debtor:	1) Mr.Gaurav Goel, Advocate 2) Mr.Vivek Bansal, Chartered Accountant.

<u>Per: Pradeep R.Sethi, Member (Technical)</u>

ORDER

The instant application is filed by the Resolution Professional (**RP**) of M/s Little Bee International Private Limited (**Corporate Debtor**) for passing liquidation order under Section 33 (1) & (2) of the Insolvency and Bankruptcy Code, 2016 (**Code**).

2. It is stated that a financial creditor, Bank of India filed a petition under Section 7 of the Code, which was admitted by the Adjudicating Authority (**AA**) vide order dated 31.05.2019 and vide the same order, the applicant Shri Narinder Bhushan Aggarwal was appointed as the Interim Resolution Professional (**IRP**). The Committee of Creditors (**CoC**) is stated to be constituted of two financial creditors namely Bank of India and Oriental Bank of Commerce having 69.48% voting share and 30.52% voting share respectively and that in the first meeting of the CoC, the IRP was confirmed as RP.

3. It is submitted that the RP appointed two registered valuers as well as forensic auditors.

4. It is stated that the 8th meeting of the CoC was conducted on 25.11.2019 where the specific agenda at item No.1 was to discuss and vote on the liquidation of the Corporate Debtor and that the CoC unanimously approved the agenda for the liquidation of the Corporate Debtor as no resolution applicant has come forward and there is no expectation of any resolution plan coming forward. It is stated that vide the same agenda, the

applicant has also been approved to be appointed as Liquidator and that his written consent to act as Liquidator is attached as Annexure A-10.

5. It is prayed that an order be passed requiring the Corporate Debtor to be liquidated in a manner as laid down in the Code, public announcement be issued stating that the Corporate Debtor is in liquidation and order be passed requiring sending of the liquidation order to the authority with whom the Corporate Debtor is registered.

6. Vide order dated 06.02.2020, it was *inter alia* noted that no Form G was published in this case, but the same is not reflected in the record.

7. Vide diary No.1095, dated 10.02.2020, the RP has filed an affidavit disclosing that no Form G was published by the RP during the CIRP process since the suspended directors of the Corporate Debtor were not cooperating with the RP and did not provide the information as sought by the RP for carrying on the CIRP process and also did not provide details of any assets of the Company.

8. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the record.

9. The relevant provisions of Section 33 (1) and (2) of the Code are as follows:-

"33. Initiation of liquidation. –

(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 [approved by not less than sixty-six per cent 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).”

10. It is stated in the application that 180 days of CIRP expired on 27.11.2019. However, the instant application for liquidation of the Corporate Debtor was filed on 05.12.2019 i.e. after the last date. It is stated that an earlier application for liquidation bearing CA No.1128 of 2019 was directed to be dismissed as withdrawn, vide order dated 03.12.2019. However, this application was filed on 29.11.2019 i.e. after the last date of CIRP. Therefore, the requirements of Section 33 (2) of the Code are not satisfied since the application before the AA for liquidation of the Corporate Debtor was not filed during the CIRP. The instant application is, therefore, being considered under Section 33 (1) (a) of the Code.

11. In the present case, the RP has filed affidavit deposing that no Form G was published during the CIRP process since the suspended directors of the Corporate Debtor were not cooperating with the RP and have not

provided the information as sought by the RP for carrying on the CIRP process and did not provide detail of any of the assets of the Company as well. The CoC in its 8th meeting held on 25.11.2019, has noted that there is no expectation of any resolution plan. The conditions provided for by Section 33 (1) (a) of the Code are satisfied since before the expiry of the CIRP, the AA has not received a resolution plan under Section 30 (6) of the Code. Therefore, the Corporate Debtor is directed to be liquidated in the manner as laid down in Chapter III of the Code. Directions for issue of public announcement stating that the Corporate Debtor is in liquidation and requiring the order of liquidation to be sent to the authority with which the Corporate Debtor is registered are given below.

12. Section 34 (1) of the Code states that where the AA passes an order for liquidation of the Corporate Debtor under Section 33, the RP appointed for the CIRP under Chapter II shall subject to submission of a written consent by the RP to the AA in specified Form, shall act as the Liquidator for the purposes of liquidation. In the present case, the CoC has agreed to Mr. Narinder Bhushan Aggarwal, RP to act as Liquidator as per his written consent. The written consent of Mr. Narinder Bhushan Aggarwal is dated 21.11.2019 and is at Annexure A-10 of the application. The Law Research Associates has checked the credentials of Mr. Narinder Bhushan Aggarwal and as per details on record, there is nothing adverse against him.

13. Therefore, Mr. Narinder Bhushan Aggarwal with registration No.IBBI/IPA-001/IP-P00649/2017-2018/11103, Address: 279-A Rishi Nagar, Backside Kali Mata Mandir, Civil Lines, Ludhiana – 141 001, Email:

nbaggarwal@rediffmail.com, Mobile No.8141688899 is appointed as the Liquidator for the liquidation process of the Corporate Debtor.

14. Regulations 39B to 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations, 2016**) are as under:-

*"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."

15. In the present case, the order for liquidation of the Corporate Debtor is being made under Section 33 (1) (a) of the Code. However, the recommendations of the CoC are being taken into consideration for the purposes of Regulation 39B to 39D of the CIRP Process Regulations, 2016.

16. As regards Regulation 39B, the CoC in its 8th meeting held on 25.11.2019, has made the estimate of expenses on liquidation of the Corporate Debtor and has also found that there are no liquid assets of the Corporate Debtor. The CoC with 69.48% voting share has approved the contribution of the estimated expenses on the liquidation by the financial creditors in an escrow account in the ratio of their claims.

17. With reference to Regulation 39C, the CoC has not made any specific recommendations. The Liquidator will, therefore, take action under

Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (**Liquidation Process Regulations, 2016**).

18. With regard to Regulation 39D, the CoC in its 8th meeting held on 25.11.2019 has approved the resolution with 69.48% voting rights to approve the remuneration of Mr.Narinder Bhushan Aggarwal, for the conduct of liquidation proceedings at Rs.50,000/- per month or such proportion to the value of the liquidation estate assets as specified by the Board as per Regulation 4 (2) of the Liquidation Process Regulations, 2016. Regulation 39D provides for fixation of the fees separately by the CoC for the three periods given in Section 39D. Therefore, the fees fixed by the CoC are not in consonance with Regulation 39D. Therefore, the fee payable to the Liquidator shall be as per Regulation 4 (2) and (3) of the Liquidation Process Regulations, 2016.

19. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 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.

20. 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.

21. 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."*

22. 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 thereafter.

23. 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.

24. The Liquidator shall take into his possession the assets of the Corporate Debtor.

25. Thus, CA No.1215/2019 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/- Pronounced in open Court. Sd/-
(Ajay Kumar Vatsavayi) (Pradeep R.Sethi)
Member (Judicial) Member (Technical)

February 26, 2020
Ashwani