THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No.478/2022
In
CP (IB) No.205/Chd/Hry/2019
(Admitted)

Under Section 33 of the Insolvency and Bankruptcy Code, 2016

In the matter of:
Oriental Bank of Commerce

….Petitioner-Financial Creditor

Vs.

M/s. Hike Leather Private Limited

….Respondent-Corporate Debtor

In the matter of IA No. 478/2022

Rakesh Phull, Resolution Professional,
M/s. Hike Leather Private Limited
With its registered office at
P-602, Jalandhar Heights, 66ft. Road,
Jalandhar City-144022

…Applicant/Resolution Professional

Judgment delivered on: 18.08.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing:

For the Applicant : Mr. Harsh Garg, Advocate
Mr. Pulkit Goyal, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The instant application is being filed by the Resolution Professional of M/s Hike Leather Private Ltd ("Corporate Debtor") under section 33 of Insolvency and Bankruptcy Code, 2016 ("Code") for the initiation of liquidation of the Corporate Debtor.

2. The main Company Petition was filed by the petitioner Financial Creditor i.e. erstwhile Oriental Bank of Commerce (now Punjab National Bank) under Section 7 of Insolvency and Bankruptcy Code, 2016, which was admitted by this Adjudicating Authority vide order dated 20.02.2020. Vide the same order, Mr. Rakesh Phull was appointed as IRP, thereafter the applicant was confirmed as Resolution Professional by the CoC in its 1st meeting held on 19.03.2020.

3. It is submitted that after the appointment of the applicant as a resolution professional, the applicant held the second meeting of the COC on 16.06.2020, where Resolution Professional had accordingly appointed two valuers each for valuation of Land and Building, Plant and Machinery, and securities and financial assets of the Corporate debtor. Copy of the minutes of the second meeting of the COC held on 16.06.2020 is attached as Annexure A-2.

4. It is further submitted that the Resolution Professional held the third meeting of the COC on 24.07.2020, where the Resolution Professional placed before the COC the draft of the Form G (EOI) and the eligibility criteria and the Evaluation Matrix. Thereafter the Form G was issued on 10.08.2020. Copy of the minutes of the third meeting of the COC is attached as Annexure A-3.

5. It is averred that the Resolution Professional thereafter held the fourth meeting of the COC on the 28.08.2020, where the Resolution Professional had placed before the COC the agenda for appointment of transaction/ forensic auditor and M/s Parshotam & Associates had been appointed as the transaction/ forensic auditor of the corporate debtor.

6. The learned counsel for the Resolution Professional submitted that CIRP process could not carried out effectively due to lockdown in view of Covide-19 Pandemic, and therefore an application for exclusion of the period of lockdown from 29.03.2020 upto 31.07.2020 was filed bearing IA No. 387 of 2020 before this Adjudicating Authority which was allowed vide order dated 14.09.2020 and period of 129 days i.e. from 25.03.2020 to 31.07.2020 was excluded from the CIRP period.

7. The Resolution Professional held the Sixth meeting of the COC on 05.11.2020. The applicant RP appraised the COC members that after sharing of the Information Memorandum, RFRP and Evaluation Matrix with the prospective resolution applicants no resolution plan was received till the last day of submission of the resolution plan. The RP further appraised that since there were queries regarding the EOI it was recommended that the Form-G be republished. In view of the same the COC had in this meeting resolved to re-publish Form-G. The RP held the Seventh meeting of the COC on the 27.11.2020, where the Resolution Professional had appraised the COC that he had re-published the Form-G in the newspapers on 08.11.2020 whereby last date of receipt of the Expression of Interest which was 23.11.2020, when 5 EOI were received by the RP.

8. It is further submitted that the COC in its 6^{th} & 7th meeting to seek extension for a period of 90 days, the RP accordingly had filed an application

bearing IA No. 839 of 2020 for extension of CIRP process period of the above mentioned Corporate Debtor by 90 days beyond 180 days, which were going to expire on 25.12.2020 (180 days + 129 days exclusion due to lockdown). The same was allowed by this Adjudicating Authority vide order dated 16.12.2020.

9. It is submitted that the Resolution Professional held the 8th meeting of the COC on 30.01.2021. The applicant Resolution Professional appraised the COC members that after re-publishing the Form G, few expression of interest (EOI) were received, however the final list comprised only two prospective resolution applicants (PRA's). Out of the two plans, the plan submitted by M/s SRK Professional services was considered and the RP exercised his due diligence and the same was placed before the COC for further consideration. The plan received from second prospective resolution applicant M/s Ganpati Infrastructure was not considered as it did not deposit the required EMD.

10. It is further Submitted that the Resolution Professional conducted the 10th COC meeting on the 24.01.2022 where the COC had rejected the only Resolution Plan received in the matter submitted by the Resolution Applicant M/s SRK Financial Services and a decision to go for liquidation was taken and the matter was put for voting. The COC in the meeting had resolved to liquidate the corporate debtor and had resolved for the RP to file an application for the liquidation of the CD. However the agenda for appointment of Liquidator and other agendas u/r 39B, 39C & 39D of the CIRP regulations were deferred for subsequent meeting. The copy of minutes of 10th COC meeting is attached herewith as **Annexure A-12.**

11. The Resolution Professional conducted the 11th meeting of CoC on 15.03.2022, whereby the CoC members have resolved to appoint Mr. Jatin Mehra as the liquidator in place of the present Resolution Professional, in the above

mentioned matter. The CoC has also resolved to make an attempt to liquidate the corporate debtor as a going concern. The CoC also resolved/ approved the estimated liquidation cost at Rs.25,70,000/- and moreover, the remuneration of the liquidator has also been approved in view of the quotation put forth by Mr. Jatin Mehra. In view of the same the agendas u/r 39B, 39C & 39D of the CIRP regulations have been approved. Copy of minutes of the 11th meeting of the CoC is attached as Annexure A-13. Copy of the consent form of Mr. Jatin Mehra to act as liquidator and quotation is attached as Annexure A-14.

12. Now, coming to the merits of the application, before considering the prayer, we would like to refer the Section 33(2) of the IBC and the same is reproduced below:

"Section 33: Initiation of liquidation.

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.

13. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

i. before the expiry of the insolvency resolution process period or;

ii. 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; and

iii. if does not receive a resolution plan under sub-section (6) of Section 30.

14. In the 11th meeting of CoC held on 15.03.2022, the CoC decided to liquidate the Corporate Debtor by passing a resolution in the aforesaid meeting and further resolved to appoint Mr. Jatin Mehra, Insolvency Professional as Liquidator.

15. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

16. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **M/s Hike Leather Pvt. Ltd.** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

17. Accordingly, by exercising our power under Section 33 pass the following order:-

i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;

ii. Since Mr. Jatin Mehra, the Insolvency Professional has given his consent to act as Liquidator, therefore, Mr. Jatin Mehra bearing Registration No.IBBI/IPA-001/IP-P-02010/2020-21/13103, E-455 Ranjit

Avenue Amritsar-143001, Mobile No.8146013366, e-mail: jatinmehraassociates@gmail.com is hereby appointed as Liquidator;

iii. The Liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

iv. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. 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;

v. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

vii. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;

viii. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate

Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.

ix. On initiation of the liquidation process but 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, as provided in Section 33(5) of the Code read with its proviso.

x. 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;

xi. 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;

xii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

xiii. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, RoC shall send compliance report to the Registrar, NCLT within a period of 30 days;

xiv. The Liquidator is directed to issue public announcement stating the Corporate Debtor is in liquidation;

xv. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record; and

xvi. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

18. Thus, IA No.478/2022 is allowed and stands disposed of.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

August 18, 2022
PB/ASH