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. 819/2020
IN
CP (IB) No. 42/Chd/HP/2019
(Admitted Matter)

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

In the matter of:-

M/s Jai Ganesh Trading Co. ….Petitioner/Operational Creditor.

Versus

Addinath Rubbers Private Limited. ….Respondent/Corporate Debtor.

And in the matter of IA No. 819/2020 :-

Mr. Vigyan Prakash Arora,
Resolution Professional,
Addinath Rubbers Private Limited,
SCO-808, 1st Floor NAC, Manimajra,
Chandigarh - 160101

…Applicant-Resolution Professional.

Order delivered on 06.10.2020

Coram: **HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)**
HON’BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

Present through Video Conferencing:-

For the applicant : Mr. Nitin Kant Setia, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

IA No. 819/2020 :

This application has been filed by Mr. Vigyan Prakash Arora, the

Resolution Professional of Addinath Rubbers Private Limited (Corporate Debtor) under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of Addinath Rubbers Private Limited.

2. CP (IB) No. 42/Chd/HP/2019 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by "M/s Jai Ganesh Trading Co." to initiate Corporate Insolvency Resolution Process (in short CIRP) against Addinath Rubbers Private Limited was admitted on 23.10.2019 and Mr. Vigyan Prakash Arora was appointed as Interim Resolution Professional (IRP). Subsequently, in the 1st meeting of CoC held on 23.10.2019, it was resolved to appoint the IRP as Resolution Professional (RP) by 100% voting share. Copy of the minutes of first meeting of CoC is attached as Annexures A-3 of the application.

3. The facts of the case, briefly stated, are that public announcement was made in Form A on 26.09.2019 (Annexure A-2) in the newspaper "The Indian Express" (English) and "Amar Ujala (Hindi)" and on the basis of claims received, Interim Resolution Professional (IRP) constituted Committee of Creditors as per Section 21 of the Code. The minutes of the first CoC meeting dated 23.10.2019 wherein, the IRP was appointed as Resolution Professional are found attached as Annexure A-3 (Colly). Subsequently, RP appointed two registered valuers for determination of fair value and liquidation value in accordance with Regulation 35 of the CIRP Regulations. In the second meeting of CoC held on 28.11.2019, CoC has discussed and decided the minimum eligibility criteria for prospective Resolution Applicant(s). Copy of minutes of second CoC meeting is attached as Annexure A-4 of the application. Thereafter, Form G dated 11.12.2019 (Annexure

A-4) for inviting Expression of Interest (EOI) and submission of resolution plans for the corporate debtor was published in Indian Express (English). In response to the publication of Form G, RP received three Expression of Interest(s) till the last date of submission of EOI. Afterwards, CoC in its 4th meeting has extended ten days for submission of documents by the Prospective Applicants with regard to their eligibility. In the extended period, only one Prospective Applicant namely, Mr. Sanjiv Vij has submitted the documents showing his eligibility as Resolution Applicant. However, the RP and CoC on perusal of documents have found that the Applicant is not eligible to submit the resolution plan.

4. In the 5th meeting of the CoC held on 07.03.2020, Andhra Bank holding 100% voting share, did not extend the time of CIRP and decided to pass resolution to liquidate the Corporate Debtor in the best interest of all the stakeholders. Copy of minutes of 5th CoC meeting is attached as Annexure A-6 of the application.

5. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under:-

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."*

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

7. The relevant provisions of Sections 33(1) and 33 (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 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)."

8. **Prescribed period for filing application** - In the present case, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 25.09.2019 and the period of 180 days were completed on 23.03.2020, but the present application is filed by the Resolution Professional on 02.11.2020. It is pertinent to mention that in the 5th meeting of CoC which was held on 07.03.2020, the resolution with respect to liquidation of corporate was passed with 100% voting share. Though, more than 15 days are available to file the application under Section 33(2) but the same was filed after the expiry of the prescribed period. No reasons or explanation is forthcoming for the said delay. Even the lockdown is imposed only after 23.03.2021. Hence, the present

application is treated under Section 33(1) instead of Section 33(2) of the Insolvency and Bankruptcy Code, 2016

9**.** **Appointment of Liquidator–** Section 34 (1) of the Code provides that 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 shall, subject to submission of written consent act as the Liquidator for the purpose of liquidation. In the present case, the Resolution Professional has sufficient time available to file an application before Adjudicating Authority for liquidation of corporate debtor i.e. from 07.03.2021 till 23.03.2021. However, the application was filed on 02.11.2020 and no explanation with regard to the delay at least from 07.03.2021 to 23.03.2021 i.e., the date of passing of the resolution by CoC for liquidation of the Corporate Debtor to the date of imposition of Ist lockdown, has been given in the application. In view of the lackadaisical conduct of the RP, we are of the view that RP should not be continued as Liquidator in the present case.

Sub Section (7) of Section 34 of the Code 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. In this regard a letter bearing **File No.25/02/2021-NCLT dated 01.07.2021** has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. **IP-12011/1/2020-IBBI/1007/1962 dated 30.06.2021** 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 from 01.07.2021 to 31.12.2021. We select

Mr. Sawinder Singh Chug appearing at Serial No.6 bearing registration No.IBBI/IPA-003/IP-N000133/2017-2018/11459 Email: cma.sschug@gmail.com of the panel to be appointed as Liquidator.

11. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019.

12. **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –** The liquidation cost shall be met as per Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

13. **Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –** The liquidator shall follow the regulation 32 of IBBI (Liquidation Process) Regulations, 2016 while selling the assets of the Corporate Debtor, if no compromise or arrangement succeeds or sale as going concern fails.

14. **Fees of the Liquidator [Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –** The RP proposed to be appointed as Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate assets as may be specified by the Board. Rule 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for Liquidator's fee. The Liquidator shall be entitled to the fee as stated in Regulation 4(2)(b) of the aforesaid Regulations.

15. **Pending Applications, if any, and its effect-** The learned counsel for the applicant has stated that there is no pending applications which has any bearing on the order of liquidation.

16. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the corporate debtor **Addinath Rubbers Private Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted 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; and

(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; and

(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.

(vi) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 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.

(vii) That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

(viii) That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

17. Thus, IA No. 819/2020 stands disposed of.

18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Himachal Pradesh forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-	Sd/-
(Raghu Nayyar)	(Ajay Kumar Vatsavayi)
Member (Technical)	Member (Judicial)

October 06th, 2021
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