IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 218
(IB)-1024(ND)2020
IA-4314/2023

IN THE MATTER OF:
M/s. Concept Group Limited ... Applicant/Petitioner

Versus

M/s. CNS Fashions Retail Private Limited. ... Respondent

Under Section: 9 of IBC, 2016

Order delivered on 18.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Adv. Bhawanshu Sharma along with Adv. Prabhjit Singh Soni
For the Respondent	:	
For the RP	:	Adv. Manoj Kumar Garg, Adv. Sachin Kaushik

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-4314/2023:- The Ld. Counsel appearing for the RP submitted that the CIRP in the present matter commenced on 20.01.2023 and the period of 180 days expired on 20.07.2023, but no PRAs came forward to express any interest to submit resolution plan, thus in terms of the provisions of Section 33(1) of IBC, 2016, the Corporate Debtor needs to be liquidated. Making reference to the meeting of the CoC held on 15.07.2023, he submitted that in the said meeting the CoC decided to liquidate the Corporate Debtor under Section 33(2) of IBC, 2016. Para 19 of the application reads thus:

19. That in the meeting held on 15th th July,2023 COC decided to liquidate the Corporate Debtor under section 33(2) read with section 33(1) of the IBC,2016 and requested Resolution Professional to intimate initiation of liquidation and proposed the name of Prabhjit Singh Soni, the Resolution Professional having registration No. IBBI/IPA-003/IP-N00377-C01/2017-2018/10143 as Liquidator for the liquidation of the Corporate Debtor and. for this existing Resolution Professional has given his consent.

2. On perusal of the records, we could find that the minutes qua the CoC meeting held on 15.07.2023 are available on record as Annexure 3 to petition. The relevant excerpt of Part-B of the resolution passed in the meeting reads thus:

ITEM B 2 FILE IA FOR INITIATION OF LIQUIDATION UNDER SECTION 33 OF THE IBC,2016

RESOLVED THAT as no resolution plan has been received before the expiry of the insolvency resolution process period under section 12 which is ending on 20th July,2023 and also since CD has no fixed assets and is not active and has no employees, COC in its 4th meeting held on 10th July,2023 and then in 5th COC approved with 100% of the voting share to liquidate the corporate debtor and after liquidation process for dissolution of Corporate Debtor.

RESOLVED THAT Resolution Professional may first explore sale of the Corporate Debtor as a going concern under regulation 32(e) of IBBI(Liquidation Process) Regulations,2016 or sale of business of CD as going concern under regulation 32(f) as CD has paid up capital of Rs.2.5 Crores and has good amount of Losses in the reserves.

RESOLVED THAT the CIRP Cost and Liquidation Cost will be taken by Liquidator as per Section 53 water fall of the IBC,2016.

RESOLVED THAT the assets of the companies available are Stock of Garments and current assets as advances of duties and taxes or company transferred as going concern and there are no fixed assets in the company.

RESOLVED further that PRABHJIT SINGH SONI, RP who has consented to become liquidator be appointed as Liquidator at a monthly fees of Rs.one lac.

RESOLVED FURTHER that CIRP cost of Rs. 870580 which has not been paid to RP and has remained pending and be paid under Section 53(1)(A) of the IBC,2016

RESOLVED FURTHER THAT an IA be filed by RP Prabhjit Singh Soni with the Adjudicating Authority under Section 33(2) of the IBC,2016 for initiation of Liquidation.

ON VOTING THE ITEM WAS PASSED WITH 100% VOTING.

3. A perusal of the aforementioned resolution of CoC reveals that as no resolution plan was received by the CoC/RP before the expiry of the Corporate Insolvency Resolution Process period under Section 12 which ended on 20.07.2023 and there being no fixed assets owned by the CD, it was appropriate to liquidate the Corporate Debtor. The Resolution was passed with 100% vote share.

4. As can be seen from Section 33(2) of IBC, 2016, on the information about the decision taken by the CoC to liquidate the CD, the Adjudicating Authority need to pass the order, as provided under Section 33(1) of IBC, 2016. Section 33 (1 to 4) of IBC, 2016 reads thus:

"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).*

[Explanation. *– For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]*

(3) Where the resolution plan approved by the Adjudicating Authority [3][under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

5. In the present case, by way of the present application, the RP has intimated us about the decision taken by the CoC which is approved by 100% of the voting share, that the CD should be liquidated. In the wake, we are left with no option but to pass an order requiring the Corporate Debtor to be liquidated as provided in Chapter 3 of IBC, 2016. **Ordered accordingly**. **The application stands disposed of.**

Accordingly, **Ms. Pooja Bahry** with **Reg.No: [IBBI/IPA-003/IP-N00007/2016-17/10063] (e-mail ID: pujabahry@yahoo.com)** is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the terms of the of the IBC-2016 and IBBI (liquidation process) Regulation – 2016 inter alia:

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate

Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) 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.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation. 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Satya Prakash