

**In the National Company Law Tribunal
Mumbai Bench**

MA 3033/2019 in C.P. (IB)-1978/(MB)/2018

Under section 33 (i)(a) of Insolvency & Bankruptcy Code, 2016

In the matter of

Mr. Ajay Gupta : Applicant/ Resolution Professional of M/s.
Zephyr Fabric Trading LLP

In the matter of

Shanaya Fashions : Petitioner/ Financial Creditor

V/s

Zephyr Fabric Trading LLP : Respondent/ Corporate Debtor

Heard on : 19.09.2019

Order delivered on : 14.10.2019

Coram: Hon'ble Mr. M.K. Shrawat, Member (Judicial)
Hon'ble Mr. Chandra Bhan Singh, Member (Technical)

For the Applicant : Mr. Devarajan Raman, Practising Company Secretary.

Per: Chandra Bhan Singh, Member (Technical).

ORDER

1. This is an Application submitted on 09.09.2019 U/s.33 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") by Mr. Ajay Gupta, the Resolution Professional of the Corporate Debtor M/s. Zephyr Fabric Trading LLP, seeking an Order of 'Liquidation' of the Corporate Debtor. It is informed that the Committee of Creditors' meeting held on 25.07.2019 has approved for "Liquidation".

Facts of the case :

2. In this case, the Petition/ Application U/s. 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Operational Creditor Shanaya Fashions against 'M/s. Zephyr Fabric Trading LLP', (hereinafter as "Corporate Debtor") was Admitted vide an order dated 03.10.2018 (C.P.1978/IBC/MB/2018) by this Bench and Mr. Ajay Gupta (IBBI/IPA-001/IP-P00192/2017-18/10371) was appointed as Interim Resolution Professional (IRP) to conduct the CIRP of the Corporate Debtor.

3. After Admission of the Petition/ Application, the said IRP was confirmed as Resolution Professional in the meeting of the Committee of Creditors held on 15.12.2018.
4. In response to the Public Announcement made by the said Resolution Professional, one claim of INR 26,78,34,251 filed by the sole Financial Creditor Indian Bank has been received and the same has been admitted.
5. An Information Memorandum (IM) was prepared under Section 29 of The Code read with Regulation 36(2) of CIRP Regulations with the made available records of the Corporate Debtor, for formulating a Resolution Plan.
6. The CoC had decided in their 5th CoC meeting to seek extension of 90 days in the CIRP period, which was allowed vide Order dated 22.04.2019.
7. The RP submits that no Expression of Interest (EoI) was received from any Prospective Resolution Applicants on first time publication of invitation for EoI.
8. Hence, the RP published on 21.05.2019 another invitation for submission of EoI in Form G on being directed by CoC. This time two Prospective Resolution Applicants (PRAs) showed their interest for submission of Resolution Plan.
9. The two PRAs submitted their Resolution Plans but CoC did not approve both plans as the plans were not viable and feasible as per the CoC.
10. One of the two PRAs filed a Miscellaneous Application stating that they were not given enough opportunity to present their plan. The RP states that Resolution Plan of the one another Prospective Resolution Applicant who submitted after the cut off date, was rejected . The last date for submission of Expression of Interest was 14.04.2019.
11. This Bench, in view of the above grievances, vide order dated 22.07.2019 directed that an application be filed for exclusion of time spent in litigations out of the total CIRP period of 270 days, so that decision on plan pending for consideration could be taken up by the CoC. The CIRP period of 270 days expired on 27.07.2019.
12. Pursuant to the direction, the CoC meeting was held on 25.07.2019 to consider the plan that was received from Mr. Sanjay Rameshchandra Vyas after the cut-off date and also to consider the revised plan submitted by the RA Mr. Manish Chaturvedi, whose plan was earlier rejected by the CoC.
13. Thereafter, the plan of Mr. Sanjay Rameshchandra Vyas was rejected by the CoC as it did not comply with the requirements of Section 30 of the I&B Code and Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The RP stated that the plan was just a settlement proposal without addressing the revival of the Corporate Debtor. The plan amount was less than Liquidation Value. The Counsel for the RP, during the course of hearing, stated that the Liquidation Value of the Corporate Debtor is ₹12 crore.

14. The revised plan of Mr. Manish Chaturvedi was also rejected by CoC as the plan was not found to be viable and feasible due to the following reasons:

- i. The Resolution Applicant could not explain the source of the upfront payment that was committed. The financial closure in respect of the same was not clear.
- ii. The Resolution Applicant was dependent on discounting of a SBLC (Stand By Letter of Credit) to fund the infusion and repayment. The Resolution Applicant could not submit any proof of the arrangement that has been made for the issue of SBLC.
- iii. The resolution proposed by the Resolution Applicant was dependent on the the issue of Stand By Letter of Credit by the sole CoC member Indian Bank in order to fund the Resolution Plan of the Resolution Applicant. This was not agreeable to the CoC as the policy of the bank did not permit additional exposure in the NPA Account.
- iv. The CoC was open to the ideas of the Resolution Applicant discounting the SBLC with some other lender. However, the RA could not submit proof for any such arrangement.
- v. The turnover of the RA was about ₹42,000/-p.a. and as such the CoC members were not confident of the RA's ability to run the business successfully.

15. Hence, in the CoC meeting dated 25.07.2019, the decision taken in the meeting dated 19.07.2019 was reiterated, wherein the CoC had unanimously decided to liquidate the Corporate Debtor under section 33(1) of the I&B Code. The CoC also decided that the RP Mr. Ajay Gupta be appointed as liquidator subject to approval of this Bench.

16. The RP Mr. Ajay Gupta has given his written consent to act as 'Liquidator' on 19.07.2019 under Regulation 3(1A) of the IBBI (Liquidation Process) Regulations, 2016.

17. Considering above facts and circumstances, this Bench hereby Orders that :

- i. The Process of Liquidation shall commence as per the Chapter III of the Code from date of this Order.
- ii. Mr. Ajay Gupta, (Registration No. IBBI/IPA-001/IP-P00192/2017-18/10371) is hereby appointed as a "Liquidator" as per the Provisions of S. 34 of the Code.
- iii. The RP shall advertise in two Newspapers, one in English language and one in Vernacular Language i.e. Marathi, about the Liquidation of the Corporate Debtor as per the provisions of the Code.

- iv. Copy of this Order shall be forwarded to the Concerned Authority with which the Corporate Debtor is Registered.
18. The Liquidator is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.
19. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
20. Ordered Accordingly. Application for U/s. 33 (1) (a) is Allowed.

SD/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

DATE: 14.10.2019