

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

C.A. 1686 (PB) /2019

IN

Company Petition No. (IB) – 948 (PB) /2018

In the matter of:

Mr. Rohit Sehgal

Applicant/Resolution Professional

AND

In the matter of:

M/s Santosh Overseas Limited

Corporate Debtor

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016
for liquidation of the corporate debtor*

Judgment delivered on: 27.09.2019

Coram:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the Applicant: Ms. Shweta Thakur, Mr. Kanishk Khetan, Advocates
For the Respondent: Mr. Amit Dhall, Mr. Rajat Srivastava, Advocates



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Santosh Overseas Limited.
2. The facts in brief are that the financial creditor, IDBI Bank Limited, had filed an application under Section 7 of the Code bearing number IB-948(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted on 08.02.2019 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Santosh Overseas Limited and Mr. Rohit Sehgal was appointed as the Interim Resolution Professional.
3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the Interim Resolution Professional made



paper publication on 13.02.2019 inviting claims from the creditors of the corporate debtor. Consequently, in compliance of Section 21 of the Code read with Regulation 17 of the CIRP Regulations, Committee of Creditors was constituted with seven financial creditors.

4. In the first meeting of the Committee of Creditors held on 08.03.2019, it was resolved that the Interim Resolution Professional Mr. Rohit Sehgal shall continue to function as the Resolution Professional of the Corporate Debtor.
5. In terms of Regulation 27 of the CIRP Regulations, the Resolution Professional appointed two registered valuers namely Finval research and Crest Capital Group Private Limited, to determine the Liquidation and Fair value in accordance with Regulation 35 of the CIRP Regulations.
6. With the approval of the Committee of Creditors and in terms of Section 25(2) (h) of the Code, the Resolution Professional invited Expression of Interest in Form G through paper publication on 19.03.2019 in the English and Hindi newspapers (Financial Express- All edition) and (Amar Ujala- Delhi/NCR). In pursuance of the advertisement inviting Expression of Interest, a prospective



resolution applicant namely Prudent ARC Limited expressed its interest. M/s Prudent ARC Limited has also submitted the earnest money deposit of Rs. 5 lacs in favour of the corporate debtor with an undertaking under Section 29A of the Code.

7. In the meantime, another Expression of Interest in Form-G was republished on 03.05.2019 in the newspapers (Financial Express and Amar Ujala) circulated in Delhi, Haryana, Chandigarh and Punjab. It is submitted that in pursuance of such publication on 03.05.2019, no response was received from any of the prospective resolution applicant.
8. Thereafter in terms of decision of third CoC meeting held on 18.06.2019 another expression of interest in Form G was again published on 22.06.2019 in the newspapers Financial Express (Delhi) and Jansatta (Bulandshahr, Uttar Pradesh).
9. In the 6th meeting of CoC dated 03.08.2019, the resolution professional apprised the members of the CoC that the prospective resolution applicant i.e. Prudent ARC Limited had sought four weeks' time, after the completion of last date of submission of resolution plan for completing



its due diligence. However, the members of CoC opined that there is no acceptable resolution plan.

10. As the CIR Process was expiring on 06.08.2019, resolution for extension of further 90 days period was placed before CoC for consideration. However, in the sixth meeting of CoC held on 03.08.2019 the resolution for extension of CIR period was failed with 64% of the voting share and the members of CoC decided as follows:

“Resolved that in the absence of any acceptable resolution plan in the Corporate Insolvency Resolutions Process of Santosh Overseas, the Corporate Debtor be liquidated and an application be filed before the Adjudicating Authority under Section 33(1) of IBC, 2016”

“Resolved Further that the name of Mr. Rohit Sehgal, on Insolvency Professional (IP Registration no. IBBI/ IPA-001 /IP-P00528 /2017-18 /1095) Partner, AAA Insolvency Professionals LLP, be and is hereby proposed as Liquidator in the matter of Santosh Overseas Limited”



“Further resolved that the Resolution Professional be and is hereby directed to file an application before the Adjudicating Authority for an order for the commencement of liquidation process of the Corporate Debtor and forward the name of Mr. Rohit Sehgal, for the appointment as Liquidator along with his consent”.

- 11.** Under subsection (2) of Section 12 of the Code, application to extend the period of corporate insolvency resolution process beyond 180 days can be filed only if instructed to do so by a resolution passed at a meeting of CoC by a vote of 66 % of the voting share. Admittedly CoC did not pass the resolution for extension of insolvency resolution period with the required voting share. On the other hand, CoC resolved to liquidate the corporate debtor.
- 12.** The aforesaid decision of CoC has been challenged by the ex-directors mainly on the ground that liquidation is the last resort which should have been avoided.
- 13.** In the present case there is no dispute that expression of interest was invited on three occasions on 19.03.2019, 03.05.2019 and on 22.06.2019. Nevertheless, ~~as~~ there was



no acceptable resolution plan. That apart the initial insolvency period has since expired on 06.08.2019. In the facts CoC with 66% vote share decided to go for liquidation of the corporate debtor. Under the provisions of the Code CoC is the decision taking body and is the competent authority for taking appropriate commercial decision. Adjudicating Authority ought not transgress into the commercial decision and jurisdiction of the CoC.

14. As the aforesaid factors are technical in nature, which can be determined by experts like the 'financial creditors', the adjudicating authority cannot sit in appeal over the decision of the 'CoC'. Commercial decision of CoC is not open to judicial review. Even if extension of period is granted at this belated stage, it will not serve useful purpose in absence of any valid and acceptable resolution plan.

15. It is pertinent to refer to the statutory provisions provided in sub-section (2) of Section 33 of the Code which mandates that *"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”.

- 16.** Therefore, upon failure of resolution process there being no acceptable resolution plan and as per decision of the CoC with requisite majority voting share; Liquidation has to follow in terms of sub-section 2 of Section 33 of the Code. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.
- 17.** In the factual background and in the absence of any acceptable resolution plan; there is no other alternative but to order in conformity with the requisite majority decision of the Committee of Creditors for liquidation of the corporate debtor under Section 33 (2) of the Code.
- 18.** In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Santosh Overseas Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:



- a.** Mr. Rohit Sehgal with Registration No. IBBI/ IPA-001 / IP-P00528 / 2017-18 / 10953, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b.** Mr. Rohit Sehgal, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;




- e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f.** The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- g.** The liquidator shall also follow up the pending applications, if any, for its disposal during the process of liquidation including issues pertaining to avoidable transactions under Section 43, 45, 50 and 66 of the Code in the light of the report of forensic audit and shall initiate appropriate steps for recovery of dues of the Corporate Debtor as per law.
- h.** The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as may be required in managing the affairs of the company in



discharge his functions as specified under Section 35 of the Code.

- i.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- k.** C.A. 1686 (PB) /2019 filed in IB 948 (PB)/2018 is disposed of in the aforesaid terms.


27.09.2019
(M.M. KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (T)