

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

C.A. 438 (PB) /2019

IN

Company Petition No. (IB) – 532 (PB) /2017

In the matter of:

Kashi Vishwanathan Sivaraman

Applicant/Resolution Professional

AND

In the matter of:

M/s Haridwar Iron & Ispat Rollings Limited

Corporate Debtor

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

Judgment delivered on: 17.09.2019

Coram:

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

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

For the Petitioner: Mr. Abhishek Pratap Singh, Advocate

For the Respondent: Mr. Priya Puri, Ms. Srishti Sharma and
Mr. Yati Sharma, 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 Haridwar Iron & Ispat Rollings Limited.
2. The facts in brief are that the financial creditor, M/s Punjab National Bank, had filed an application under Section 7 of the Code bearing number IB-532(PB)/2017 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 22.05.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Haridwar Iron & Ispat Rollings Limited and there in appointed Mr. Sanjay Gupta, 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 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 Punjab National Bank as the sole financial creditor and sole member of CoC.

4. With the approval of CoC in the 5th meeting convened on 03.11.2018, Mr. Sanjay Gupta was replaced by the applicant as resolution Professional which was confirmed on 11.10.2018 by the Adjudicating Authority.
5. As the initial CIRP period of 180 days was expiring, an application was filed by the resolution professional for extension of CIRP period and upon such application filed by the Resolution Professional further time of 90 days was granted by this tribunal vide order dated 16.11.2018.
6. It is submitted that CoC in its second meeting held on 21.07.2018 discussed and approved Evaluation Matrix and EOI for inviting resolution plans. Thereafter, the EOI was published in two newspapers namely Financial Express



(English) and Jansatta (Hindi) and same was also published on the website of IBBI on 06.07.2018.

7. In response to the Publication of Form G, seven prospective resolution applicants submitted their Expression of Interest.

- i. Alfa Ignots Private Limited
- ii. Diamonds Trading Co.;
- iii. Prudent ARC Limited;
- iv. Shah Publications Private Limited;
- v. Ispat Private Limited;
- vi. MSA Steels & Alloys Private Limited;
- vii. Singla Sons LLP.

8. Out of the seven resolution applicants, only three submitted the Earnest Money Deposit amount of INR 5 lacs, namely M/s Alfa Ignots Private Limited, M/s Prudent ARC Limited and M/s Shah Publication Private Limited. M/s Shah Publications Private Limited was declared ineligible as their net-worth was lower than the requisite net worth stipulated under the eligibility criterion set by the Committee of Creditors for resolution applicants.



9. The remaining two eligible resolution applicants did not submit any resolution plan until the last date of submission for resolution plans i.e. by 03.10.2018 and both resolution applicants sought further time for submission of plan and consequently the last date for submission was extended to 01.11.2018.
10. At the 5th Meeting of Committee of Creditors held on 03.11.2018, M/s Shah Publications having fulfilled the eligibility criteria by increasing their net-worth by infusion of fresh capital, was allowed to submit a fresh interest.
11. At the 6th CoC Meeting, the sole member of COC, Punjab National Bank was of the view that plans received may not be accepted, as their Head Office would consider plans submitted by resolution applicants under the following circumstances with any of the two possibilities:
- i. *That if the amount offered by the resolution applicant was equal or above the last valuation report conducted by the Punjab National Bank at the time of initiating the CIRP, then a percentage of 75% upfront cash was expected with the balance of the amount to be paid within 6 months; OR*



ii. If the amount offered by the Resolution Applicants was between 90-100% of the last valuation report, conducted by the Punjab National Bank at the time of initiating the CIRP, 100% of the offer amount would be expected upfront.

12. On 15.12.2018, Shah Publications notified the Resolution Professional that they would not be submitting a further resolution plan and were withdrawing their interest. The sole resolution applicant, Alfa Ignots submitted a revised resolution plan, which was discussed at the 7th Committee of Creditors Meeting and proposals were suggested, pursuant to which Alfa Ignots was further asked to submit a revised resolution plan by the last date for submission i.e. 30.01.2019. However, even after reminders Alfa Ignots failed to respond and submit a revised resolution plan.

13. It is stated that in the interim time Shah Publications, who had earlier withdrawn their offer again showed interest and submitted a revised financial bid without a resolution plan. The CoC directed Shah Publications to submit a revised financial bid in accordance with the discussions



held at the COC Meeting and further directed Shah Publications to incorporate the revised financial bid in the Resolution Plan, which was to be submitted by 11.02.2019.

14. At the 9th Meeting of the Committee of Creditors convened on 13.02.2019, the COC rejected the resolution plan of Shah Publications Private Limited and passed a resolution for liquidation of the Corporate Debtor with 100% voting majority, in the manner hereunder:

"RESOLVED THAT Haridwar Iron & Ispat Railings. Limited, the corporate debtor having CIN No. U27209DL2009PLC190691 may be liquidated as the revised resolution plan submitted by Shah Publication Private Limited on 11.02.2019 was rejected by the head office of Punjab National Bank, sole member of the Committee.

"FURTHER RESOLVED THAT the Resolution Professional may intimate to Hon'ble National Company Law Tribunal, New Delhi bench regarding the decision of the head office of Punjab National Bank sole member of the Committee of Creditors to liquidate the Corporate Debtor".



15. The word “may’ used in Section 30(4) of the Code is indeed a discretion given to CoC either to reject or accept the resolution plan with 66% voting share, despite the plan in all respects is correct. At the 6th CoC Meeting, the sole member of COC, Punjab National Bank made it clear that their Head Office would consider plans submitted by resolution applicants under the given two possibilities. Nevertheless, despite several opportunities no resolution plan was submitted to the satisfaction of the sole member of the CoC. Commercial decision of CoC is not open to judicial review. The Resolution Professional has filed the present application for liquidation of the Corporate Debtor, since 270 days have elapsed from the date of initiation of CIRP and no Resolution Plan has been approved by COC.

16. It is pertinent to refer to the statutory provisions provided in Section 33 (1) (a) of the Code which mandates that *“where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate*



debtor to be liquidated in the manner as laid down in the Chapter.”

17. Therefore, upon failure of resolution process there being no approved resolution plan and on completion of the statutory CIRP period; Liquidation has to follow. 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.

18. In the factual background and in the absence of any approved resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the decision of the Committee of Creditors with 100 % voting share, *for liquidation of the corporate debtor under Section 33 of the Code.*

19. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Haridwar Iron & Ispat Rollings 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. Kashi Viswanathan Sivaraman with Registration No. IBBI/ IPA-001 / IP-P00900 / 2017-18 / 11497, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b.** Mr. Kashi Viswanathan Sivaraman, 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 including CA 854 (PB)/2019 for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h.** 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.



- i.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- j.** C.A. 438 (PB) /2019 filed in IB 532 (PB)/2017 is disposed of in the aforesaid terms.

Sd/-
17.09.2019
(M.M. KUMAR)
PRESIDENT

Sd/-
(S. K. MOHAPATRA)
MEMBER (T)