FREE OF COST COPY

THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

C.A. 2689 (PB) /2019
IN
Company Petition No. (IB) – 1528 (PB) /2018

In the matter of:

Mr. Jatin Madan

Applicant/Resolution Professional

AND

In the matter of:

M/s Kashyap Motors India Private Limited

Corporate Debtor

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

Judgment delivered on: 04.12.2019

Coram:

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

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

National Company Law Tribunal Principal Bench

12/12/19

For the RP: Mr. Sunil Sharma, Advocate.
For the Respondent: Mr. Ravneet Singh, Advocate.

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 Kashyap Motors India Private Limited.

2. The facts in brief are that one of the financial creditors, Bank of Baroda, had filed an application under Section 7 of the Code bearing number IB-1528(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor, M/s Kashyap Motors India Private Limited. The said application was admitted by this Tribunal on 05.03.2019 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Kashyap Motors India Private Limited and there in appointed Mr. Jatin Madan having IBBI Registration IBBI/IPA-001/IP-P00222/2017-18/10421 as the Interim Resolution Professional ("IRP").

3. In accordance with order dated 05.03.2019 and in terms of Section 13(2) of the Code, Resolution Professional made Public Announcement of the Corporate Insolvency Resolution Process and started performing the duties in terms of the Sections 15, 17 & 18 of the Insolvency and Bankruptcy Code, 2016.

4. It is submitted that the Interim Resolution Professional conducted the First Meeting of Committee of Creditors on 06.04.2019 and apprised the Committee of Creditors about the constitution of committee of creditors and list of creditors whose claims were admitted along with the list of activities done by the Interim resolution Professional. In the second meeting of Committee of Creditors held on 22.04.2019 Mr. Jatin Madan, Interim Resolution Professional was appointed as Resolution Professional (RP).

5. In terms of Regulation 27 of the IBBI (CIRP) Regulations, 2016, the Resolution Professional in the second meeting of Committee of Creditors held on 22.04.2019 appointed two valuers i.e. Mr. R S Yadav and Rajesh Gupta. The Liquidation value of the Company as per the Registered valuers are as follows: -

Sr. No	Name of Valuers	Liquidation Value in Rs
1	R S Yadav	9,69,34,746
2	Rajesh Gupta	9,12,32,387

6. The average valuation of the corporate debtor in terms of the aforesaid valuation comes to Rs 9,40,83,567.

7. As the initial 180 days of Insolvency Resolution Period was going to be over on 31.08.2019, with the approval of Committee of Creditors, Resolution Professional filed application vide CA no 1597/PB/2019 to extend the period of Corporate Insolvency Resolution Process beyond the period of 180 days for further 90 days. The application was allowed on 04.09.2019 by extending the CIRP period by further 90 days beyond the initial CIRP period of 180 days.

8. In compliance of Regulation 36A(1) of CIRP Regulations 2016 and under instruction of Committee of Creditors, the Resolution Professional had published the Expression of Interest for invitation of the Resolution Plan in the prescribed Form G on 16.05.2019 and also subsequently published revised EOI on 20.08.2019.

9. It has been submitted that as no resolution Plan was received within the Insolvency Resolution period which was expiring on 30.11.2019, only recourse left was to file the present application for initiation of Liquidation of the corporate debtor as provided under the provisions of Section 33 of the Code.

10. It has also been submitted that the Committee of Creditors in their 10th meeting held on 14.11.2019 by 99.23% voting share decided and passed the resolution to liquidate the Corporate Debtor as there is no hope of revival of the corporate debtor. The Resolution passed with 99.23% vote share in the 10th meeting of Committee of Creditors held on 14.11.2019 reads as follows: -

> *"Resolved that pursuant to the provisions of Section 33 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed thereunder and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder, Kashyap Motors India Private Limited (Corporate Debtor) be and is hereby liquidated in the manner as laid down in Insolvency and Bankruptcy Code, 2016."*

11. 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."*

12. Therefore, upon failure of resolution process there being no resolution plan and on completion of the statutory Corporate Insolvency Resolution Process 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.

13. In the factual background and in the absence of any resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the majority decision of the Committee of

Creditors with 99.23% voting share, *for liquidation of the corporate debtor under Section 33 of the Code*

14. It is pertinent to note here that Committee of Creditors with 99.23% vote share has recommended the applicant Resolution Professional namely Mr. Jatin Madan to act as liquidator. Mr. Jatin Madan, the Resolution Professional has submitted his written consent on 14.11.2019 to act as the Liquidator of the corporate debtor.

15. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Kashyap Motors India Private 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. Jatin Madan with Registration No. IBBI/ IPA-001 / IP-P00222 / 2017-18 / 10421, is appointed as Liquidator in terms of Section 34(1) of the Code.

b. Mr. Jatin Madan, 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 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 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. 2689 (PB) /2019 filed in IB 1528(PB)/2018 is disposed of in the aforesaid terms.

-Sd-

(M.M. KUMAR)
PRESIDENT

-Sd-

(S. K. MOHAPATRA)
MEMBER (T)

SHAMMY