

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
C.A. 1394/2020
IN
Company Petition No. (IB) – 1644 (PB) /2018**

*Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016
for liquidation of the corporate debtor*

In the matter of:

Oriental Bank of Commerce

.... Financial Creditor

VS

KMG ATOZ System Private Limited.

.... Corporate Debtor

AND

In the matter of:

**Mr. Sandeep Kumar
Bhatt**

.... Applicant/Resolution Professional

Order delivered on: 13.05.2021

Coram:

**SHRI. B.S.V PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT
SHRI. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant: CMA IP SK Bhatt, RP alongwith Kamal Tyagi, Sr Executive
For the Respondent: Mr. Ashok Juneja, Adv. for R4 in IA No. 1394

ORDER

PER- B.S.V PRAKASH KUMAR ACTG. PRESIDENT

This is an application filed by the Resolution Professional, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) for issuance of directions for liquidation to Corporate Debtor, M/s. KMG ATOZ Systems Private Limited.

1. The facts are that the one of the Financial Creditor, Oriental Bank of Commerce, had filed an application under Section 7 of the Code bearing number IB- 1644/ (PB)/2018 for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on 06.08.2019 initiating CIRP against the Corporate Debtor and there in, appointed Mr. Sandeep Kumar Bhatt, as the Interim Resolution Professional (IRP).

2. Further, as against the case of the RP, the Promoter-Directors Counsel has stated that the liquidation value of the Company is only Rs. 9 Crores, whereas the Promoter-Directors submitted the Plan value as Rs. 12.75 Crores, therefore this Company shall not be sent to liquidation.
3. Apart from it, he has also stated that there is an arbitration proceeding pending, wherein the Corporate Debtor has made a claim of Rs. 280 Crores, therefore there is every likelihood of getting money in arbitration proceeding pending. If his plan is approved, instead of proceeding with the liquidation, the Corporate Debtor could survive as envisaged in the preamble of Insolvency and Bankruptcy Code.
4. On hearing the submissions of each side, it is evident, that the Financial Creditors in the CoC are Punjab National Bank with 80% of voting share and Canara Bank with 15% voting share. It appears that the Corporate Debtor is owed to pay Rs. 246.93

Crores to these Claimants. Out of which, the Promoter-Directors have come forward with a Plan valuing Rs. 12.75 Crores to pay within 22 months, however, considering all the materials available before the CoC, it has in its wisdom taken a decision to proceed for liquidation of the Company, instead of approving the Resolution Plan submitted by the Promoter-Directors.

5. As to the approval of the Plan is concerned, as long as the procedure is complied with, the CoC can take commercial decision in the interest of the Creditors which this Bench cannot turn down on hearing the submissions of the Promoter-Directors unless it is hit by procedural compliance laid under the IBC.

6. The Promoter-Directors Counsel having not stated that the CoC has not complied with the procedure in taking a decision for filing a liquidation application, this Bench cannot interfere with the decision of the CoC. Moreover, this liquidation application was filed

more than one year before i.e., during Feb'2020, but till date, it appears that these Promoter-Directors have not put in any efforts to convene the CoC meeting, therefore we are of the view that the submissions made by the Promoter-Directors do not warrant this Bench to interfere with the decision of the CoC.

7. Anyhow, it is still open to the Promoter-Directors to place the Scheme application even after the liquidation has been initiated against the Corporate Debtor.

8. The applicant had also submitted that in the 4th CoC meeting, held on 17.01.2020 the RP apprised to the CoC that RP had received three resolution plans from the respective Resolution Applicants i.e. by 1) Mr. Sanjeev Krishan Sharma, 2) Mr. Amrit Kumar Agarwal & Sanjeev Krishan Sharma (Director) and lastly by 3) Mr. Sanjay Mittal (KMG Industrial Traders Pvt. Ltd.).

9. The Resolution Professional had the evaluation matrix and the evaluation matrix had approved by the CoC, and it was decided that the final marks shall be allotted after the discussion and negotiations with the three Resolution applicants.

10. Thereafter, in the 5th CoC meeting held on 03.02.2020. The CoC decided after all the discussions and deliberations to file a liquidation application before this Bench, accordingly resolutions were passed by the CoC with 100% vote share.

i. Resolved that company be liquidated as per section 33 of the IB Code and CoC approves for the Liquidation of the Company U/s 33(2) of the IB Code as the Resolution Plan does not merit the expectations of the CoC in terms of offer and time period of payment offered in the resolution plan.

- ii. Further, Resolved That CMA Sandeep Kr. Bhatt working as RP is hereby proposed to be appointed as Liquidator of the company as he has consented to work as a Liquidator and application for the Liquidation be filed by the RP to the Hon'ble NCLT U/s 33(2) of the IB Code.**
- iii. Resolved that at the time of voting, the CoC members had requested the RP to reduce fee from Rs. 2.40 Lac to Rs. 2.00 Lac per month, till the application for liquidation is pending before the AA. RP had confirmed to take the fee of Rs. 2.00 Lac per month and had confirmed to CoC vide mail dated 11.02.2020.**
- iv. Resolved that at the time of voting, it was decided by the CoC that the**

liquidation cost shall be paid on actual basis on bills raised by the liquidator on monthly basis as company does not have any liquid asset and in case CoC feels then may ask the RP to call meeting and RP shall call meeting to estimate the liquidation cost if majority of CoC members so decide.

11. Accordingly, this application is allowed by ordering liquidation of the corporate debtor, namely M/s KMG A to Z Systems Private Limited with following directions:

- a. The Mr. Sandeep Kumar Bhatt, holding Registration No. IBBI/IPA-003/IP-N00038/2017-2018/10298, having email-skbmica@gmail.com is appointed as the Liquidator in terms of Section 32(1) of the Code;

- b. 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;
- c. 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;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down

in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The liquidator shall also follow up the pending applications for their 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. Accordingly, CA-1394(PB)/2020 is allowed filed in IB 1644/(PB)/2018 is disposed of in terms of the aforesaid terms.

Sd/-

(BSV PRAKASH KUMAR)

ACTNG PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (TECHNICAL)

