

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH (COURT-II)

C.A. 1639/C-II/ND/2019
IN
Company Petition No. (IB)-136(ND)/2019

IN THE MATTER OF:

M/s. YS Merchandise International Pvt. Ltd. ...Corporate Debtor

AND IN THE MATTER OF:

Sunil Kumar Aggarwal
Resolution Professional of
M/s. YS Merchandise International Pvt. Ltd.
E-29 South Extension- II
New Delhi – 110049 ...Resolution Professional/Applicant

Order Delivered on: 03.01.2020

Section: 33(1)(a) and 33(2) of the IBC, 2016.

CORAM:

CHD. MOHD SHARIEF TARIQ, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : I.P.S Oberoi, Advocate
For the Respondent : None





ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This is an application filed by Sh. Sunil Kumar Aggarwal the Resolution Professional of M/s YS Merchandise International Pvt. Ltd. under Sections 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking the following main reliefs :

"(a) Liquidation of the corporate debtor – YS Merchandise International Pvt. Ltd."

"(b) appointment of Liquidator – Mr. Sunil Kumar Agarwal (IBBI Registration-IBBI/IPA-002/IP-N00081/2017-18/10222)."

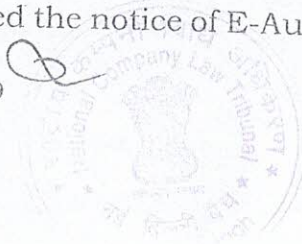
2. Facts of the case in brief are that the Corporate Debtor, YS Merchandise International Pvt. Ltd. had filed an Application bearing No. IB-136/(ND)/2019 under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP). The said application was admitted by this Tribunal vide Order dated 06.06.2019 and Mr. Sunil Kumar Aggarwal was appointed as Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in Form-A on 10.06.2019. The Public announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

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4. The Interim Resolution Professional constituted a Committee of Creditors (CoC), which comprised of two Financial Creditors namely, Capfloat Financial Services Pvt. Ltd and Neogrowth Credit Pvt. Ltd., having voting shares of 64.95% and 35.05% respectively. The first meeting of the CoC was held on 06.07.2019.
5. It is further submitted by the Applicant that on an application filed by the CoC, this Tribunal vide its Order dated 08.08.2019 had confirmed the appointment of Sh. Sunil Kumar Aggarwal as RP.
6. It is submitted by the Ld. RP that he had published Form-G for inviting EOI (Expression of Interest) vide publication dated 24.08.2019 in newspapers namely Financial Express and Jansatta. It is informed by the Ld. RP that no EOI or Resolution Plan has been received for managing the affairs of the Corporate Debtor.
7. It is further submitted by the Ld. RP that he has received Forensic Audit and Transactional Audit Reports from Transactional Auditor-M/s Mittal Arvind & Co. Chartered Accountants and Forensic Auditor-S.K. Mittal & Co. Chartered Accountants, indicating some Related Party transactions.
8. It is stated by the Ld. RP that he had conducted E-Auction of the Assets such as stock of goods, Footwear, Apparels, Belts, Goggles, Bags of multiple well known brand, Car-Honda City, Office Equipments- Computer, Laptop, Printers, Camera, LCD, Microwave & Refrigerator of the Corporate Debtor by published the notice of E-Auction in newspapers



namely, Financial Express and Jansatta on 07.11.2019. It is further submitted by the Ld. RP that the E-Auction was conducted on 15.11.2019 and no bids were received in the said auction.

9. It is submitted by the RP that in the 5th Meeting of COC on 27.11.2019. The following agenda was put to vote before the CoC.

"Item No. 7

To discuss and approve the liquidation of the Corporate Debtor.

The RP has informed to Committee of Creditors that CIRP 180 days to be completed on 03.12.2019. And the Corporate Debtor have stock of goods and there is no major other assets. The Form- G was issued for EOI but no EOI has received. The COC may consider Liquidation of the Corporate debtor. After consideration:

"Resolved that committee of creditors be and is hereby consented for Liquidation of the Corporate Debtor- YS Marchandise International Pvt. Ltd. under section 33 of Insolvency and bankruptcy Code 2016.

Resolved further that Resolution Professional- Mr. Sunil Kumar Agarwal be and is hereby authorised to submit Application before Hon'ble NCLT Court."

"Item No. 8

To discuss and appoint Liquidator and fix their remuneration

Resolved that committee of creditors be and hereby consented to appoint Mr. Sunil Kumar Agarwal - IBBI Registration- IBBI/IPA-002/IPN00081/2017-18/10222 as Liquidator of YS Marchandise International Pvt. Ltd."

(Signature)



10. It is submitted by the Ld. RP that the Resolution was passed with 100% Votes. That the RP has also filed his written consent to act as Liquidator under Section 34(1) of IBC 2016.

11. There being no other alternative and as resolved and recommended by the COC, this Bench is inclined to order Liquidation of the Corporate Debtor.

12. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. YS Merchandise Pvt. Ltd. in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a. Mr. Sunil Kumar Agarwal, IBBI Registration No. IBBI/IPA-002/IP-N00081/2017-18/10222, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016.
- b. The Liquidator, 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 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;

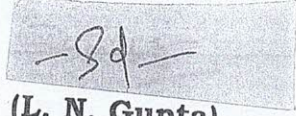


- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued, preferential and fraudulent transactions etc.
- f. Liquidator shall also take action as necessary on findings of the Transaction and Forensic Review Audit Reports.
- g. 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.
- h. The Registry is directed to communicate a copy of the Order to the Corporate Debtor and Liquidator at the earliest but not later than seven days from today. A copy of this Order be also sent to the ROC for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT.
- i. 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;



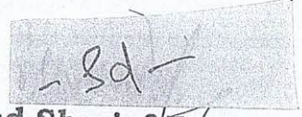
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13. C.A. 1639/C-II/(ND)/2019 filed in IB-136(ND)/2019 is disposed-off in the aforesaid terms.




(L. N. Gupta)
Member (T)





(Chd. Mohd Sharief Tariq)
Member (J)

 09.1.2020

Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003