

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.866/2020
In
CP (IB) No.392/Chd/HP/2018
(Admitted)
Under Section 33(1) & (2) of IBC, 2016**

In the matter of:

Punjab National Bank

....Petitioner-Financial Creditor

Versus

KUT Energy Private Limited

..Respondent-Corporate Debtor

And in the matter of:-

Mahesh Bansal

Resolution Professional of
(SCF 24, First Floor, Bhadur House,
Ludhiana)

Resolution Professional of
KUT Energy Pvt. Ltd. with Regd. Office:-
Kaith House, Near H.S. Khaneri Petrol Pump,
Tehsil Rampur Bushahr, Rampur Bushahr,
Shimla, Himachal Pradesh-172001

...Applicant/Resolution Professional

Judgment delivered on: 28.08.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the applicant/RP

:

Mr. Nahush Jain, Advocate.

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The above-captioned application is being filed by the Resolution Professional of M/s KUT Energy Private Limited (Corporate Debtor) under Section 33 of the Insolvency and Bankruptcy Code, 2016 ("Code") for the initiation of liquidation of the Corporate Debtor.

2. The Corporate Insolvency Resolution Process, in the captioned matter, was triggered by Punjab National Bank, a financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein referred to as "**IBC**"). The Application of the Financial Creditor was admitted by this Bench of NCLT vide order dated 07.10.2019 and further Mr. Nipan Bansal, Resolution Professional, having IP Registration no. IBBI/IPA-001/1P-P00039/2016-17/10100, was appointed as the Interim Resolution Professional.

3. It is submitted that pursuant to this order, the IRP made the Public Announcement in Form A via Publication in the Economic Times -Chandigarh Edition (English) and in the Amar Ujala (Hindi) on 09.10.2019 for the invitation of claims. Claims were received and the Committee of Creditors (hereinafter referred to as "**CoC**") was constituted on 24.10.2019 in the following manner with respective voting share:

| BANK | CLAIMS (Rs.) | VOTING SHARE(%) |
|-----------------------|-----------------------|------------------------|
| Punjab National Bank | 1,04,78,24,435 | 35.01 |
| Corporation Bank | 1,06,47,87,109 | 35.57 |
| Central Bank of India | 88,05,70,341 | 29.42 |
| Total | 2,99,31,81,885 | 100% |

4. The details of the CoC meetings are given below:-
- i. The 1st meeting of COC was held on 02.11.2019, whereby the meeting was deferred. In the 2nd Meeting of COC dated 13.11.2019, a resolution for replacing the IRP Mr. Nipan Bansal and to appoint Mr. Mahesh Bansal as Resolution professional of the Corporate Debtor was passed. In the same regard, an order was passed by the Hon'ble Tribunal on 17.12.2019 for the same.
 - ii. In the 3rd Meeting of COC dated 16.12.2019 and the 4 meeting of COC dated 30.12.2019, a resolution was passed for publication of the 1st Form-G and the same was published on 01.01.2020 in English 'Financial Express' and in Hindi 'Jansatta', with the last date of receipt of Expression of Interest (hereinafter referred to as “EOI”) as 16.01.2020. In the said meeting, the Evaluation Matrix, Eligibility Criterion for the Prospective Resolution Applicant, and Request for Resolution Plan were also approved.
 - iii. It is submitted that pursuant to the publication of the 1st Invitation for EOI in Form-G on 01.01.2020, an Expression of Interest was received from two parties, i.e., i) Prudent ARC Limited; i) Mr. Jagar Singh. However, no Resolution Plan was received till the last date of receipt of the Resolution Plan, i.e., 01.03.2020. However, after the expiry of the last date for receipt of EOI, M/s Kundan Group enquired vide email on 04.02.2020 about submitting an EOI.
 - iv. In the 5th Meeting of COC dated 12.03.2020, RP brought to the notice of the COC regarding the non-receipt of the Resolution Plan from Prospective Resolution Applicants and regarding the belated receipt of a request to submit EOI from M/s Kundan Group, as aforesaid. The resolution was passed to approve the publishing of the revised 2nd Form-G. Further, it is submitted that the 180 days of CIRP were expiring on 04.04.2020, and therefore, in the said 5th

COC Meeting dated 12.03.2020, it was also resolved unanimously that the CIRP period be extended for another 90 days and an application in this regard be filed before the Hon'ble Tribunal.

v. In accordance with the aforesaid resolution, a 2nd Form-G was published on 15.03.2020 in English 'Financial Express' and in Hindi 'Jansatta', with the last date of receipt of EOI as 30.03.2020. However, it is submitted that due to the COVID-19 pandemic, there was a Janta Curfew on 22.03.2020 which was followed by a State Government imposed curfew in Punjab and thus no EOI was received.

vi. On 29.05.2020, the 6th COC Meeting was held through Video Conferencing, it was decided that the 3rd Form-G is to be published. Accordingly, a revised 3rd Form G was published on 19.06.2020, with the last date of receipt of EOI as 04.07.2020.

vii. Further, an Application under Section 12 of the Insolvency and Bankruptcy Code 2016 being I.A. No.373/2020 for an extension of CIRP due to lockdown was filed and was allowed for a period of 90 days from 25.03.2020 to 31.07.2020.

viii. It is submitted that in the 7th Meeting of COC dated 24.08.2020, it was informed that pursuant to 3rd Form-G, no Resolution Plan was received despite having received EOI from various prospective Resolution Applicants. Accordingly, it was resolved to republish Form-G for the 4th time which was published on 03.09.2020, with the last date of receipt of EOI as 18.09.2020 and the last date for receipt of Resolution Plans as 28.10.2020.

ix. In the 9th Meeting of COC dated 06.11.2020, it was informed that pursuant to 4th Form-G no Resolution Plan was received till the stipulated last date despite having received EOI from various prospective Resolution Applicants. Further, it

was observed by the COC that despite multiple efforts by the RP and COC, no resolution plan was received and accordingly, it was unanimously decided by the COC to consider Liquidation of the Corporate Debtor. It was also observed by the Ld. COC that there is no specific Resolution required to be passed to file an Application for Liquidation and asked RP to take necessary steps to initiate Liquidation of the Corporate Debtor. Copy of minutes of the 9th meeting of the CoC held on 06.11.2020 is attached herewith as Annexure A-11 of the application.

5. The applicant-resolution professional has filed his consent form vide diary No. 01737/01 dated 13.07.2023 along with his short written submissions filed vide Dairy No.01737/02 dated 08.07.2023.

6. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(1) of IBC and the same is reproduced below:-

“Section 33: Initiation of liquidation.

33. (1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

7. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. before the expiry of the insolvency resolution process period or;
- ii. maximum period permitted for completion of the corporate insolvency resolution process under Section 12 or the fast track corporate insolvency resolution process under Section 56, as the case may be; and
- iii. if does not receive a resolution plan under sub-section (6) of Section 30.

8. In the instant matter, it may be noted that there are no assets available with the corporate debtor, except cash and cash equivalent amounting to Rs. 63,333/-. Moreover, no CoC has been formed as no claims have been received from any of the operational and financial creditors except one related party-financial creditor i.e. Sentinel Consultants Private Limited.

9. A reference is made to the decision in the matter of **Mr. Sudhanshu Gupta, IRP of Nesa India Producer Company Ltd.** (2022) 75 NCLT, wherein it held that;

“A bare perusal of the provision of Section 33 of the IBC shows that there are two circumstances under which a liquidation order can be passed by the Adjudicating Authority. (a) under Section 33(1) of the IBC and (b) under Section 33(2) of the IBC. Under section 33(1), where the Adjudicating Authority before the expiry of the Insolvency Resolution Process or the maximum period permitted for completion of the CIRP under Section 12 of the fast track CIRP under Section 56, as the case may be, does not receive a resolution plan under Section 30(6) or reject the resolution plan under Section 31 for non-compliance of requirement specified therein, in that case, the Adjudicating Authority shall pass an order for liquidation under Section 33(2) of the IBC, the resolution professional at any time during the CIRP but before the confirmation of resolution plan intimate the Adjudicating Authority of the decision of the COC to liquidate the Corporate Debtor, then the Adjudicating Authority shall pass an order for liquidation.”

Here in the case in hand, the CoC is not constituted even after the expiry of more than 365 days and the IRP has also not received any claim during the CIRP. Rather, the IRP has prayed for termination of the CIRP on the ground that he has not received any claim. There is no such provision under the IBC to terminate the CIRP once it is initiated,

the only way is either to complete the CIRP by approval of the resolution plan or pass the order of liquidation under 33 of the IBC.

Here in the case in hand, there is no resolution plan as there was no claimant and the CoC was not constituted till the date of filing the application. Under such circumstances, in our considered view, in terms of Section 33(1), the Adjudicating Authority is empowered to pass the liquidation order after the completion of the maximum period. Since, 330 days has already been completed and no resolution plan is received even the COC is not constituted, therefore, in stead of termination in the CIRP on the request of the applicant, we think it proper to pass an order under Section 33(1) of the IBC to pass the liquidation order.”

10. After going through the facts, we are of the considered view that no useful purpose would be served by placing the corporate debtor under a lengthy liquidation process as there are no realizable assets in possession of the corporate debtor and no progress in this regard has been made since the initiation of CIRP on 07.10.2019. Thus, invoking the inherent powers under Rule 11 of NCLT Rules, 2016, we direct the liquidator to take up the dissolution process of the corporate debtor and file an application for dissolution enclosing his final report and the compliance certificate in Form H within 30 days of receipt of this order.

11. Accordingly, by exercising our power under Section 33(1) pass the following order:-

- i. Since the Interim Resolution Professional has not given his consent to act as Liquidator, Shri Harmanjit Singh, Mobile No. 9988445464 e-mail: ipcaharmanghai@gmail.com is hereby appointed as Liquidator. The Law

Research Associate of this Tribunal has checked the credentials of the proposed Interim Resolution Professional, and nothing has been found adverse against Mr Harmanjit Singh. In view of the same, he is hereby appointed as liquidator; subject to his written consent to be filed within 7 days of this order;

- ii. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- iii. The Liquidator is directed to take custody and control of the assets, and property of the Corporate Debtor with immediate effect and make a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- iv. The Provision of Section 33 (5), (6), and (7) of the IBC, 2016 shall have come into force with immediate effect. 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;
- v. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor if any. This direction is hereby given in concurrence with the jurisdiction prescribed under Section 33(5) of the Code.
- vi. On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate

Debtor save and except the liberty to the Liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

- vii. That all the powers of the Board of Directors, key managerial personnel, and the partners of the Corporate Debtor, as the case may be, shall cease to have an effect and shall be vested in the Liquidator;
- viii. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional;
- ix. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;
- x. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi and Haryana for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;
- xi. The Liquidator is directed to issue a public announcement stating the Corporate Debtor is in liquidation;
- xii. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record; and
- xiii. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

12. Thus, IA No. 866/2020 is allowed and stands disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

August 28, 2023

JGS/VN

Sd/-

(Harnam Singh Thakur)
Member (Judicial)