

IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH III

NEW DELHI

CA.185/C/III/ND/2019
CA.208/C/III/ND/2019
CA.292/C/III/ND/2019
CA.338/C/III/ND/2019

Application under Section 33(1)(a) and 33(2) of the Insolvency and Bankruptcy Code,2016 Requiring the Corporate Debtor to be Liquidated.

IN THE MATTER OF;

Mr.Mohan Lal Jain
Resolution Professional
Sector-15, Rohini,
Delhi-110089

Project Specific address:
C/o Sumedha Management Solutions Pvt.Ltd.
B1/12, Safdarjang Enclave, 2nd Floor,
New Delhi-110029

.....Applicant

M/s Impex Services India Private Ltd.
Flat No.402, Pragati House,
4th Floor, 47-48, Nehru Place,
New Delhi

...Operational Creditor

M/s SSMP Industries Limited
K 336, Sarita Vihar,
New Delhi-110076

....Corporate Debtor

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CORAM:

**R.VARADHARAJAN,
Hon'ble Member (Judicial)**

For Applicant/ Corporate Debtor: Mr.H.P.Bhardwaj, Advocate
Mr. Nishant Bhardwaj, Mr. Pramod
Kumar, Advocate
For Resolution professional: Mr. Mohan Lal Jain,
(Resolution Professional)

ORDER DELIVERED ON: 31.07.2019

ORDER

An application filed by the Resolution Professional under Section 33(1)(a) and Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (IBC,2016) seeking for liquidation of the Corporate Debtor (CD) under the circumstances stated in the application. From the perusal of the Application as well as under the directions of this Tribunal, a Compliance Certificate approximating Form-H has been filed by the Resolution Professional and perusal of both the above brings to the notice of this Tribunal that Corporate Insolvency Resolution Process (CIRP) was initiated of the Corporate Debtor (CD) on 27.08.2018 and pursuant to the appointment there under of the Interim Resolution Professional (IRP) and publication of public announcement calling for the claims and that the constitution of the Committee of Creditors (CoC) was done on 2.10.2018 by the IRP. Subsequent to the constitution of the CoC, two financial creditor

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companies being the bankers emerge namely, Oriental Bank of Commerce having voting share of 99.1% and Kotak Mahindra Prime Limited having voting share of 0.90% as the members of the CoC having 100% voting rights. The Application discloses that in all seven meetings of the CoC were convened on 8.10.2018, 18.10.2018, 12.11.2018, 21.12.2018, 1.2.2019, 14.2.2019 and 15.3.2019. It is also brought to the notice of this Tribunal that the CIRP which was to end on 21.2.2019 was extended by a further period of 30 days based on the resolution of the CoC and on an application filed by the Resolution Professional in CA No.133/C-III/ND/2019 and the same was also allowed by this Tribunal vide order dated 25.2.2019. In the circumstances, the CIRP after the extension granted ended on 24.3.2019. Initially, at the time of admission one Mr. Manoj Kunwar was appointed as the IRP and subsequently vide CA No.359/C-III/ND/2018 on an application moved by the members of the CoC, one Mr. Munish Kumar Sharma was appointed as the Resolution Professional who had chosen to file this application before this Tribunal upon completion of the CIRP period seeking for liquidation at the instance of the CoC and in compliance with the provisions of IBC,2016 read with attendant regulations.

2. During the CIRP, it is brought to the notice of this Tribunal that invitation for Expression of Interest (EoI) was made on 19.11.2018 and upon finalization of the eligible prospective resolution applicants only one person namely, ex-Director of the CD was

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finalized as eligible prospective resolution applicant and that the resolution plan was placed before the 6th CoC meeting held on 14.2.2019. However, the CoC based on commercial considerations seem to have rejected the resolution plan. The following concerns have been expressed by the CoC in relation to the resolution plan in the meeting held on 14.2.2019, which is extracted as follows:

- The amount offered in the Resolution Plan seems to be on the lower side vis-à-vis the realizable value of the collaterals held by the Bank.
- The resolution plan is not commercially viable and the amount offered in the plan is not acceptable.
- The Resolution Plan seems to be subjective in respect of the payment to be made after realization from the proceeds of estimated profits and on-going litigations which are uncertain in nature.
- There are inconsistencies in the amount offered in the plan. For example in clause 6B(1), it is mentioned that Rs.50 lacs will be given as an upfront payment to Financial Creditors, whereas in clause 12.2(c) it is mentioned that CIRP cost of Rs.25 lacs will be deducted from such upfront amount of Rs.50 lacs payable to FCs. Similarly, nothing was mentioned in the clause 6B(1) in relation to the inclusion of Forex Gain of Rs.30.84 lacs, receivable on account of cancellation of Forward Contract, whereas it is included in the table given at clause 11 of the Plan.
- The marks scored by the Resolution Applicant is also very low as per the Evaluation Matrix.
- Further, when the account of corporate debtor became NPA, the resolution applicant was the same promoter, and since he had not been able to achieve projections at that time, it raises a doubt on his future projections as well.
- Further, the resolution applicant doesn't have any credential in turning around distressed companies managerial competence, technical capabilities and track record in implementing turnaround of stressed asset.

3. Under the circumstances, this application seeking for liquidation. From the application and annexures filed there with, it is seen that the fair value of the assets of the CD is stated to be Rs.157.07 lakhs and the liquidation value is stated to be

Rs.150.63 lakhs as against the admitted claim as on 27.8.2018
of Rs.1839.68 lakhs, which is as follows:

		Rs in Lacs
1	Financial Creditors- Table I	1593.79
2	Amounts payable to Employees As salaries- Table-II	1.5
3	Other amounts payable to Employees as salaries- Table-III	17.66
4	Amounts due to Operational Creditors Table IV	156.15
5	Government Dues - Table V	0.17
6	Advances From Customers	83.21
7	Total	1839.68

From the above tabulation, it is clear that the liabilities of the CD exceed more than 12 times of the available assets connoting that the CD is abysmally insolvent.

4. The present application seeking for liquidation has not been opposed by the erstwhile management of the CD who have chosen to file the resolution plan pursuant to the invitation of the EOI by the RP and whose resolution plan also stood rejected, as already brought forth in the earlier portion of this order while narrating the facts.

5. However, two applications have been filed by Operational Creditors aggrieved by the action of IRP/RP in rejecting the claim. The applications are CA No.208/C/III/ND/2019 and CA No.338/C/III/ND/2019. Perusal of

these applications shows that while CA No.208/C/III/ND/2018 has been filed by one Jindal Biochem Pvt. Ltd. stating that a sum of Rs.24,80,217/- is due to the said applicant payable from February, 2018 as arrears of rental for the portion of the property given to the CD under lease which stood executed on 24.10.2012, in relation to CA No.338/C/III/ND/2019, the claim of the applicant has arisen out of supply of goods made against MOUs totaling the claim to the extent of Rs.18,74,173.22. On the face of these applications, it is evident that both these applicants prior to the initiation of the CIRP of the CD have chosen to file separate suits before the appropriate Civil Courts seeking inter alia claim for recovery of money as well as for other relieves. While the applicant in CA No.208/C/III/ND/2019 has chosen to approach ADJ Rohini Courts, North District, Delhi in CS No.1056/17, the applicant in CA No.338/C/III/ND/2019 has chosen to approach ADJ-I, Saket Court, Delhi and consequent to the moratorium being applied under Section 14 of IBC, 2016, the suits have not been proceeded with further. In the circumstances, both the applicants have sought that the entire claim should be accepted by the RP. However, under the circumstances, since the order of liquidation is being passed of the CD, upon appointment of the liquidator, suitable action as contemplated under the provisions of IBC, 2016 shall be initiated by the liquidator in defending the suits before the courts for which leave of this Tribunal shall be sought for. In the circumstances, no further directions need to be passed in relation to these applications.



6. Ld. Counsel for the IRP also brings to the notice of this Tribunal that an application in CA No.292/C/III/ND/2019 has been filed under Section 66 and other relevant provisions of IBC,2016 bringing to the notice of this Tribunal about the fraudulent transfers which have been effected by the erstwhile management of the CD namely, respondents in the said application. Fraudulent and wrongful transactions, it is represented in the application is based on the special audit carried out by the Auditors under the aegis of CoC and in nutshell by way of tabulation it has been brought forth as to what has been sold by the CD or its erstwhile management without the concurrence of the financial creditors namely, Oriental Bank of Commerce which has granted working capital facilities based on hypothecation of properties and the tabulation as provided for ready reference is reproduced below:

SNo.	Fixed Assets	From 1.4.2017 to 31.3.2018 amount (Rs.)	From 1.4.2018 to 27.8.2018 Amount (Rs.)	Total (Rs.)
1	Computer & Printers	-	4,86,349	4,86,349
2	Land & Building	-	2,06,469	2,06,469
3	Furniture & Fixtures	2,44,500	37,02,000	39,46,500
4	Office Equipment	12,25,513	14,18,894	26,44,407
5	Lab Equipment	3,21,702	-	3,21,702



6	Plant & Machinery	1,33,96,056	9,61,745	1,43,57,801
7	Motor Car	-	19,26,715	19,26,715
8	Software	48,324	-	48,324
	Total	1,52,36,095	87,02,172	2,39,38,267

7. It is further brought to the notice of this Tribunal by Ld. Counsel for the RP that as per the hypothecation agreement as entered into between the erstwhile Oriental Bank of Commerce (OBC) and the CD, any assets hypothecated cannot be sold without the prior permission of the OBC and that in case of sale, the borrower (CD) in effect was required to deposit the value of the hypothecated assets sold into the loan account or in the alternative substitute the same with an acceptable asset equal in value of the asset so sold and that all the proceeds of money in cash or otherwise on account of book debts realised, the CD was bound to deposit the same in cash credit or current account till the loan is satisfied and unless otherwise done and that in relation to any money received by the CD it was required to act as a trustee for the Bank in relation to the said account.

8. Prima facie perusal of the form as well as documents annexed therewith show that the disposal of the assets as tabulated here in above has been done in the near proximity of the initiation of the CIRP by this Tribunal on 27.8.2018. However, in the absence of any reply being on record as this application seems to have been filed

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only on 23.3.2019 and as mentioned on 8.5.2019 wherein it is evident that notice was directed to be issued to the respondent of which no proof has till now been furnished by the RP, we direct the liquidator appointed to proceed with the application in the right earnest. From the records, it is seen that at the time of rejection of the resolution plan on 14.2.2019 by 100% votes cast against the resolution plan, authority has also been given to the RP to do all acts, deeds as necessary to give effect to the rejection of the resolution plan. Since the resolution plan has been rejected by the CoC based on the commercial considerations and no further resolution plan has been received on or before the expiry of the CIRP period, taking into consideration the provisions of Section 33 of IBC,2016, this Tribunal orders for the liquidation of the CD and save the application in CA No.292/C/III/ND/2019 in which we have directed the Liquidator to proceed with, all other applications stand disposed of with the directions contained as above.

9. Ld. Counsel for the RP upon a query being posed as to whether the resolution professional would be inclined to act as the liquidator of the CD draws attention of this Tribunal to paragraph 17 of the application being an affidavit filed by the RP and from the perusal of which it is seen that the resolution professional who was acting herein as such, has expressed his unwillingness to act as the liquidator of the CD due to his pre-occupation. In the circumstances, Shri Yogesh Sethi, IBBI/IPA-001/IP-P00814/2017-2018/11379, e-

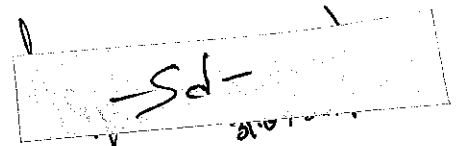


mail:sethiyogesh@yahoo.com Mobile: 9810045108 is appointed as the liquidator of the CD.

- a. Mr. Yogesh Sethi shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him.
- b. Mr. Yogesh Sethi shall issue the public announcement that the CD is in liquidation. In relation to officers/ employees and workers of the CD, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c. The Liquidator shall investigate the financial affairs of the CD particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences.
- d. 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;
- e. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation
- f. 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;
- g. 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



- h. The liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and file its response for disposal of any pending Company Applications during the process of liquidation.
- i. The liquidator shall submit a Preliminary report to this Tribunal within seventy-five days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- k. CA.No. 185/C/III/ND/2019, CA.NO.208/C/III/ND/2019 and CA No.338/C/III/ND/2019 filed in IB/495/ND/2017 are disposed of in the aforesaid terms. The Liquidator is directed to persist with CA No.292/C/III/ND/2019 for which the said application is posted on 30.09.2019.



(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta
31.07.2019