

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

IA 638 of 2019 in CP(IB) 407 of 2018

Coram: Hon'ble Mr. MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.09.2020

Name of the Company:

Shyam Sundar Rathi RP For K K Kadri Paper
Mills Pvt Ltd

Section:

Section 33 of Insolvency and Bankruptcy Code, 2016

ORDER

Learned Counsel Mr. Gaurav Mathur appeared.

The case is fixed for pronouncement of order. The order is pronounced in open
Court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

Dated this the 8th day of September, 2020


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
COURT 1**

I.A. No. 638 of 2019

IN

C.P. (I.B.) No.407/NCLT/AHM/2018

Through

Mr. Shyam Sundar Rathi
Resolution Professional,
DBS Corporate Park,
Kanakia Wall Street,
Andheri-Kurla Road,
Mumbai- 400063

...Applicant/ RP

In the matter between:

Edelweiss Asset Reconstruction Co. Ltd.
Having its registered office at
Edelweiss House, Off CST Road,
Kalina, Santacruz (East)
Mumbai-400 098

..... Financial Creditor

Versus

M/s K.K. Kadri Paper Mills Pvt. Limited,
Registered office at,
Plot No.412/2
Opp: Chanod Bus Stop,
GIDC, Vapi-396195
Surat-395004, Gujrat

.....Respondent/ Corporate Debtor

Order delivered on 08.09.2020.

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

Ld. Counsel Mr. L.M. Patel appeared for the RP appeared.
Ld. Counsel for Singhi & Company for the COC appeared.

[Per Bench]

1. The facts, in brief, are that the Corporate Debtor was put into Corporate Insolvency Resolution Process vide order of this Adjudicating Authority dated 25.07.2019 in response to an application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016.
2. The IRP was appointed who constituted Committee of Creditor (COC) and also made public announcement. The Committee of Creditors (COC) was informed about the condition of the plant and machinery and also of other assets of the Corporate Debtor. It was also informed to Committee of Creditors (COC) that the operations of the Corporate Debtor were not in a position at all to restart. It was also confirmed by the Suspended Board of Management in view of operation being closed for long period and machinery getting corroded. Accordingly, Committee of Creditors (COC) in its first meeting dated 5th September, 2019 decided to go for liquidation of the Corporate Debtor.

3. The Learned Counsel Mr. L. M. Patel for the RP appeared and perused us with the basic facts whereby this Adjudicating Authority has been directed to dispose-off this application.
4. We heard the Learned Counsel for the RP and also perused the material on record. It is noted that Corporate Debtor has been admitted into Corporate Insolvency Resolution Process on 25.07.2019. Form-A has been published on 9th August, 2019. The last date for submission of the claimed was fixed as 20.08.2019. Committee of Creditors (COC) has been formed and in its meeting dated 5th September, 2019 which is its first meeting, in that meeting itself, the decision to liquidate the Corporate Debtor has been taken which was based on claims made as regard to the condition of the plant and machinery of the Corporate Debtor. However, apart from this, it is noted that in the application filed by RP, a claim, in para-7 of application has been made as regard to the condition of plant and machinery. It has also been stated that it was not possible to start the unit which was also confirmed by suspended board of management of the Corporate Debtor. The evidence, if any, produced before Committee of Creditors (COC) has not been attached with the application filed before us. We further find that Corporate Debtor wished to oppose the application filed for

liquidation and vide order dated 10.06.2020, this Authority allowed him to file affidavit in reply in the interests of justice, though this Authority was of the prima-facie view that Corporate Debtor had no locus. Apart from this fact, it is noted that the admission of Corporate Debtor into Corporate Insolvency Resolution Process had been challenged before the Hon'ble NCLAT and Hon'ble NCLAT vide its order dated 22.05.2020 upheld the order of Adjudicating Authority. Before passing final order, Hon'ble NCLAT vide its interim order dated 17.10.2019 had directed the IRP to ensure that company remains going concern. From the records, it is evident that no progress report has been filed after 12.12.2019. This Authority vide order dated 22.01.2020 in IA No.681 of 2019 had directed the RP to verify the fact from its record and appraise this Authority as regard to the status of the Corporate Debtor as going concern. This Adjudicating Authority vide order dated 12.02.2020 in IA 638 of 2019 considered it appropriate to await for the outcome of Appeal filed by Corporate Debtor against the order of admission. In this order, the Adjudicating Authority also mentioned the fact that Hon'ble NCLAT had expected the RP to continue the Corporate Debtor as going concern. Apart from this, we also find that CGST and Central Excise Commissinerate has also filed a claim of excise dues arising out of order dated 29.10.2015. Considering

this factual position, this Adjudicating Authority had thought it proper to seek the details of assets and valuation thereof to proceed with the matter. However, against such directions, RP moved before Hon'ble NCLAT and Hon'ble NCLAT vide its order dated 14.08.2020 passed in Appeal No.683 of 2020 directed us to dispose of application within one week. Copy of this order was filed by the counsel on the date of hearing which had already been fixed on 03.09.2020. Thus, there appears to be some reasons to verify the bonafides of application filed for passing of order of liquidation. Having stated so, now we look into other material aspects. The Committee of Creditors (COC) has passed the following resolution:

Any other matter

Item 1 - To initiate liquidation proceedings for the Corporate Debtor

Committee of Creditors (COC) after understanding the current status of the unit and after seeing the conditions of the factory site has concluded that the Corporate Debtor be liquidated in accordance with the provisions of section 33(2) of the Insolvency and Bankruptcy Code (Amendment Act), 2019. An appropriate application be made immediately to Adjudicating Authority for liquidations of the Corporate Debtor.

Committee of Creditors (COC) desired confirmation of Mr. Shyam Sundar Rathi to act as a liquidator in the event of liquidation gets approved by the Hon'ble NCLT at a following fee:

Liquidators' Fee

Amount of Realization	of	First 6 months from date of NCLT Order	Next 6 months

Net realization	3%	2%
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Net realization would mean that sale proceeds of the asset less the Insolvency Resolution Process cost (for e/g IRP Fee, RP fee, Valuers' fee, transaction auditor fee, security agencies fee, various OPE incurred by IRP/RP/Liquidator, Advocate fee, Ad expenses) but would exclude the liquidators' fee. Taxes would be payable over and above the fee.

50% of the above fee will be paid on amount realized while the balance will be paid on making payment to the Lenders.

Mr. Rathi confirmed the above arrangement.

5. From perusal of the above, it is apparent that no resolution has been passed as regard to proceeding with the liquidation of Corporate Debtor which is required in terms of Regulation 39C of Corporate Insolvency Resolution Process Regulations, 2016. Even percentage of voting has not been mentioned though this may not be of much significance as there is a sole Financial Creditor but still it is a requirement of law. It is apparent that no efforts at all have been made to find resolution Applicant as within period of less than two months from the insolvency commencement date, the application for liquidation of the Corporate Debtor has been filed and that too without bringing any material on record in support of its claims. Even from other business conducted in the said meeting of COC, nothing appears which could throw light for necessity of liquidation at first meeting of Committee of Creditors (COC) itself. We are further of the view that as per the

explanation of Section 33(2) of Insolvency and Bankruptcy Code, 2016, Committee of Creditors (COC) is empowered to take decision to liquidate the Corporate Debtor at any time after its constitution but the relevant material and resolution is required in that regard. Accordingly, we dismiss the application with liberty to file fresh application for liquidation duly supported by relevant material so that appropriate decision can be taken thereon. Thus, this application stands dismissed.

6. Accordingly, the present I.A. No. 638 of 2019 stands disposed-off.

Virendra Kumar Gupta
8/9/2020

**(Virendra Kumar Gupta)
Adjudicating Authority &
Member (Technical)**

(M)
8/9/2020

**(Madan B. Gosavi)
Adjudicating Authority &
Member (Judicial)**

PC