



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CA NO.87/2019
IN
CP (IB) NO.133/ALD/2017**

In the matter of
*An application under Section 33 of the Insolvency & Bankruptcy
Code, 2016*

In the matter of:

Anshul Gupta

..... Applicant/ Resolution Professional

In the matter of:

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED

.....Financial Creditor

Versus

SHAMKEN MULTIFAB LIMITED

.....Corporate Debtor

Order pronounced on 1st June, 2023

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearance :

Sh. Milan Singh Negi alongwith Sh. Zain Abbas, Advs.
: *For the Applicant/RP*

Sh. Dinkar Singh, Adv. : *For the CoC*

Sh. Arun Saxena alongwith Sh. Vikas Ashwani, Advs.
: *For the Ex- Management*

ORDER

1. The present application (CA No.87/2019) has been filed by the Resolution Professional (RP) of the Corporate Debtor seeking directions for initiating liquidation proceedings of the Corporate Debtor in terms of Section 33(1)(b)(i), (ii) & (iii)



of the Code and to appoint Mr. Sanjay Gupta, as the Liquidator of the Corporate Debtor.

- 2.** Briefly stated facts of the case are that in pursuance of an application filed U/s 7 by the Financial Creditor, the application was admitted vide order dated 29.05.2018 passed by this Tribunal and an Interim Resolution Professional (IRP) was appointed to conduct the CIRP of the Corporate Debtor. In pursuance of the admission order, the public announcement of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, appointment of IRP and invitation of claims from the creditors was made in FORM-A on 02.06.2018 in newspaper namely 'Business Standard' in English & Hindi.
- 3.** It is stated that Form-G was published and the last date for submission of Expression of Interest (EoI) was on 28.08.2018 and the last date for submission of Resolution Plan was 12.10.2018. In pursuance thereof, three EoIs were received, out of which, two were withdrawn. The party who remained in dispute submitted its Resolution Plan on 12.10.2018. However, EMD of ₹50 Lakhs was not provided, hence such Resolution Plan was not put before CoC for its consideration.
- 4.** Thereafter, CoC directed RP to issue fresh Form-G which was done and one Resolution Plan was received. However, this Resolution Plan was also withdrawn before the approval of the same by the CoC.



- 5.** It is stated that on 18.02.2019, an email was received from the Resolution Applicant namely Satya Narain Sharma submitting a resolution plan, being supported by the workers/ employees of the Corporate Debtor. Since, no EOI, no KYC and no 29A undertaking were received from the said Resolution Applicant, the RP replied to the said Resolution Applicant that he will not be able to entertain any new resolution plan, as the plan was to be submitted only 4 working days before the proposed date for closure of CIRP. The aforesaid communication between the RP and Resolution Applicant was communicated to the CoC Members.
- 6.** Therefore, in the 11th CoC meeting which was convened on 18.02.2019, the CoC decided to proceed with the liquidation of the Corporate Debtor with 100% voting share as there was no Resolution Plan. The RP also submitted to CoC that he was not willing to function as Liquidator and to appoint another Resolution Professional as Liquidator. Subsequently, on 22.02.2019, it was intimated by ARCIL, the largest lender in the case that the CoC has proposed to appoint Mr. Sanjay Gupta as the Liquidator of the corporate debtor.
- 7.** Hence, the RP filed an application under section 33(1)(b) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor.



8. We have perused the record and also heard the submissions made by the Ld. Counsel representing the RP.

9. Section 33(2) of the Code, is reproduced below :-

33. (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1 [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)

10. In view of the stated position as averred in the application and submitted by the Ld. Counsel for the RP as well as the provisions of Section 33 of the Code, we are inclined to allow the present application. We have found that despite having made all possible efforts by the RP acting on the advice of the CoC for inviting EOI and for submission of the Resolution Plan by the PRAs, no concrete and final proposal could be submitted. It was thereafter, only as per the commercial wisdom of the CoC in its 11th CoC meeting held on 18.02.2019, that the conscious decision has been taken for initiating liquidation process and accordingly, the RP had been directed to move the present application. It has been stipulated U/s 33(2) as reproduced above that where the RP during the CIRP intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less



than 66% (sixty-six) per cent of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order. In the present case, the Resolution to initiate the liquidation process has been taken by the CoC in its 11th CoC meeting as referred to above, by a majority of 100%, thus, would meet the bench mark of percentage share of voting prescribed under the aforesaid provisions of the Code.

- 11.** Section 33(2) of the Code empowers the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor

- 12.** In view of our foregoing discussions, we pass the following orders :-
 - a.** Prayers as sought for in CA.No.87/2019 filed by Mr. Anshul Gupta RP of Shamken Multifab Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;



- b.** Mr. Sanjay Gupta [Reg No.IBBI/IPA-001/IP-P00117/2017-18/10252], email: sanjaygupta@aaainsolvency.com, Phone: 9412705345, having address at E-10A, Kailash Colony, Greater Kailash-1, New Delhi 110048, whose name has been proposed by CoC, is hereby appointed as Liquidator as provided under section 34(1) of the Code subject. The consent in Form AA of Mr. Sanjay Gupta to act as a Liquidator of the Corporate Debtor has been filed *vide* Diary No.561 dated 25.03.2019. The credentials of the Mr. Sanjay Gupta, who would act as a Liquidator, have been verified by the LRA Ms. Aditi Kharbanda, from the IBBI website, and are found to be correct and valid.
- c.** The Liquidator is directed to forthwith take into his custody all the assets, properties and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under Section 35(1)(b) & (d) of the Code.
- d.** The Liquidator shall first try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and (f) of IBBI (Liquidation Process) Regulations, 2016. The Liquidator shall initiate liquidation process as envisaged under Chapter- III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.



- e.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- f.** All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- g.** The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h.** 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 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.
- i.** In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continues during the liquidation process by the Liquidator as a going concern.



IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

- j.** In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kanpur, Uttar Pradesh, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Uttar Pradesh, Kanpur.
- 13.** In view of the aforesaid order, the CA No.87/2019 stands disposed off accordingly.
- 14.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 15.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

-Sd-

(Ashish Verma)
Member (Technical)

1st June, 2023

-Sd-

(Praveen Gupta)
Member (Judicial)