

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

CA No.1208/2019
IN
CP (IB) No. 118/Chd/Pb/2019

Under Section 33(1) of Insolvency
and Bankruptcy Code, 2016.

In the matter of :

M/s V.K. Traders

... Operational Creditor

Vs.

M/s Tripurari Agro (Pvt.) Ltd.

... Corporate Debtor

And in the matter of:

CA No.1208/2019

Mr. Rajesh Kumar Loomba,
S/o Late Sh. Dharam Pal Loomba,
Resolution Professional/Applicant
M/s Tripurari Agro (Pvt.) Ltd,
C/o K-208, Kismat Complex,
Miller Ganj, G T Road,
Ludhiana.

... Applicant/Resolution Professional

Judgement delivered on: 7.02.2020

Coram: **Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)**
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)

For the Applicant :

Mr. Pulkit Goyal, Advocate

Per: Pradeep R. Sethi, Member (Technical)



CA No.1208/2019 IN
CP (IB) No. 118/Chd/Pb/2019

ORDER

(Handwritten signature)

The instant application is filed under Section 33(1) and (2) of the Insolvency and Bankruptcy Code, 2016 (**Code**) by the Resolution Professional (**RP**) for passing liquidation order in the case of M/s Tripurari Agro (Pvt.) Ltd. (**Corporate Debtor**).

2. It is stated that an Operational Creditor i.e. M/s V.K. Traders filed application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of the corporate debtor and that the same was admitted by the Adjudicating Authority (**AA**) vide order dated 07.06.2019 and vide the same order, Shri Suresh Kumar Bansal was appointed as Interim Resolution Professional (**IRP**). It is submitted that in the first meeting of Committee of Creditors (**CoC**) held on 05.07.2019, it was proposed to replace the IRP with the applicant as RP and vide order dated 19.07.2019, the applicant was appointed as RP by the AA.

3. It is submitted that the IRP received claims from two Financial Creditors and two Operational Creditors and constituted the CoC consisting of two Financial Creditors namely, Punjab National Bank having 58.44% voting share and Canara Bank having 41.56% voting share. It is stated that Form G was published in two newspapers on 23.08.2019 and last date for submission of expression of interest was fixed for 06.09.2019 but no expression of interest was received and it was therefore, decided in the 4th meeting of CoC conducted on 21.09.2019 to issue fresh Form G.

4. The RP is stated to have apprised the CoC in the 6th meeting conducted on 22.11.2019 that no expression of interest was received despite publication of Form G for the second time and therefore, agenda for liquidation



CA No. 1208/2019 IN
CP (IB) No. 118/Chd/Pb/2019

V. L. L. L. L. L.

of the corporate debtor was put forward. However, the suspended Director stated that he was in touch with some investor who has shown keen interest in the project and would very soon convince the investor to invest in the same and therefore, the agenda for liquidation was deferred by the CoC to its next meeting and directions were given to the suspended Director to submit the proposal in writing and make presentation for the proposal in the next meeting scheduled on 26.11.2019.

5. It is stated that in the 7th meeting of the CoC conducted on 26.11.2019, the suspended Director did not place any proposal/document and the CoC unanimously resolved to liquidate the corporate debtor in view of non-receipt of expression of interest. It is submitted that the CoC also approved the appointment of the applicant as Liquidator as well as the remuneration of the applicant for conducting liquidation proceedings and estimate of liquidation expenses.

6. It is prayed that an order be passed requiring the corporate debtor to be liquidated in the manner as laid down in the Code; public announcement be issued stating that the corporate debtor is in liquidation; and order be passed requiring sending of the liquidation order to the authority with whom the corporate debtor is registered.

7. We have carefully heard and considered the arguments of the learned counsel for the applicant and have also perused the record. The provisions of Section 33 (1) and (2) of the Code are as under:-

"33. Initiation of liquidation. –

(1) Where the Adjudicating Authority, -



CA No. 4208/2019 IN
CP (B) No. 118/Chd/Pb/2019

V. S. - 2019/11/27

(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.”

(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 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).

8. In the present case, it has been pleaded that the Form G was published in two newspapers on 23.08.2019 and last date for submission of expression of interest was fixed for 06.09.2019 but no expression of interest was received. It is further reported that the fresh Form G was also issued but again, no expression of interest was received. Further, in the 6th meeting of CoC conducted on 22.11.2019, the suspended Director had evinced interest in placing a proposal/document for bringing an investor for the project of the corporate debtor. However, in the next meeting of the CoC conducted on



CA No. 1208/2019 IN
CP (IB) No. 118/Chd/Pb/2019

V. J. [Signature]

26.11.2019, no such proposal in writing was placed before the CoC members. The CoC members thereafter unanimously decided to accord consent to the liquidation of the corporate debtor.

9. We however, note that as per details in para No.3 of the application, the last date for CIRP is stated to expire on 04.12.2019. The instant application has been filed on 05.12.2019 i.e. after the expiry of the CIRP. Therefore, the condition provided for in Section 33(2) of the Code that the intimation to the AA of the decision of the CoC to liquidate the corporate debtor should be made at any time during the CIRP is not satisfied.

10. The present application is therefore, being considered under Section 33(1)(a) of the Code. The AA has not received a resolution plan under Section 30(6) of the Code before the expiry of CIRP. Therefore, in view of the provisions of Section 33(1)(a) of the Code, it is directed that the corporate debtor M/s Tripurari Agro (Pvt.) Ltd. be liquidated in the manner as laid down in Chapter III of the Code. Directions are also being given for issuing a public announcement stating that the corporate debtor is in liquidation and requiring the order to be sent to the authority with which the corporate debtor is registered.

11. Section 34(1) of the Code *inter alia* states that where the AA passes an order for liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP under Chapter II shall, subject to submission of written consent by the RP to the AA in specified form, shall act as the Liquidator for the purposes of liquidation. The written consent of the RP Shri Rajesh Kumar Loomba to act as Liquidator for the liquidation process of the corporate debtor has been filed at Annexure A-10 of the application. The Law



CA No. 1208/2019 IN
CP (B) No. 118/Chd/Pb/2019

V. J. [Signature]

Research Associate has checked the credentials of Shri Rajesh Kumar Loomba and as per verification placed on record nothing adverse is reported against him. We therefore, appoint Shri Rajesh Kumar Loomba, Registration No. IBBI/IPA-002/IP-N00170/2017-18/10440, Email Id: rajeshloomba@gmail.com, Mobile No. 9216510901 as Liquidator for the liquidation process of the corporate debtor.

12. Regulation 39B, 39C and 39D of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations 2016**) are as under:-

“39B. Meeting liquidation cost.

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation.-For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

39C. Assessment of sale as a going concern.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation



V. Anand

Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(2) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

(c) the balance period of liquidation.”

13. In the present case, in the 7th meeting held on 26.11.2019, the CoC has taken a decision to liquidate the corporate debtor and also took decisions with regard to compliance of Regulations 39B and 39D of the CIRP Regulations 2016. However, since the decision of the CoC was not communicated to the AA within the time specified in the Code, the order for liquidation has been passed under Section 33(1) of the Code. Taking into consideration that decisions were taken by the CoC with regard to compliance of Regulations 39B and 39D of the CIRP Regulations 2016, we consider it reasonable to take into account these decisions in the subsequent discussion.



[Handwritten signature]

14. As regards Regulation 39B, the CoC has approved estimates of liquidation costs (revised) and value of liquid assets available to meet the liquidation costs. The CoC has also resolved that the difference between the estimated value of liquid assets and the estimated liquidation costs shall be borne by the Financial Creditors proportionately according to their voting share.

15. With reference to Regulation 39C-assessment of sale as a going concern, the CoC has not given any recommendations. Therefore, the Liquidator may take necessary action as per Regulation 32A(3) of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations 2016**).

16. As regards Regulation 39D, the CoC has resolved that the Liquidator shall be entitled to fee as per Regulation 4(2)(b) and 4(3) of the Liquidation Process Regulations, 2016. The fixation of the fee is not in accordance with Regulation 39D since the CoC has not fixed fee of the Liquidator for the period covered by Regulation 39D (a) and (b) of the CIRP Regulations, 2016. Therefore, the Liquidator fee will be as per Regulation 4(2)(a) and (b) as well as Regulation 4(3) of the Liquidation Process Regulations, 2016.

17. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 shall be strictly complied with. Some of the directions are as under:-

- i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;



CA No. 1208/2019 IN
CP (IB) No. 118/Chd/Pb/2019

V. Anand

- Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;
- ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator;
- iv) 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 effect and shall be vested in the Liquidator; and
- v) 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.

18. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 2016 Regulations and in Form B of Schedule II of



CA No. 1208/2019 IN
CP (IB) No. 118/Chd/Pb/2019

Vijay Kumar

these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

19. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

"(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location wherein the opinion of the liquidator, the corporate debtor conducts material business operations;

(b) on the website, if any, of the corporate debtor; and

(c) on the website, if any, designated by the Board for this purpose."

20. In accordance with Regulation 13 of the 2016 Regulations, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the 2016 Regulations every fortnightly thereafter.

21. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

22. The Liquidator shall take into his possession the assets of the Corporate Debtor.

23. Thus, CA No.1208/2019 stands disposed of.



CA No.1208/2019 IN
CP (IB) No. 118/Chd/Pb/2019

V. S. S. S. S.

24. Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, Punjab and Chandigarh. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

— Sd —
(Ajay Kumar Vatsavayi)
Member(Judicial)

Pronounced
in open court
Pradyumn

— Sd —
(Pradeep R. Sethi)
Member (Technical)

February 7, 2020.
arora



FREE OF COST COPY

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

No. _____
Date of Presentation As per order dtd 7-2-2020
of application for Copy of one Honble Tribunal, chd bench
No. of Pages 11
Copying Fee NIL
Registration & Postage Fee NIL
Total ₹ NIL
Date of Receipt &
Date of Preparation of Copy 7-2-2020
Date of Delivery of Copy 7-2-2020

(Signature)
7.2.2020

DD / DR / AR / Court Officer
National Company Law Tribunal
Chandigarh Bench, Chandigarh