IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, (BENCH IV)
C.A. 394/(ND)/2019
IN
Company Petition No. (IB)- 894/(ND)/2018

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor

IN THE MATTER OF:

LEKHRAJ BAJAJ (RP) .... **APPLICANT**

Versus

RAJEEV GUPTA .... **RESPONDENT**

IN THE MATTER OF:

ASHWIN KUMAR BABU LAL DAVE

SOLE PROPRIETOR of M/s. R. ASHWIN KUMAR & Co.

.... **PETITIONER**

Versus

M/s ALKA FABRICS PRIVATE LIMITED

.... **CORPORATE DEBTOR**

Coram:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
SH. HEMANT K. SARANGI
HON'BLE MEMBER (TECHNICAL)

Presents:

For the CoC	- Mr. Neeraj Mahajan, Advocate for HDFC Bank
For RP	- Mr. Abhishek Anand, Mr. Mohak Sharma
For the Respondent	- Mr. Imran Khan, Mr. Rajeev Gupta, Advocate

MEMO OF PARTIES

LEKHRAJ BAJAJ

RESOLUTION PROFESSIONAL

For M/s Alka Fabrics Pvt. Ltd.

Having office at:

107, Agarwal Prestige Mall,

Adjoining to M2K Pitampura,

New Delhi-110034

... Applicant

VERSUS

RAJEEV GUPTA

G-315, Preet Vihar,

New Delhi-110092

... Respondent

***Pronounced on:* 07.01.2020**

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. This is an application filed by the Resolution Professional under Section 33 (2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for passing an order for liquidation of the corporate debtor, M/s Alka Fabrics Private Limited.

2. Facts in brief are that the Operational Creditor, Mr. Ashvin Kumar Babulal Dave, sole proprietor of M/s. R. Ashwin Kumar & Co. had filed an application bearing no. IB-894(ND)/2018 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor, M/s Alka Fabrics Private Limited. The said application was admitted by this Tribunal vide order dated 30.10.2018 and Mr. Lekhraj Bajaj was appointed as Interim Resolution Professional (IRP).

3. The Resolution Professional (RP) submitted the present application no. CA- 394(ND)/2019, in the present application the RP states that, In terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in FORM-A on 01.11.2018. The Public announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional (IRP), constituted a Committee of Creditors, which comprised of sole financial

creditor, HDFC Bank Ltd. In its first meeting held on 26.11.2018, Committee of Creditors appointed the IRP to act as Resolution Professional (RP).

5. Third CoC meeting was convened on 07.02.2019 wherein, the Applicant, RP apprised the members of the CoC that, pursuant to the last meeting, the Applicant issued invitation for Expression of Interest in FORM G for the Corporate Debtor however, no Expression of Interest has been received for the same by the Applicant RP. In view of the same it was discussed and approved by the members of the CoC to publish revised FORM G with revised dates. In view of the same the last date of Expression of Interest was extended and publication in the newspapers i.e., Financial Express (English) and Jan Satta (Hindi) dated 09.02.2019 was made by the applicant RP with the last date of submissions as 19.02.2019 The minutes of third meeting of the CoC dated 07.02.2019, along with the copy of Form-G as published in newspapers, is annexed along with the application.

6. The sixth meeting of the CoC was convened on 16.07.2019 wherein, the Applicant RP apprised the members of the

CoC that no resolution plan has been received till date. Further, the member of the CoC, after discussions and deliberations that there is no other way except to liquidate the Corporate Debtor, decided to put the following resolution for voting:

> *"Resolved that the application for liquidation be moved to Hon'ble National Company Law Tribunal."*

Records reveal that on putting to vote the resolution was passed unanimously by 100% voting share by sole CoC member M/s HDFC Bank Ltd.

7. The Resolution Professional discloses that no further assets remain for realisation in the company and corporate debtor has no potential assets, including intangible assets, against which resolution process is to be carried out, hence neither valuation of the assets can be done nor Expression of Interest can be invited.

8. In the aforesaid factual background and in the absence of any resolution plan; there is no other alternative but to seek for liquidation of the corporate debtor under Section 33 of the Code.

9. In view of the above position, the application is allowed, ordering liquidation of the corporate debtor, M/s. Alka Fabrics Private Limited, in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

1. Mr. Vikas Chandra Misra, holding registration no. IBBI/IPA-001/IP-P-01449/2018-2019/12276, email cavcmisra@gmail.com, mobile no. 9336618600 is appointed as Liquidator in terms of Section 34(1) of the Code;

2. Mr. Vikas Chandra Misra is directed to issue Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

3. 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;

4. 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;

5. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

6. 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 and

in accordance with the relevant rules and regulations.

7. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine any undervalued and preferential transactions etc.

8. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

9. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

10. C.A. 394(ND)/2019 filed in IB 894/(ND)/2018 is disposed of in terms of the aforesaid order.

11. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

(HEMANT K. SARANGI)
MEMBER (TECHNICAL)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)