IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: SH. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

SH. RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 119/JPR/2020
in
CP No. (IB) – 159/9/JPR/2019

UNDER SECTION 33 & 34 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF

M/S SONA PROCESSORS (INDIA) LIMITED

...OPERATIONAL CREDITOR

VERSUS

G.P. COTTFAB PRIVATE LIMITED

...CORPORATE DEBTOR

AND IN THE MATTER OF

IA No. 119/JPR/2020

SARITA DUCK,
Resolution Professional of G.P Cottfab Pvt. Ltd.
421, Rani Sati Nagar,
Gautam Marg, Nirman Nagar
Jaipur-302019, Rajasthan

...APPLICANT

For the Applicant: Amol Vyas, Adv.

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Order Pronounced On: 02.03.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. The instant Application, IA No. 119/JPR/2020, is filed by the Resolution Professional of G.P Cottfab Private Limited ('Applicant' / 'RP') under Sections 33 and 34 of the Insolvency and Bankruptcy Code, 2016 ('Code') for initiation of Liquidation Proceedings against G.P Cottfab Private Limited ('Corporate Debtor').

2. This Adjudicating Authority, vide order dated 12.09.2019, had admitted the application filed by M/s Sona Processors (India) Limited under Section 9 of Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof appointed Mr. Prashant Aggarwal as the Interim Resolution Professional ('IRP').

3. In compliance with the provisions of the Code, the IRP constituted the CoC. The first meeting of the CoC was held on 11.10.2019, wherein the CoC unanimously resolved to replace the IRP, i.e. Mr. Prashant Aggarwal. Consequently, Ms. Sarita Duck was appointed as Resolution Professional ('RP') by this Adjudicating Authority vide its order dated 11.12.2019. It is also seen that the RP had appointed five registered valuers to determine fair and liquidation value of different categories of assets of the Corporate Debtor

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in accordance with Regulation 35 of the CIRP Regulations.

4. It is submitted that the IRP had initially effected publication of Form G on 26.11.2019 and invited Expression of Interest ('EOI') from prospective resolution applicants. The last date for submitting the EOI was fixed as 16.12.2019 and last date of submitting the resolution plan was fixed at 30.01.2020.

5. It is submitted that till 16.12.2019, the RP did not receive any resolution plan. Also, no person had expressed any interest in the Corporate Debtor.

6. It is submitted that since the maximum period of 180 days was expiring on 10.03.2020 and no resolution plan was received, the COC in its 5th meeting held on 29.02.2020, unanimously resolved to liquidate the Corporate Debtor. Copy of the minutes of the 5th meeting of CoC is annexed as Annexure 3 of the Application.

7. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are seen as follows: -

> *"33. Initiation of liquidation. –*
> *(1) Where the Adjudicating Authority, -*
> *(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*

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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 creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)"

8. The Hon'ble National Company Law Appellant Tribunal ('NCLAT'), in *Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."

9. **Prescribed period for filing application** - In the present case, the application under Section 9 of Code was admitted on 12.09.2019 and the period of 180 days was ending on 10.03.2020. It is noted that the CoC, by

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100% voting, resolved to liquidate the Corporate Debtor on 29.02.2020 and, as a consequence thereof, the instant application is filed by the Resolution Professional on 12.03.2020. Thus, in view of the resolution dated 29.02.2020, this Application is considered as filed within the prescribed period.

10. **Appointment of Liquidator and fee to be paid–** Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the liquidator for the purpose of liquidation. The relevant provisions of Sections 34(1) of the Code are as follows: -

> *"(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4).*
> *(2) ...*
> *(3) ...*
> *(4) The Adjudicating Authority shall by order replace the resolution professional, if–*
> *(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
> *(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or*
> *(c) the resolution professional fails to submit written consent under sub-section (1)."*

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11. It is seen that no resolution is passed by the CoC for appointment of RP as Liquidator. Also, the RP has not filed written consent along with the instant Application. In view of the same, this Tribunal appoints Mr. Jai Narayan Khandelwal having Registration No. IBBI/IPA-001/IP-P00208/2017-18/10408 and email address khandelwaljn@rediffmail.com and contact number 9414188696, as the Liquidator of the Corporate Debtor. Mr. Jai Narayan Khandelwal shall file written consent in Form-AA within two weeks of this order.

12. Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

13. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – The COC in its 5th meeting held on 29.02.2020 has not decided the estimated liquidation cost. The liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

14. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** – No resolution is passed by the COC in its 5th meeting held on 29.02.2020 under Regulation 39C. The liquidator is, therefore,

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directed to take necessary action in accordance Regulation 32A and other relevant regulations of IBBI (Liquidation Process) Regulations, 2016.

15. **Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016) –** The CoC in its 5th meeting while passing a resolution for the fees of the liquidator as per Regulation 39D of CIRP Regulation, resolved that the liquidator shall be entitled to fees in such manner as prescribed under Regulation 4 of IBBI (Liquidation Process) Regulations, 2016.

16. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, G.P Cottfab Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under: -

    (i) 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 by or against the Corporate Debtor;

    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; and

    (ii) 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; and

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(iii) 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; and

(iv) 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) 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 liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the Liquidator; and

(vi) The Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders 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; and

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(viii) In accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and shall file regular progress reports as per Regulation 15.

17. **Pending Applications, if any, and its effect-** It is seen that following IAs filed by RP before the Adjudicating Authority are pending:

Sr. No.	**IA NO.**	**SECTION**	**PRAYER**
1	IA No. 335/JPR/2019	Under Section 19(2) of Code	To direct the personnel, Promoters and any other person of the Corporate Debtor to provide requisite information and documents and to cooperate with the RP.
2	IA No. 238/JPR/2020	Under Section 43 of Code	To declare certain transactions as preferential transaction and also to direct the respondent to reverse back such transactions.
3	IA No. 318/JPR/2020	Under Section 60(5) of Code	To seek exemption from filing of Income Tax returns for the year 2018-19 and 2019-20 under Income Tax Act, 1961.
4	IA No. 320/JPR/2020	Under Section 60(5) of Code	To seek exemption from filing of Annual Statutory Returns for the year 2018-19 and 2019-20 under Companies Act, 2013

Since the above stated pending **IA No. 335/JPR/2019, IA No. 238/JPR/2020, IA No. 318/JPR/2020 and IA No. 320/JPR/2020**, have bearing on the issues in liquidation proceedings, they are directed to be listed along with the CP No. 159/9/JPR/2019 when the matter is next placed before this Adjudicating Authority. If so advised, the liquidator may move

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appropriate applications for prosecution of the said applications by a suitable person / entity instead of the RP and the Liquidator is not precluded from carrying on the said proceedings.

IA No. 125/JPR/2020: It is further seen that IA No. 125/JPR/2020 was filed by the RP to report the minutes of 5th meeting of CoC. The items of the said meetings of CoC and aspects related thereto have been considered in this Order. The same is not required for any further reference. Thus, IA No. 125/JPR/2020 is also disposed of along with this order in IA No. 119/JPR/2020.

18. In view of the foregoing, IA No. 119/JPR/2020 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Jaipur, forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

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SH. RAGHU NAYYAR,
TECHNICAL MEMBER

SH. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER