

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

**IA No.138/2020
IN
CP (IB) No. 398/Chd/Hry/2018**

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

In the matter of :

State Bank of India ...Financial Creditor
Vs.
M/s Priknit Retails Ltd. ...Corporate Debtor

And in the matter of:

IA No.138/2020

Mr. Sanjay Kumar Aggarwal,
Resolution Professional-Applicant
M/s Priknit Retails Ltd.,
R/o # 14, New Punjab Mata Nagar,
Main Street, Pakhowal Road,
Ludhiana, Punjab-141013
Professional ...Applicant-Resolution

Judgement delivered on: 18.05.2020

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

For the Applicant : 1. Mr. Puneet Jain, Advocate for Mr. Rakesh
Gupta, Advocate.
2. Mr. Sanjay Kumar Aggarwal, RP in person.

Per: Pradeep R. Sethi, Member (Technical)

ORDER

The instant application is filed under Section 33(1) read with
Section 34 of the Insolvency and Bankruptcy Code, 2016 (**Code**) and read

with Regulation 3 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016 (**Liquidation Process Regulations, 2016**).

2. Vide order dated 11.09.2019, petition under Section 7 of the Code filed by State Bank of India was admitted and it was directed that Corporate Insolvency Resolution Process (**CIRP**) be initiated in the matter of Priknit Retails Ltd. (**Priknit**) and Shri Sanjay Kumar Aggarwal was appointed as the Interim Resolution Professional (**IRP**).

3. It is submitted that the Committee of Creditors (**CoC**) was constituted with two financial creditors i.e. State Bank of India having 90.92% voting share and ASREC (India) Ltd. having voting share 09.08%. It is further stated that in the first meeting of CoC held on 05.10.2019, the IRP was confirmed as Resolution Professional (**RP**).

4. It is submitted that the RP invited Expression of Interest (**EOI**) by way of Form G on 15.11.2019 and that two EOIs were received but no resolution plan was received till the last date i.e. 14.01.2020. 7 CoC meetings are stated to be conducted before the 8th meeting was held on 06.03.2020. It is submitted that in this meeting, the CoC was informed by the applicant that despite the issue and publication of EOI on 15.11.2019, no resolution plan was received and that Priknit is not a going concern as there are no operations of the company for the last many years, there is no inventory (raw material/finished goods/products) and there is no plant and machinery, no workmen or employees, no proper books of account and or statutory records/registers, no complete possession of the company land/building is given by the directors of the suspended board.

5. It is stated that in the 8th meeting, the CoC decided not to request for extension of the CIRP and to recommend the liquidation of Priknit.

6. It is submitted that the CoC also passed resolution to appoint Shri Sanjay Kumar Aggarwal present RP as Liquidator and the consent form AA of Shri Sanjay Kumar Aggarwal is attached as Annexure A-7.

7. It has been prayed that order be passed requiring Priknit to be liquidated in a manner as laid down in the Code, Shri Sanjay Kumar Aggarwal present RP be appointed as Liquidator, public announcement be issued stating that Priknit is in liquidation, order be passed requiring sending of copy of liquidation order to the authority (MCA/ROC) with whom the Priknit is registered.

8. We have carefully considered the submissions and arguments of the learned counsel for the applicant and have also perused the record. Section 33 (1) of the Code is 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 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.”

9. In the present case, we find that the CoC has concluded that Priknit is not a going concern as there were no operations, no inventory (raw material/finished goods/products), no plant and machinery no workmen or employees, no proper books of account and/or statutory records/registers and even complete possession of the factory land/building is not given by the directors of the suspended board. The CoC also found that there were no operations for the last many years. The CoC noted that in response to issue and publication for invitation of EOI on 15.11.2019, two EOIs were received but did not result in any resolution plan. In the 8th meeting of the Coc held on 06.03.2020, the CoC has resolved with 90.08 % voting share to liquidate Priknit.

10. In view of the above discussion and since before the expiry of the CIRP on 09.03.2020, no resolution plan was received by the Adjudicating Authority (**AA**), it is held that the requirements of Section 33 (1)(a) of the Code are satisfied. We therefore, direct the liquidation of Priknit Retails Ltd. in the manner as laid down in Chapter III of the Code. Directions for issue of public announcement stating that Priknit is in liquidation and requiring such order to be sent to the authority with which the Priknit is registered are being issued below.

11. Section 34(1) 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 the specified form, shall act as a Liquidator for the purposes of liquidation.

12. Shri Sanjay Kumar Aggarwal, RP has submitted his written consent dated 06.03.2020 in Form AA. The Law Research Associate of this Tribunal has checked the credentials of Shri Sanjay Kumar Aggarwal and as per verification, there is nothing adverse against him. In view of the above, we appoint Shri Sanjay Kumar Aggarwal, Registration No. IBBI/IPA-002/IP-N00126/2017-2018/10295, resident of #14, New Punjab Mata Nagar, Main Street, Pakhowal Road, Ludhiana-141013, Mobile No.98761-05414, E-mail: sanjayaggarwal.fcs@gmail.com as Liquidator in the matter of Priknit Retails Ltd.

13. 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 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.”

14. We note that in the present case, the CoC in its 8th meeting held on 06.03.2020 has made recommendation with reference to the above Regulations. The CoC also decided to liquidate Priknit with the voting share

of 90.92%. Therefore, the recommendations of the CoC are being taken into consideration.

15. As regards Regulation 39 B, the CoC has estimated the liquidation cost. The CoC has also resolved that the other unforeseen/contingency expenses shall be a part of the liquidation cost on actual basis and all the expenses as incurred during the course of the liquidation shall be paid by the secured financial creditors in proportionate share within 7 days to the liquidation account of Priknit. CoC resolved that initially to meet out the liquidation expenses, an amount/funds to the tune of ₹2.00 lacs shall be created or kept in liquidation account by the financial creditor within 7 days after receipt of certified copy of liquidation order and intimation of opening of liquidation account under the name and style of corporate debtor namely Priknit Retails Ltd. by the Liquidator as appointed by AA for which proper accounts shall be maintained by the Liquidator under intimation to the financial creditors.

16. As regards Regulation 39C, the CoC has concluded that the company is not a going concern.

17. As regards Regulation 39D, the CoC has recommended that the Liquidator be paid fees in terms of Regulation 4(2)(b) of the Liquidation Process Regulations.

18. 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;

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.

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

20. 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.”

21. 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 thereafter.

22. 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.

23. The Liquidator shall take into his possession the assets of the corporate debtor.

24. Thus, IA No.138/2020 stands disposed of.

25. Copy of this order be supplied to the Applicant-Resolution Professional as well as to the Registrar of Companies, NCT of Delhi and Haryana. 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)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

May 18th, 2020.
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