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

IA No. 1768/2022
In
CP(IB) No. 645/Chd/Pb/2019

Under Section 33 (1) & (2) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s Somal Pipes Private Ltd. **…Operational Creditor/Petitioner**

Vs.

M/s Mahajan Steel Furnace Private Limited

…Respondent-Corporate Debtor

<u>And in the matter of IA No. 1768/2022</u>

Prem Chand Goyal, Resolution Professional
M/s. Mahajan Steel Furnace Private Limited
having its registered office at
C/o H. No. 1-F, Model Town, Adjoining Municipal House,
Patiala-147001

…Applicant/Resolution Professional

Judgement delivered on: 20.04.2023

Coram: **Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)**
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Resolution Professional: Mr. Harsh Garg, Advocate
Mr. Pulkit Goyal, Advocate

<u>Per: Harnam Singh Thakur, Member (Judicial)</u>

JUDGMENT

IA No. 1768/2022

The present Application is being filed by Mr. Prem Chand Goyal, Resolution Professional (RP) of M/s. Mahajan Steel Furnace Private Limited (Corporate Debtor) under section 33(1) & (2) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'), for initiation of liquidation of the corporate debtor.

2. It is prayed by the applicant to pass an order requiring the corporate debtor, i.e., M/s Mahajan Steel Furnace Private Limited, to be liquidated in a manner as laid down in the Insolvency and Bankruptcy Code, 2016, and appoint Sh. Prem Chand Goyal as a liquidator; to issue a public announcement stating that the corporate debtor is in liquidation; to pass an order requiring to send liquidation order to the Authority with whom the corporate debtor is registered.

3. It is submitted that the CIRP of the corporate debtor commenced from 25.05.2022 in pursuance to the order of even date passed by this Tribunal.

4. The Interim Resolution Professional has constituted the Committee of Creditors with one sole financial creditor, i.e. Punjab National Bank holding a 100% voting share. The Interim Resolution Professional was confirmed as Resolution Professional in the 2nd meeting of CoC held on 05.07.2022.

5. In the 3rd meeting of CoC held on 28.07.2022, the agenda for the appointment of two independent valuers for the valuation of Land and Machinery was passed. Copies of minutes of the 3rd meeting of CoC held on 28.07.2022 is attached as Annexure A-4 of the application.

6. It is submitted that the Resolution Professional had issued Form-G dated 04.08.2022 in “The Tribune” (English) and “Punjabi Tribunal” (Punjabi) on 04.08.2022. A copy of Form-G published on 04.08.2022 is attached as Annexures A-5 of the application.

7. The applicant received five EOI(s) pursuant to the publication of Form G on 04.08.2022. However, none of them had submitted their Resolution Plan till the last date. One PRA had submitted an EMD of Rs. 5 Lakhs and prayed for an extension of time for submitting the Resolution Plan. In the 4th CoC meeting held on 19.10.2022, the Resolution Plan of the Resolution Applicant was discussed, and Resolution Applicant agreed to submit the revised Resolution Plan, which is attached as Annexure A-6 of the application.

8. In the 5th meeting of the CoC, the discussion on the revised Resolution Plan took place, and after the discussion, the CoC members did not find the plan satisfactory. It was further informed by the CoC members to the RP that they want to proceed with the liquidation of the corporate debtor as the business was running on a leased property which has already expired, and the lease obligation of Form G could not serve any purpose. The copies of the minutes of the 5th meeting of the CoC dated 09.11.2022 are attached as Annexure A-7 of the application.

9. In the 6th meeting of CoC held on 14.11.2022, the resolution plan as submitted by the PRA was put for voting, and the same was rejected by COC. Further, the agenda for the liquidation of the corporate debtor was approved with a 100% voting share. After discussion, the sole member of the CoC, namely, Punjab National Bank with 100% voting right, passed the following resolution in agenda item No. 6 in the 6th CoC meeting for liquidation of the Corporate Debtor:

"RESOLVED THAT the liquidation of the Corporate Debtor is hereby approved as provided under section 33 of Insolvency and Bankruptcy Code, 2016.

FURTHER RESOLVED THAT the Resolution Professional i.e. Mr. Prem Chand Goyal is hereby authorized to file an application before Adjudicating Authority for initiation of liquidation proceedings of the Corporate Debtor."

The copies of the minutes of the 6th meeting of the CoC dated 14.11.2022 are attached as Annexure A-8 of the application.

10. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and the relevant provision is reproduced below:

"Section 33(2): Initiation of liquidation
(1) …………
(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 [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 clauses (i), (ii) and (iii) of clause (b) of sub-section (1).
[Explanation. - For the purpose of this sub-section, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

11. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

i. before the expiry of the Insolvency Resolution Process period;
ii. before the expiry of theMaximum 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;

iii. If no resolution plan is received under sub-section (6) of Section 30; and

iv. after the CoC approval of the proposal for the liquidation with not less than sixty six percent of the voting share.

12. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

13. The Liquidator's Fee shall be structured in the manner mentioned below as ratified in the 6th Meeting of CoC:

> *"RESOLVED THAT Resolution Professional i.e. Mr. Prem Chand Goyal is hereby proposed to be appointed as a liquidator to carry on the liquidation proceeding of the Corporate Debtor is be hereby approved." FURTHER RESOLVED THAT the Liquidator shall be paid fees as per Regulation 4(a) & (b) of the Insolvency and Bankruptcy. Board of India (Liquidation Process) Regulations, 2016."*

14. It is noted that the best estimate of liquidation cost has been ratified by the Coc in the 6th CoC meeting at Item No. 6 and the financial creditor shall deposit the estimated amount in the liquidation account..

15. It is further noted that the CoC in the 6th meeting at item No. 7 and 8 has passed the resolution with regard to the sale of the Corporate Debtor as a going concern and for compromise or arrangement as referred in Regulation 2B(1) of IBBI (Liquidation Process) Regulation, 2016 which is reproduced as below:-

> *"RESOLVED THAT the Liquidator shall at first explore for compromise or arrangement as referred to under sub-regulation (1) of Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016."*

> *"RESOLVED THAT the assets of the Corporate Debtor may be assessed members of CoC and further the resolution for sale as a going concern be hereby ratified and approved."*

16. In the 6th meeting of CoC held on 14.11.2022, the present Resolution Professional has been resolved to be appointed as Liquidator. The consent of Mr. Prem Chand Goyal in Form AA dated 14.11.2022 is attached as Annexure A9 of the present application.

17. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, i.e. **M/s Mahajan Steel Furnace Private Limited,** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

18. Accordingly, by exercising our power under Section 33(2) pass the following order:-

I. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;

II. Mr. Prem Chand Goyal, bearing Registration No. IBBI/IPA-001/IP-P01780/2019-20/12710, Mobile No. 9813621782, e-mail: pcg47758@gmail.com is hereby appointed as liquidator;

III. Mr. Prem Chand Goyal, Shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations;

IV. Mr. Prem Chand Goyal is directed to file his written consent along with an affidavit within 7 days, stating therein that no disciplinary proceedings have been initiated against him by the Board or the insolvency professional agency;

V. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

VI. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. 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;

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

VIII. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

IX. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016, every fortnightly thereafter;

X. The Liquidator shall take necessary legal action to recover the trade receivables and other credits, such as loans and advances from the parties, which are reflected in the latest Balance Sheet of the

Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.

XI. 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.

XII. 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 an effect and shall be vested in the liquidator;

XIII. 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

XIV. The liquidator will be entitled to the protection of action taken in a good faith as per the provisions of Section 233 of the Insolvency and Bankruptcy Code 2016

XV. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

XVI. A copy of this order be sent by the Registry to the concerned Registrar of Companies (RoC) for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT, within a period of 30 days.

XVII. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

XVIII. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

19. Thus, IA No. 1768/2022 stands allowed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

April 20, 2023
SA/PB