IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
I.A. No. 4172 OF 2020
In
Company Petition (IB) No. 3196/ND/2019

In the matter of:
The Insolvency and Bankruptcy Code, 2016

AND
In the matter of:
APPLICATION UNDER SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 ON BEHALF OF THE RESOLUTION PROFESSIONAL FOR ALUPAN COMPOSITE PANELS PVT. LTD. (COMPANY UNDERGOING CORPORATE INSOLVENCY RESOLUTION PROCESS) SEEKING ORDER UNDER SECTION 33 (1) FOR LIQUIDATION OF THE CORPORATE DEBTOR.

AND
In the matter of :
M/S KESHAV ENTERPRISES **...PETITIONER**

VERSUS

ALUPAN COMPOSITE PANELS PVT. LTD. **...CORPORATE DEBTOR**

And in the matter of:

ASHOK KUMAR DEWAN'
RESOLUTION PROFESSIONAL
FOR ALUPAN COMPOSITE PANELS PVT. LTD.
OFFICE BUILDING NO. B-1/D-2,
MOHAN CO-OPERATIVE INDUSTRIAL ESTATE
NEW DELHI-110044

...APPLICANT

VERSUS

1. **NITIN GARG**
   ND-27, PITAMPURA, NEW DELHI-110034
   HAVING OFFICE AT:
   7D. HANSALYA BUILDING,
   15, BARAKHAMBA ROAD,
   NEW DELHI-110001 **...RESPONDENT NO. 1**

2. **VINOD GARG KUMAR**
   ND-27, PITAMPURA, NEW DELHI-110034

HAVING OFFICE AT:
7D. HANSALYA BUILDING,
15, BARAKHAMBA ROAD,
NEW DELHI-110001 **...RESPONDENT NO. 2**

3. **MAYANK GARG**
ND-27, PITAMPURA, NEW DELHI-110034
HAVING OFFICE AT:
7D. HANSALYA BUILDING,
15, BARAKHAMBA ROAD,
NEW DELHI-110001 **...RESPONDENT NO. 3**

4. **VRINDA GARG**
ND-27, PITAMPURA, NEW DELHI-110034
HAVING OFFICE AT:
7D. HANSALYA BUILDING,
15, BARAKHAMBA ROAD,
NEW DELHI-110001 **...RESPONDENT NO. 4**

ORDER DELIVERED ON: 18.02.2021

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Mr. Abhishek Anand, Ld. Coursel for RP
For the Respondent/ Corporate Debtor: Mr. Ishwar Mahopatra, Ld. Counsel for Suspended Board of Director, Adv. Ankur Mittal, Adv. Meera Murali for the Committee of Creditors.

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. By filing this application, the applicant/RP has made a following prayers: -
   a. ***Allow the present petition; and***
   b. ***Pass an order under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 to liquidate the Corporate Debtor as approved by the Committee of Creditors in its 6th meeting with 80.23% voting share;***
   c. ***Consequently, pass an order for appointment of applicant as the Liquidator of the Corporate Debtor for conducting the liquidation of the Corporate Debtor and permit the liquidator to invite the scheme of Compromise and***

arrangement under Section 230 of the Companies Act, 2013 in terms of Regulation 2B of the Liquidation Process Regulation, 2016 as decided by the Committee of Creditors for 90 days;

d. ***Allow the liquidator to keep the Corporate Debtor as a going concern in accordance with the provisions of the Code and Regulations, post exploring option of Section 230 of Companies Act and permit the liquidator to sell the Corporate Debtor as a going concern in terms of Regulation 32 as decided by the Committee of Creditors.***

e. ***Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the case.***

2. The facts mentioned in the application in short is that this Adjudicating Authority vide its order dated 25.01.2020 was pleased to admit the company petition i.e. Company Application (IB) No. 3196 (ND) of 2019 filed on behalf of the Operational Creditor M/s Keshav Enterprises against the Corporate Debtor for initiating the Corporate Insolvency Resolution Process (CIRP) under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code).

3. Vide order dated 25.01.2020 this Adjudicating Authority while admitting the application and declaring the moratorium inter-alia, appointed Mr. Dharmendra Kumar as an Interim Resolution Professional ("IRP").

4. In terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the IRP made a public announcement in FORM- A on 04.02.2020 in Financial Express (English) New Delhi Edition, Jansatta (Hindi) New Delhi Edition. In terms of Regulation 6 (2) (c), the last date for submission of proof of claim was specified as 18.02.2020.

5. The first meeting of CoC was held on 02.03.2020 wherein Mr. Ashok Kumar Dewan was appointed as Resolution Professional with the approval of members of CoC with 100% voting in favour.

6. Pursuant to above, the members of CoC has filed an application before this Adjudicating Authority for replacement of IRP namely Mr. Dharmendra Kumar and appointment of Mr. Ashok Kumar Dewan as the Resolution Professional. However, the Application could not take

up due to lockdown imposed by Government of India in view of the outbreak of Covid-19.

7. Further, second meeting, the Committee of Creditors was convened on 26.05.2020, wherein, the IRP apprised the members of the CoC that the promoters of the Corporate Debtor vide email dated 26.05.2020 sent to the IRP have expressed their willingness to submit a resolution plan to revive the Company within next 15 days. Further, in support of their right to submit a resolution plan even before issue of Information memorandum (IM) under Section 29 of IBC 2016 and invitation of resolution plan under Section 25(2) (h) of IBC 2016.

8. Further, vide order dated 27.05.2020, this Adjudicating Authority allowed the application for replacement of IRP and appointment of Applicant as the Resolution Professional for the Corporate Debtor.

9. The third meeting of the Committee of Creditor was convened on 02.06.2020, wherein, the Applicant informed the members of Committee of Creditor about the order dated 27.05.2020 passed by this Adjudicating Authority and informed that the Applicant has been appointed as the Resolution Professional of the Corporate Debtor. Further, the Applicant also shared the status of pending items, in the said list, it was specifically provided what documents/information/record is still required to be handed over to the Applicant by the Directors of the Corporate Debtor. The Applicant put forth the agenda for Invitation of Expression of Interest before the members of the CoC and the eligibility criteria for the prospective resolution applicants to submit their Expression of Interest. The members of the CoC approved the eligibility criteria and directed the Applicant to publish Form — G.

10. The Applicant in terms of Section 25(2)(h) read with Regulation 36(4) of the C1RP Regulations, 2016 invited Expression of Interest for submissions of Resolution Plans for the Corporate Debtor and the same were published in Financial Express (Delhi NCR Region) (English) and Jansatta (Delhi NCR Region) (Hindi) on 18.06.2020 with the last date of submission of expression of interest as 03.07.2020.

11. The fourth meeting of the Committee of Creditors was convened on 18.07.2020, wherein the Applicant apprised the members of the CoC that pursuant to the publication of Form — G, the Applicant received two Expression of Interest till the last date for submission of

EOI and the provision list of eligible prospective resolution applicants were issued in terms of Regulation 36A (10) of CIRP Regulations as follows:

(a) Mr. Nitin Garg, Promoter under MSME Category

(b) M/s. Ranjana Enterprises Group

Applicant further apprised that the final list of prospective resolution applicants in terms 36A(12) of the CIRP Regulations was scheduled to be issued and shared with the members of the CoC on 23.07.2020. Thereafter, the Applicant put forth the agenda for approval of Request for Resolution Process and Evaluation Matrix. The members of the CoC approved the resolution for approval for Request for Resolution Plan and Evaluation Matrix with 80.32% voting share.

12. In the meantime, the respondent no. 1 filed an application under Section 60(5) of the Code for cancellation of the sale effected by respondent i.e. State Bank of India in favour of auction purchaser and directions to respondent i.e. State Bank of India to give effect for reversing the sale transaction.

13. The Applicant filed an application under section 19(2) of IBC, 2016 being I.A. No. 3001 of 2020 wherein vide order dated 07.08.2020, this Adjudicating Authority issued notice upon the Respondents.

14. Vide order dated 04.09.2020, this Adjudicating Authority dismissed the application filed by the Respondent No. 1 and held that there was no violation of Section 14 of the Code by State Bank of India as the auction was conducted on 24.10.2019 and on the same day, confirmation was issued in favour of Alucom Panels Pvt. Ltd. and on 30.12.2019, Sale Certificate was issued.

15. The fifth meeting of the Committee of Creditors was convened on 08.09.2020, wherein the Applicant apprised the members of the CoC that due to non-availability of books of accounts/ tally data, the process of valuation is getting delayed. Further, the Applicant apprised the members of the CoC that the last date for submission of Resolution Plan was 18.08.2020, however, one of the prospective resolution applicant namely M/s Ranjana Enterprises Private Limited vide email dated 09.08.2020 requested the Applicant to extend the timeline for submission of Resolution Plan by 15 days up to 03.09.2020. The Applicant apprised the CoC members vide email dated 18.08.2020, to which State Bank of India (Financial Creditor with 80.32% voting share) approved the request for extension of

timeline to submit Resolution Plan. The Applicant informed the prospective resolution applicant that the last date for submission of resolution plan has been extended to 03.09.2020.

16. Thereafter, the Applicant apprised that the prospective resolution applicant had submitted the resolution plan before the last date and the same was presented to the members of the CoC for consideration. Thereupon, the resolution plan received from the PRA M/s. Ranjana Enterprises Private Limited was presented to the committee of creditors (CoC) under Sec 25(2) (h) which requires the Resolution Professional to present all Resolution Plan to CoC. The gist of the plan was presented. The plan has proposed a total consideration of Rs.61 Lacs, out of which, Rs.35 Lacs was towards the CIRP costs and Rs.25 Lacs to the Secured Financial Creditors. The plan also envisaged the assignment of the residual loan to an ARC or NBFC. The CoC deliberated on the plan and was of the view that they were not inclined to assignment of loan, as they do not want to part with their recourse to recovery from guarantors by assignment of debt. Further, the assignment of loan / credit facilities would mean that the third-party security available in the case would also have to be assigned, the value of which alone is more than the consideration offered.

17. The Prospective Resolution Applicant (PRA) was then invited to the meeting through Audio/Visual means via Zoom Application to discuss on the Plan. He was briefed that the consideration offered is too low when compared with the overall exposure of the lenders and the plan needs substantial improvement along with amendment in certain conditions like assignment. The PRA impressed upon the CoC that the consideration is worth as there are no tangible asset in the company. The only plant at Uttarakhand has already been sold by the bank in the recent months and that the receivables have no value at all. Further, a few old vehicles would be worth a negligible amount.

18. Mr. Nitin Garg, promoter of the CD was asked about his willingness to submit their plan to which the CoC enquired if the EMD has been received from him. RP replied that neither EMD nor any plan has been received from him. Rather vide email dated 02.09.2020, he sought an extension of the timeline for submission of Resolution Plan and requested for waiver of the condition of EMD deposit of Rs. 10 lakhs. On being enquired about the submission of the Plan, the promoter stressed that the plan will be conditional to the effect that the plant at Haridwar, which has already been sold by the lenders

should also form part of resolution plan. The CoC further suggested that he may submit the EMD first to show his bonafide and also required as per terms of RFRP and also that the plan should not be conditional. Further, there was no time left for extension. The lenders deliberated the situation and considered that it is not feasible to approve a plan with such low consideration. Considering the above propositions coupled with the fact that the CIRP is coming to an end the CoC discussed that the only option available is of liquidation.

19. The Respondents have not provided entire information and the same was recorded by this Adjudicating Authority vide order dated 07.09.2020 and 16.09.2020.

20. The sixth meeting of the Committee of Creditors was convened on 18.09.2020, wherein the Applicant apprised the members of the CoC that due to failure of the suspended board of directors in providing complete information/ documents pertaining to the Corporate Debtor, the process of valuation to ascertain the liquidation value of all the assets of the Corporate Debtor is not being fully completed and getting delayed, particularly the investment of Rs 50,00,000 made by CD in Airon Commercials Pvt Ltd. However, valuation of vehicles and other financial assets were received and shared with the COC members after obtaining confidentiality undertaking as per the CIRP Regulations, 2016.

21. The Applicant further informed the members of the CoC, that one of the prospective resolution applicant namely M/s Ranjana Enterprises Private Limited had vide email dated 10.09.2020 sent their revised Resolution Plan with improved offer of Rs. 75 lakhs. The Applicant then informed and read out to the members of the COC that just before the start of CoC meeting M/s Ranjana Enterprises Private Limited submitted another revised offer vide mail dated 18.9.2020 of Rs. 1 crore. Upon discussions and deliberations, the members of the CoC were not inclined for assignment of loan as the members did not want to part with their recourse to recovery from guarantors by assignment of debt. Moreover, the members of the CoC were of the opinion that the assignment of loan/ credit facilities would mean that the third party security available in the case would also have to be assigned, the value of which alone is more than the consideration offered in the resolution plan (approximately Rs. 100 crores as informed by the Authorised Representative of Bank of Baroda). Considering the aforementioned facts and that the CIRP period is expiring on 29.09.2020 (after considering the excluded period as per

Regulation 40C of the CIRP Regulations,2016)0, the members of the CoC with the requisite voting share decided for liquidation of the Corporate Debtor.

22. Thereafter, the Applicant put forth various agendas to be considered before passing resolution for liquidation of the Corporate Debtor. The Applicant first put forth the agenda to invoke compromise and arrangement under Section 230 of the Companies Act, 2013 in accordance with Regulation 2B of the Liquidation Regulations, 2016. Upon discussions and deliberations, the members of the CoC decided to first invoke the scheme compromise/arrangement under Section 230 of the Companies Act, for a period of 90 days from the initiation of liquidation of CD by NCLT, for giving an opportunity to members and creditors of the CD. Further regarding the fee, it was decided that Fee for RP and IPE at existing level, for the period of 90 days as decided for compromise and arrangement under Section 230 of Companies Act, 2013.

23. The agenda for Sale of Corporate Debtor as a going concern in accordance with Regulation 39C of the CIRP Regulations, 2016 was placed before the members of the CoC. The members of the CoC decided that post exploring option of Section 230 of Companies Act, 2013, the Corporate Debtor may first be put to auction as a going concern. The Agenda for estimated Liquidation Cost in terms of Regulation 39B of CIRP Regulations was placed before the members of the CoC. Also, the members of the CoC decided to create a pool of fund required to be set up to meet the estimated liquidation expenses aggregating to Rs. 60,20,000/- in terms of Regulation 2A of the Liquidation Regulations. The agenda for fee of the Liquidator in terms of Regulation 39D was placed before the members of the CoC. The members of the CoC decided on fee structure for the Applicant to act as the Liquidator.

24. The resolution for liquidation of the Corporate Debtor and appointment of the Applicant as Liquidator was approved by the members of CoC with 80.32% voting share.

25. The registered valuers appointed to determine the fair and liquidation value of the assets of the Corporate Debtor were unable to complete their valuation till date due no non-cooperation of the suspended board of directors in providing information. The Applicant had filed an application under Section 19(2) of the Code seeking cooperation from the suspended board of directors and to handover

information/ documents and vehicles owned by the Corporate Debtor to the Applicant. The suspended board of directors handed over the vehicles owned by the Corporate Debtor only on 20.09.2020 and the other information/ documents pertaining to the Corporate Debtor were provided to the Applicant only on 23.09.2020. This Adjudicating Authority disposed off the Application filed under Section 19(2) of the Code on 23.09.2020, with directions to the suspended board of directors to cooperate with the Applicant. Since the information/ documents were provided to the Applicant by 23.09.2020, the same has been shared with the registered valuers to enable them to complete the valuation reports.

26. The total debts due to the financial creditors of the corporate debtor as on Corporate Insolvency Commencement date (24.01.2020) are as under: -

S. No.	NAME OF FINANCIAL CREDITOR	AMOUNT CLAIMED (RS.)	AMOUNT ADMITTED (RS.)	VOTING SHARE (%)
1.	State Bank of India	31,11,70,504.57	31,11,70,504.57	80.32
2.	Bank of Baroda	7,62,22,264.39	7,62,22,264.39	19.68
	TOTAL	38,73,92,768.96	38,73,92,768.96	100.00

27. The Reply dated 19.10.2020 was filed by Suspended Director to liquidation filed application by Resolution Professional of the Corporate Debtor is as below:

a. The liquidation value of the Corporate Debtor which is necessary under Regulation 35 of CIRP Regulation has not been obtained by the RP. In 6th meeting of CoC, CoC has rejected the Resolution Plan submitted by Resolution Applicant/Ranjana Enterprises Private Limited on the ground that the proposed amount is less than the claim amount of Rs.39 crore as stated in the 6th Meeting of CoC of CD.

b. As per Regulation 35(2) of the IBBI (Insolvency Resolution Process of Corporate Person) Regulation, 2016, Resolution Professional after receipt of Plan, shall provide the fair market value and liquidated value to every member of the of COC, so that comparison with the plan submitted by Resolution Applicant can be made. RP has by passed the provision of this regulation and forwarded the plan submitted by applicant to COC, which is gross violation of Regulation 35.

c. There is no provision in IBC where resolution plan can be compared with claim amount and hence reason assigned by the COC is not tenable and in violation with provision of the Code. It is submitted that rather than determining liquidation value of the CD, COC opted to liquidate the company by way of making comparison between Plan Amount Vs Claim Amount which is not justified.
d. If COC has the reservation with respect to assignment of debt, discussion/negotiation with Resolution Applicant can be made and plan can be taken into consideration rather than pushing the CD into liquidation.
e. Mr, Nitin Garg, Suspended Director has requested the COC to waive the condition of EMD amount and want to submit the plan under MSME category but not given opportunity to submit the plan.
f. CoC had not determined liquidation value of the Corporate Debtor and on the other hand, approved cost of liquidation as Rs. 50,00,000/- which is on very higher side.
g. Applicant earlier filed an application for violation of moratorium with respect to registration of sole factory of the Corporate Debtor in favour of auction purchaser after commencement of CIRP and the Adjudicating Authority vide order dated 04.09.2020 dismissed the application of the applicant.
h. Against the order of Adjudicating Authority vide order dated 04.09.2020, applicant filed an appeal before Hon'ble NCLAT which is likely to be listed soon.

28. The Applicant in his rejoinder dated 26.10.2020 contends that:

a. The Respondent has no locus standi to challenge the commercial wisdom and decision of CoC to liquidate the Corporate Debtor.
b. The commercial or business decisions of the financial creditors are not open to any judicial review by the Adjudicating Authority or even by the Hon'ble Appellate Authority.
c. The respondent no. 1 is non-cooperating in providing information to the Applicant is the reason for delay in valuation under Regulation 35 of the CIRP Regulations, 2016.
d. The Respondent no. 1 till date has not provided the information regarding Rs. 50,00,000/- investment in Arion Commercial Pvt. Ltd. by the Corporate Debtor. Vide email dated 03.10.2020, the Respondent No. 1 still sought time to provide the details.
e. The correct position of Assets and liabilities as on CIRP dated 24.01.2020 and audited Balance Sheet as on 31.03.2020 has not

been provided through reminder mails have been sent on 06.10.2020 and 20.10.2020.

f. The provisional assets and liabilities as on CIRP dated 24.01.2020 is not correct as the same is showing negative balance of Rs. 2.51 crores, which raises doubt as the company in its accounts cannot have negative balance in the inventory.

29. We have heard the Ld. Counsel for the applicant as well as the respondent no. 1, Mr. Nitin Garg and perused the averments made in the application, reply, rejoinder and written submissions filed by the respective parties.

30. Ld. Counsel for the applicant submitted that the Committee of Creditors in its meeting dated 18.09.2020 resolved that ***"pursuant to the provisions of Section 33(2) of Insolvency and Bankruptcy Code, 2016, the consent of the members of Committee of Creditors (CoC) is hereby accorded for liquidation of the Corporate Debtor M/s Alupan Composite Panels Private Limited (Corporate Debtor) and continuation of Resolution Professional, Mr. Ashok Kumar Dewan as Liquidator at a consolidated professional fee of Rs. 25,00,000/- plus GST and out of pocket expenses on actual basis for the entire liquidation process of the Corporate Debtor".***

> ***The said consolidated fee by shared by the Liquidator and ARCK Resolution Professionals LLP (IPE) equally @ 12,50,000/- each."***

31. Resolved further that ***"pursuant to the provisions of Regulation 39B of CIRP Regulations, 2016 and other applicable provisions of the Insolvency & Bankruptcy Code, 2016, the consent of members of Committee of Creditors (CoC) be also accorded towards the creation of Pool of Funds for estimated Contributions to Liquidation Costs aggregating to INR 6,020,000/- approx which is excess of the estimated liquidation costs over the estimated liquid assets of the corporate debtor, from Financial Creditors to meet the Liquidation Costs in the proportionate voting shares of members of the CoC, which shall be repayable as part of liquidation cost"*** and further resolved that ***"the application concerning the Liquidation of CD be filed by the Resolution Professional before the NCLT."***

32. Above three Resolutions was approved by the members of the CoC with 80.32% voting share and the voting sheet is available at page 133 of the paper book.

33. He further submitted that the State Bank of India having 80.32% voting share have approved the Resolution, whereas the Bank of Baroda having 19.68% voting share had given a dissenting vote against the Resolution.

34. He further submitted that in view of Section 33(2) if the CoC by 66% of the voting share approved the Resolution to liquidate then authorized the Resolution Professional to file an application then the wisdom of the CoC cannot be challenged by anyone.

35. He further submitted that although the respondent no. 1 has raised the objections and challenged the decision of the CoC but it is not permissible under the Law, so, the prayer of the applicant may be approved.

36. On the other hand, Ld. Counsel for the respondent no. 1 submitted that the RP has not submitted the Resolution Plan filed by the Resolution Applicant in accordance with the Regulation 35 of the Insolvency Resolution for Corporate Persons Regulations, 2016.

37. He further submitted that the respondent no. 1 has requested a CoC to waive the condition of EMD amount and want to submit the plan under MSME category but no opportunity was given to him to submit the plan.

38. He further submitted that the CoC has not determined the liquidation value of the Corporate Debtor.

39. He further submitted that the respondent no. 1 has filed an application for violation of moratorium and this Adjudicating Authority has dismissed the application vide order dated 04.09.2020 and against that order, the respondent no. 1 has preferred an appeal before the Hon'ble NCLAT which is likely to be listed soon, therefore, till the disposal of that appeal, the application filed by the RP for liquidation of the Corporate Debtor may be keep pending.

40. Now, in the light of the submissions raised on behalf of the parties, we shall consider the case in hand and before that we would like to refer Section 33 of the IBC and the same is quoted below: -

33. (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.

(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 1[approved by not less than sixty-six per cent. 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).

2[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.]

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) 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.

(7) The order for liquidation under this section 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.

41. Mere plain reading of the provisions shows that there are three circumstances under which the Adjudicating Authority will pass an order under Section 33 of the IBC, first is that 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 resolution plan is required under Section 30(6) of the IBC or reject the resolution plan under Section 31 of the IBC, secondly, the 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 1[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor and third when the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor.

42. In the light of that, when we consider the case in hand then we notice that the Committee of Creditors in its meeting dated 18.09.2020, considered the Resolutions and prior to that, we further notice that the CoC considered the Resolution Plan submitted by M/s Ranjana Enterprises Private Limited and on the request of M/s Ranjana Enterprises Private Limited, the CoC in its 5th of the CoC, extended the time limit for submission of the Resolutin Plan by 15 days upto 03.09.2020 and on 08.09.2020 after receiving the Resolution Plan, the same was placed before the CoC and we further notice that M/s Ranjana Enterprises Private

Limited revised Resolution Plan which was presented before the meeting of the CoC on 18.09.2020 but the CoC upon discussions rejected the plan.

43. We further notice that the respondent no. 1 has proposed to file the Resolution Plan but at the same time, he had also made a request for waiver of the condition of EMD deposit of Rs. 10 lakhs but that was not accepted by the Corporate Debtor and that is the reason, one of the ground taken by the respondent no. 1 in its reply/objections that he had not been given opportunity. So far this objection of the respondent no. 1 is concerned, in view of the discussions and on the basis of the averment made in the application, we notice that the CoC has not approved his proposal to waive the amount regarding the deposit of Rs. 10 lakhs.

44. He further submitted that after the rejection of the plan submitted by the M/s Ranjana Enterprise Private Limited, there was no Resolution Plan pending before the CoC and as per the averment made in para 21 of the application, the period of CIRP has already been expired on 29.09.2020 after the exclusion of the period as per Regulation 40(c) of the CIRP Regulations, 2016 i.e. after the exclusion the period of imposition of lockdown by the Central Government as well as State Government concerned. And the CoC in its meeting dated 18.09.2020 by 80.32% voting, resolved to liquidate the Corporate Debtor and had not considered any resolution for further extension of the period of Corporate Resolution Process.

45. At this juncture, we would like to refer second arguments advanced on behalf of respondent no. 1 that an appeal is pending before the Hon'ble NCLAT against the order passed by this Adjudicating Authority on 04.09.2020. When we consider this submission of the respondent no. 1 together with the provision of law contained under Section 33 of the IBC then we are of the considered view that in view of Section 33(2) the moment the CoC has approved the Resolution to liquidate the Corporate Debtor by 66% voting share at any time during the CIRP but before the confirmation of the Resolution Plan and this fact are brought to the knowledge of the Adjudicating Authority by the RP then this Adjudicating Authority shall pass an liquidation order . Apart from this, in the case in hand, we also notice that the period of CIRP has already been expired on 29.09.2020 and it is for the CoC to consider whether it is necessary to approve the further extension of the period of CIRP or not. Because only after the approval of the CoC, the RP shall file an application for extension of period of CIRP but herein the case in hand, it is case of the applicant that the CoC has not taken any decision to move/file an application for extension of the period of CIRP beyond the period of 180 days rather in its

6th meeting held on 18.09.2020, the CoC resolved to liquidate the Corporate Debtor there was no Resolution Plan pending for consideration before the CoC.

46. So, under such circumstances only on the ground that the respondent no. 1 has filed an appeal against the order passed by this Adjudicating Authority on 04.09.2020, in our considered view, is not the ground to reject the prayer of the applicant to pass an order of liquidation rather we are of the considered view that it is well settled principle of law that Adjudicating Authority cannot pass any order against the wisdom of the CoC, if the CoC approved for liquidation then the Adjudicating Authority has no option but to approve the Resolution and allow the prayer to liquidate the Corporate Debtor.

47. For the reasons discussed above, we find no merit in the objections raised on behalf of the respondent no. 1 and we are of the considered view that since the CoC by 80.32% voting shares approved the Resolution to liquidate the Corporate Debtor, which would be evident from the voting sheet available at page 133 of the paper book, hence, we have no option but to allow the prayer of the applicant.

48. **Accordingly, *we hereby allow the application ordering the liquidation of the Corporate Debtor* of M/s Alupan Composite Panels Private Limited in the manner as led in Chapter III Part II of the IBC, 2016 in accordance with the relevant rules and regulations and along with the following directions: -**

A. Mr. Ashok Kumar Dewan, IP having registration number IBBI/IPA-001/IP-P00603/2017-18/11054 is appointed as Liquidator, who has given his consent

B. The Liquidator shall issue a public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations 2016.

C. The order of moratorium passed under Section 14 of the IBC, 2016 and fresh moratorium under Section 33(5) of the IBC shall commence. The order for liquidation under this Section shall be deemed to be notice of discharge to the officer, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor continued during the liquidation process by the liquidator.

D. Liquidator shall follow up and investigate the financial affairs of the Corporate Debtor to determine the under valued preferential transactions if any

E. The liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date as per Regulation 13 of the IBBI (Liquidation Process) Regulation 2016.

49. *Registry is directed to communicate the copy of this order to the Financial Creditor, Corporate Debtor, Liquidator and the Registrar of Companies and NCT of Delhi and Haryana for needful and IBBI for the record. With this order the present application stands disposed of.*

Sd/-

K. K. VOHRA

Member (T)

Sd/-

18.02.2021

ABNI RANJAN KUMAR SINHA

Member (J)