

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.278/2022
In
CP (IB) No.272/Chd/J&K/2018
(Admitted Matter)**

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

In the matter of:-

M/s Jammu & Kashmir Bank Ltd.

....Petitioner/Financial Creditor

Vs.

M/s Mir Kings Industries Pvt. Ltd.

...Respondent/Corporate Debtor

And in the matter of IA No.278/2022:-

Mr. Neeraj Bhatia,
Resolution Professional
of M/s Mir Kings Industries Pvt. Ltd.,
C/o P-27, First Floor, Malviya Nagar,
New Delhi - 110017

...Applicant-Resolution Professional

Order delivered on 22.07.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:-

For the Applicant

- : 1. Mr. Harsh Garg, Advocate
2. Mr. Pulkit Goyal, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

The Present Petition is filed by Resolution Professional of M/s Mir Kings Industries Pvt. Ltd. (Corporate Debtor) Under Section 33 of Insolvency and Bankruptcy Code, 2016 for the initiation of Liquidation of the Corporate Debtor. The Insolvency Petition was filed by the petitioner-financial creditor i.e. Jammu & Kashmir Bank Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016. The same was admitted by this Adjudicating Authority vide order dated 22.01.2020. Vide the same order, Mr. Neeraj Bhatia i.e. the applicant was appointed as Interim Resolution Professional.

2. It is submitted that the Interim Resolution Professional held the 1st CoC meeting on 18.02.2020 and in the same meeting, the applicant was confirmed as Resolution Professional. Again 3rd meeting of the CoC held on 10.08.2020, where the Resolution Professional was authorized to appoint valuers for Plant & Machinery and for Land & Building.

3. It is averred that the Corporate Insolvency Resolution Process (hereafter referred to as CIRP process) in the present matter has not yet been completed and in the meantime, the nationwide lockdown was imposed by the Government of India under the compelling situation occurred due to Covid-19 Pandemic, and during the mean time the period of 180 days of the CIRP process had expired on 19.07.2020, in view of the same the applicant/Resolution Professional moved an application bearing IA No.803 of 2020 for extension of period of CIRP process by

90 days while excluding the period of 129 days of lockdown w.e.f. 25.03.2020 upto 31.07.2020, as per the provisions of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The same application was allowed vide order dated 11.12.2020 and view of the same the period of CIRP of 270 days were to expire on 23.02.2021 while excluding period of Lockdown.

4. It is further contended that since there being issues related to the Covid-19 pandemic, terror attacks and other unstable political scenario and Extreme weatherconditions in the UT of Jammu and Kashmir, much time was lost in the CIRP process of the present matter. In view of same, the Resolution Professional filed an application bearing IA No. 291 of 2021 was filed before this Adjudicating Authority for exclusion of period of 61 days of lockdown from 01.08.2020 to 30.09.2020. The above mentioned application was allowed vide order dated 23.08.2021 while also excluding the period of pendency of the application.

5. The Resolution Professional held the 8th meeting of the CoC on the 02.08.2021. The applicant Resolution Professional apprised the CoC members that the Form-G was published in the matter on 07.07.2021 & 08.07.2021 and subsequently two expression of interests (EOI) was received. The CoC had resolved and approved the Information Memorandum, RFRP and Evaluation Matrix in the same meeting. Moreover the CoC had apprised the Resolution Professional that the OTS submitted by the suspended board was under consideration by the higher authorities.

6. It is submitted that the Resolution Professional held the 9th meeting of the CoC held on 07.10.2021, when the applicant-Resolution Professional appraised the CoC members that after sharing of the Information Memorandum, RFRP and Evaluation Matrix with the prospective resolution applicants no resolution plan was received till last day of submission of the resolution plan which was 04.09.2021. The Resolution Professional further appraised that since there were queries regarding the EOI and PRAs were willing to submit a resolution plan, so it was recommended that the Form-G be republished. In view of the same the CoC had in this meeting resolved to re-publish Form-G. The CoC had apprised the Resolution Professional that the OTS submitted by the suspended board was under consideration by the higher authorities.

7. It is further submitted that in view of the resolution passed in the 6th meeting of the CoC held on 10.03.2021, the applicant-Resolution Professional filed an application u/s 12(3) Proviso 2 of the Insolvency And Bankruptcy Code, 2016 seekign extension of time of CIRP process by a period of 60 days beyond the Corporate Insolvency Resolution Process period of 270 days, which were expiring on 18.09.2021. The application bearing IA No. 501 of 2021, was finally allowed vide order dated 24.11.2021 of this Adjudicating Authority.

8. The Resolution Professional conducted 10th meeting of the CoC on the 26.11.2021, where the Resolution Professional had appraised the CoC that he had republished the Form-G in the newspapers on 08.10.2021 whereby till the last date of receipt of resolution plans the Resolution Professional had received two resolution plans one from Mr. Mukhtar-ul-Qadir and one was submitted jointly by

Mr. Shafeeq Ahmad Mir & Mr. G.M. Mir (suspended directors). The resolution plan submitted by the PRA/s were opened before the CoC and it was apprised that the resolution plan submitted by Mr. Mukhtar-ul-Qadir was below the liquidation value and the resolution plan submitted jointly by Mr. Shafeeq Ahmad Mir & Mr. G.M. Mir was above fair value. The CoC after discussion with Mr. Shafeeq Ahmad Mir & Mr. G.M. Mir (PRAs) had asked them to submit an improved plan. Further consideration of the plans was deferred to next meeting.

9. It is submitted that the Resolution Professional held the 11th meeting of the CoC on the 06.12.2021, where the CoC had deliberated on the resolution plan submitted by Mr. Shafeeq Ahmad Mir & Mr. G.M. Mir (suspended directors). The CoC apprised the RP that the plan so submitted was being forward to the competent authorities of the CoC. The plan submitted by Mr. Mukhtar-ul-Qadir was however rejected.

10. The Resolution Professional conducted the 12th CoC meeting on the 08.03.2022. Since the CoC had rejected the Resolution plan submitted by Mr. Shafeeq Ahmad Mir & Mr. G.M. Mir (suspended directors). Therefore it had further resolved for Liquidation of the corporate debtor and had resolved for the Resolution Professional to file an application for the liquidation of the Corporate Debtor. The CoC had also resolved to attempt to liquidate the corporate debtor as a going concern. The CoC also resolved/approved the estimated liquidation cost at Rs.9,35,000/-, and also approved the fee/remuneration of the Liquidator as per regulation 4 of the Liquidation Regulations & Regulation 39D of the CIRP regulations. In view of the same, the agendas u/r 39B, 39C & 39D of the CIRP

Regulations had been approved. Copy of minutes of 12th meeting of the CoC is attached as Annexure A-14 of the application. As per order dated 25.05.2022 of this Adjudicating Authority whereby the applicant-Resolution Professional was directed to file the list of assets of the corporate debtor. In pursuant of the above, the applicant filed compliance affidavit vide Diary No.00552/01 dated 23.06.2022 stating the list of assets of the corporate debtor as Annexure-A of the said affidavit.

11. Now, coming to the merits of the application, before considering the prayer, we would like to refer the Section 33(2) of the IBC and the same is reproduced below:-

“Section 33(2): Initiation of liquidation.

33. (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 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).

[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.]”

12. 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. 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; and
- iii. if does not receive a resolution plan under sub-section (6) of Section 30.

13. In the 12th meeting of CoC held on 08.03.2022, the CoC decided to liquidate the Corporate Debtor by passing a resolution in the aforesaid meeting and further resolved to appoint Resolution Professional as Liquidator.

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

15. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **M/s Mir Kings Industries Pvt. Ltd.** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

16. 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. Since the Resolution Professional has given his consent to act as Liquidator, therefore, Mr. Neeraj Bhatia bearing Registration No.IBBI/IPA-001/IP-P00824/2017-18/11400, resident of C/o P-27, First

Floor, Malviya Nagar, New Delhi - 110017, Mobile No.9810317585, e-mail: nbtrace1@yahoo.com is hereby appointed as Liquidator;

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

- viii. 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.
- ix. 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.
- x. 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;
- xi. 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;
- xii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

- xiii. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), Jammu and Kashmir for updating the Master Data. After updating the Master Data, RoC shall send compliance report to the Registrar, NCLT within a period of 30 days;
 - xiv. The Liquidator is directed to issue public announcement stating the Corporate Debtor is in liquidation;
 - xv. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record; and
 - xvi. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.
17. Thus, IA No.278/2022 is allowed and stands disposed of.

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

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

July 22, 2022

AV/ASH