IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT NO. 1, ALLAHABAD

IA NO. 292/2020 IN COMPANY PETITION NO. (IB) 261/ALD/2019

(Under Section 33(1) (a) of the Insolvency and Bankruptcy Code,2016 for liquidation of the corporate debtor)

IN THE MATTER OF:
MR. ADITYA AGARWAL
(RESOLUTION PROFESSIONAL)
A.B.M CONCRETE PVT.LTD

..............APPLICANT

AND

IN THE MATTER OF:

ORIENTAL BANK OF COMMERCE

..............FINANCIAL CREDITOR

VERSUS

A.B.M CONCRETE PVT.LTD

..........CORPORATE DEBTOR.

ORDER PRONOUNCED ON :21.09.2021

CORAM:
Hon'ble Dr. Deepti Mukesh, Member, Judicial
Hon'ble Ms. Sumita Purkayastha, Member, Technical

MEMO OF PARTIES

Mr. Aditya Agarwal
(Resolution Professional)
A.B.M Concrete Pvt.Ltd
—Sd— 3A/105 Azad Nagar,
Kanpur-208002

.............APPLICANT

Appearance:
For RP : Mr. Shubham Agarwal, Advocate
For COC :

ORDER

[Per se: Dr. Deepti Mukesh, Hon'ble Member (J)]

1. This is an application filed by Resolution Professional under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the Corporate Debtor, A.B.M. Concrete Pvt. Ltd. And also for the appointment of the Liquidator thereof.

2. This Bench vide its order dated 21.10.2019, admitted the application for initiation of CIRP filed by the Financial Creditor under Section 7 of IBC, 2016 and appointed Mr. Aditya Agarwal as the Interim Resolution Professional.

3. Pursuant to the order, the IRP made a public announcement in accordance with Section 15 of the Code and submitted a list of creditorsand further constituted the CoC based on verified claims received on 14.11.2019 as required under Regulation 13 & 17 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 but asthat the Corporate Debtor was in continuance default of statutory filings and in absence of Financial Statements, only one claim was verified and the same

—Sd—

was included in the CoC. Further the Information memorandum was also not fully completed in absence of necessary documents.

4. The CoC in the first meeting confirmed IRP as RP. It is submitted that since the directors/officers of the Corporate Debtor were not cooperating the applicant was unable to carry out of his duties. The RP had vide various e-mails sought information from ex-management regarding the Corporate Debtor but the ex-management never responded the following e-mails.

5. The Second CoC meeting convened on 13.12.2019, which was attended by only one CoC member i.e. Oriental Bank of Commerce and the RP persuaded in appointing two valuerfor each class of assets and further EOI in Form-G was published. The last date of EOI was 18.01.2020 but no EOI was received neither any resolution plan came for consideration.

6. The RP further conducted the 4th CoC meeting held on 17.06.2020, in which the RP informs the COC member that the current financials have not been updated and also informed about the financial status of the Corporate Debtor.

—Sd—

7. Further based on the valuation report, the fair value of land and building and plant and machinery is Rs. 4,66,48,251/- and liquidation value of the Corporate Debtor is Rs. 3,13,78,338/- .

8. It was stated that there is significant erosion in the value of the Corporate Debtor ability to continue as a going concern and there is no chances of revival of the company as there is no viable resolution plan received.

9. Thus, in the 4th CoC meeting which convened on 17.06.2020, the sole CoC members passed the following resolution in view of the stand taken by it to liquidate the Corporate Debtor. Accordingly, it was resolved that an application under Section 33 of IBC to seek permission of this Adjudicating Authority for liquidation of Corporate Debtor shall be filed and resolved as (Item No. 5):

> *" The RP informed that since there is no head way in the Resolution process and further the Ex-Management is also not cooperating in the process. Further there is almost no viable business Plan coming up. The CoC considered the same as passed the following Resolution:*
> *" **Resolved** that CoC recommends to get Corporate Debtor liquidated. RP is authorized to file necessary liquidation application before Hon'ble NCLT, Allahabad for the Liquidation of Corporate Debtor : A.B.M. Concrete Private Limited."*

—Sd—

*"**Resolved** further that Mr. Aditya Agarwal, IBBI No. : IBB/IPA-001/IP-P-00529/2017-18/10954 is appointed as Liquidator for the Corporate Debtor, who gave his consent & declaration of eligibility to act as Liquidator under IBC, 2016 on a remuneration as per Regulation 4 of IBBI (Liquidation Process) Regulation 2016."*

10. Taking into consideration, the provisions of law and as well as the documents on record , this Tribunal is of the view that the endeavors to obtain resolution of corporate debtor has failed and CoC in its commercial wisdom decided to liquidate the corporate debtorwhich does not require any interference, thus in present circumstances the CoC decision is appropriate.

11. We hereby order that the corporate debtor A.B.M. Concrete Pvt. Ltd., stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017.

—Sd—

12. Further as the CoC have decidedto confirmthe RP who was conducting CIRP, to be appointed as the Liquidator, who has given consent in Form-AA to act as a Liquidator.Accordingly, Mr. Aditya Agarwal IBBI No. : IBB/IPA-001/IP-P-00529/2017-

18/10954 is be and hereby appointed as Liquidator in terms of Section 34(1) of the Code, with the following directions.

(a) The liquidator to issue public announcement stating that the Corporate Debtor is in Liquidation in term of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.

(b) The Liquidator to proceed with the process of Liquidation in the manner laid down in Chapter-III of Part –II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

(c) This order is 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.

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

13. As a consequence of the application being allowed the Moratorium as envisaged 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.

—Sd—

14. A Copy of this order shall be communicated to the financial creditors, corporate debtor and the Liquidator for taking necessary steps. In addition, a copy of said order shall be also be forwarded to IBBI for its records and to ROC for updating the Master Data.

15. The present application is allowed and disposed of in terms of above order.

-Sd-

(SUMITA PURKAYASTHA)
MEMBER (T)

-Sd-

(DR. DEEPTI MUKESH)
MEMBER (J)

Swati Gupta
(LRA)