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.212/2021
In
CP (IB) No.486/Chd/Hry/2019
(Admitted Matter)

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

<u>In the matter of:-</u>

M/s Sainsons Pulp and Papers Limited ….Corporate Debtor/Petitioner

And

State Bank of India …Financial Creditor

<u>And in the matter of IA No.212/2021:-</u>

Mr. Manjul Mittal,
Resolution Professional
of M/s Sainsons Pulp and Papers Limited,
C/o H.No.125-A, Raman Enclave,
Near Rishi Nagar, Ludhiana – 141001 …Applicant-Resolution Professional

Order delivered on 21.12.2021

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

<u>Present through Video Conferencing:-</u>

For the Applicant : 1. Mr. Harsh Garg, Advocate
2. Mr. Pulkit Goyal, Advocate

<u>Per: Subrata Kumar Dash, Member (Technical)</u>

<u>ORDER</u>

<u>IA No.212/2021</u>

The present application has been filed by Resolution Professional to liquidate Corporate Debtor under Section 33(2) of the Insolvency & Bankruptcy Code, 2016. In this case, the petition for initiation of CIRP process by the Corporate Debtor under Section 10 of the IBC, 2016 was admitted by this Tribunal by order dated 03.03.2020 and Sh. Adesh Kumar Singla was appointed as IRP. The IRP constituted the Committee of Creditors (CoC) on 20.05.2020 with the “State Bank of India” as sole member. Subsequently, the CoC resolved to replace the IRP and to appoint Sh. Manjul Mittal as Resolution Professional. This Adjudicating Authority by order dated 10.07.2020 confirmed the replacement of IRP with Sh. Munjul Mittal as the Resolution Professional in the present case. In the second meeting of the CoC held on 06.08.2020, it was resolved to appoint two Valuers for the valuation of land and building and securities and financial assets of the corporate debtor and also to file an application for exclusion of period of lockdown from the CIRP process. The minutes of the second meeting of the CoC held on 06.08.2020 is attached as Annexure A-3 of the application. This Adjudicating Authority vide order dated 15.09.2020 excluded the period w.e.f. 25.03.2020 to 31.07.2020 from the CIRP process.

2. The Evaluation Matrix, eligibility criteria and the draft of Form G (EOI) was discussed in the third meeting of the CoC held on 01.09.2020. Form G was issued on 03.09.2020. In the fourth meeting of the CoC, RP informed the member that after issuance of Form G, two Expression of Interests (EOI) were received and the RP had made a provisional list of resolution applicants. Later on, one prospective Resolution Applicant i.e. J.C. Flowers Asset Reconstruction withdrew its Expression of Interest. In the 5th meeting of CoC, the RP informed the CoC that the other prospective Resolution Applicant has also withdrawn their EOI and the agenda to discuss the publication of Form G was kept for discussion in the next meeting. The agenda for republication of Form G and for calling of Expression of Interest was discussed in the subsequent meetings of CoC. It is submitted that in the seventh meeting of CoC held on 30.12.2020, it was resolved to liquidate the Corporate Debtor in accordance with the

provisions of Section 33(2) of Insolvency and Bankruptcy Code, 2016 read with Regulation 3 of the IBBI (Liquidation Process) Regulations, 2016

3. Now, coming to the merit 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.]"

4. 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.

5. In the present case, the Resolution Professional has published the Form G inviting the Expression of Interest (EOI) on 03.09.2020. Thereafter, few

prospective Resolution Applicants have come forward showing their interest. However, both of the PRA(s) have withdrawn their EOI before submission of resolution plans. In the 7th meeting of CoC held on 30.12.2020, the CoC has decided to liquidate the Corporate Debtor by passing a resolution in the aforesaid meeting and further resolved to appoint Resolution Professional as Liquidator.

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

7. The CoC in its 7th meeting held on 30.12.2020 has resolved to appoint the present RP i.e. Mr. Manjul Mittal, Resolution Professional with IBBI Registration No.IBBI/IPA-001/IP-P00061/2017-18/10139 as Liquidator and he has filed his consent in Form AA dated 30.12.2020 (Annexure A-10 of the application). The CoC in the same meeting has further resolved that the Liquidator shall be entitled to the fees of ₹75,000/- (Rupees Seventy Five Thousand Only) per month plus actual expenses and a percentage of amount released net of other liquidation costs and of the amount distributed. Moreover, the Liquidator will explore an option to sell the Corporate Debtor as a going concern under Clause (e) or (f) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as resolved in the 7th meeting of CoC. The liquidation cost is estimated to be ₹40.59 Lakhs which shall be borne and reimbursed upfront by the sole financial creditor as decided by CoC.

8. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **M/s Sainsons Pulp and Papers Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

9. 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 RP has given his consent to act as Liquidator, therefore, Mr. Manjul Mittal bearing Registration No.IBBI/IPA-001/IP-P00061/2017-18/10139, resident of c/o Manjul Bhawan, B-I/596, Punchayati Mandir Street, Barnala, Punjab, Mobile No.9814880802, e-mail: irp.sainsonspulp@gmail.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), NCT of Delhi & Haryana 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 Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

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

10. Thus, IA No.212/2021 stands disposed of.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

December 21st, 2021
AV/SA