**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
ALLAHABAD BENCH**

**CA No.310 of 2018
IN
CP(IB) No.140/ALD/2017**

IN THE MATTER OF :

ASREC (INDIA) LTD

.... FINANCIAL CREDITOR

V/S

SHASHI OILS & FATS PVT. LTD

.... CORPORATE DEBTOR

AND IN THE MATTER OF:
Chanchal Dua
(RESOLUTION PROFESSIONAL
Shashi Oils & Fats Pvt. Ltd)

............Applicant

Versus

Asrec (India) Limited & Anr.

.................Respondents

ORDER RESERVED ON :18.11.2019
ORDER DELIVERED ON:21.01.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

Counsel for the Resolution Professional: Mr.Shubham Agarwal (Adv)
Counsel for COC : Mr. Abhishek Anand (Adv)
Counsel for Resolution Applicant : Mr. Abhishek Mishra

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

ORDER

1. The present application is filed under Section 33(2) of the Insolvency and Bankruptcy Code,2016 by the Resolution Professional, through his Counsel seeking order of the liquidation and appointment of liquidator under Section 33 and 34 of the Insolvency & Bankruptcy Code with such prayer, to pass an order for the liquidation of the Corporate Debtor Company i.e. Shashi Oils & Fats Pvt. Ltd.

2. The Adjudicating Authority on the basis of this petition filed by the financial Creditor under Section 7 of the Code, vide order dated 20.03.2018 initiated the CIRP in respect of Corporate Debtor Company and appointed Mr. Chanchal Dua as the Interim

—— Sd ——

Resolution Professional, who was as RP of the corporate Debtor, vide order dated 01.05.2018.

3. It is submitted that the COC in its 7th Meeting held on 17.12.2018 was informed by RP that he has sought the legal opinion M/S Dhawan & Co.that whether the promoters/ directors are eligible to submit a Resoltion plan in view of the registration certificate submitted by them , as MSME unit, to which they opined thst "on conjoint reading of two provisions i.e Sec 240 A(1) read with Sec 29A (c)and (h) it is clear that even if a Resolution Applicant is a promoter of a company whose account is a non-performing assets in terms of guidelines of RBI or if the resolution applicant has executed a guarantee in favour of the creditor, which is under going CIRP, even such a resolution applicant is eligible to submit a resolution plan for the corporate debtor which is a MSME Enterprise as requested by the CoC Members. Since, the Corporate Debtor in the present case is a MSME Enterprise, the Resolution Plan as submitted by the promotor of Corporate Debtor is eligible and applicant can put the plan before COC for approval.

4. Accordingly, the Applicant apprised the COC that among both the Resolution Plan submitted by PRA's, the Plan submitted by M/s Rafia & Company was not in compliance as per the provision of the Code and the same was not revised so it was not submitted to COC for further consideration and in regard to the Resolution plan submitted by the Promoters/Director of the Corporate Debtor was in compliance of the provisions of the Code. And the same was place before the COC for approval. Further CoC requested the promoter/ director of the Corporate Debtor Mr. Sudhir Kumar Goel to further increase the consideration in the Resolution Plan submitted by them, to which he stated that they are not in the position to increase the offer and to make any changes in Resolution Plan so the same was put up before the CoC.

5. The CoC Member confirmed tha the Competent Authority has not agreed on the consideration amount being offered in the Resolution Plan submitted by the Promoters/ Directors of the Corporate Debtor and also not agreed on the release of mortgaged of residential house and release of personal guarantees of all promoters/ directors/personal guarantors as mentioned in the Plan. Further submitted by the counsel for the RP that the Resolution Plan has not been approved and has been rejected by 100% vote of COC and

Sd

the statutory period of 270 days of CIRP is also going to expire on 15.12.2018 and now there is no other option left but to apply for initiation of liquidation process and further prayed in the application that the Resolution Professional Mr. Chanchal Dua having IBBI Regn No. IBBI/IPA-003/IP-N00083/2017-2018/10821 to act as Liquidator of the Corporate Debtor company.

6. I have gone through the contents of the present Liquidation application and pursued the documents annexed therewith. By taking into consideration the ground for seeking liquidation, I being Adjudicating Authority is of the view that the liquidation order can be passed in respect of Corporate Debtor i.e. Shashi Oils Fats & Fats Pvt Ltd, as the Members of the COC are in favour for liquidation of the Company. Therefore, by exercising the power under Section 33(1) it is hereby directed that the Corporate Debtor i.e Shashi Oils & Fats shall go into Liquidation and the moratorium declared for the Corporate Debtor under Liquidation shall cease to have effect from the date of pronouncement of this Order.

7. This Adjudicating Authority hereby appoint the Resolution Professional as 'Liquidator' under Section 34(1) of the Code as he is not disqualified as per Section 34(4) of the IBC. The Liquidator shall send an intimation to the ROC, Kanpur, U.P with which the Corporate Debtor company is registered. The liquidator shall cause public announcement in newspaper by declaring that the Corporate Debtor has gone under liquidation.

8. The Liquidator shall act as per section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinabove referred as "IBC") subject to direction time to time as may be issued by this Adjudicating Authority.

9. The liquidator shall file progress report of every three months.

10. With the aforesaid observations, the present CA No. 310/2018 is allowed and accordingly stands disposed of.

Date: 21.01.2020

— Sd —

JUSTICE RAJESH DAYAL KHARE

MEMBER (J)