

**NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CA No. 391/2019  
IN  
CP (IB) No. 201/Chd/Hry/2018  
(Admitted Matter)**

**Under Section 33(1) of  
Insolvency and Bankruptcy  
Code, 2016.**

**In the matter of:**

State Bank of India

...Petitioner-Financial Creditor

Vs.

SRS Limited

...Respondent-Corporate Debtor

**And in the matter of CA No. 391/2019:**

Ashok Kumar Gulla  
Professional

...Applicant-Resolution

**Order delivered on: 15.10.2019**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant-Resolution Professional : Mr. S.S. Brar, Advocate

**Per: Pradeep R. Sethi, Member (Technical)**

**ORDER**

**CA No.391/2019**

The present application is filed by the Resolution Professional (**RP**) under Section 33 (1) of the Insolvency & Bankruptcy Code, 2016 (**Code**) for passing an order of liquidation of SRS Limited (**Corporate Debtor**) in view of the decision of the Committee of the Creditors (**CoC**) in the meeting held on 10.05.2019 rejecting the sole Resolution Plan submitted by Movie Times Complex Private Limited and Movie Time Cinemas Private Limited.

2. The petition filed by State Bank of India under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the corporate debtor was admitted by order dated 21.08.2018 and moratorium was declared and Mr. Ashok Kumar Gulla was appointed as Interim Resolution Professional. The appointment of Mr. Ashok Kumar Gulla as Resolution Professional (RP) was made by the CoC in its 1<sup>st</sup> meeting held on 20.09.2018. Pursuant to application by the RP, extension of 90 days for completion of CIRP was granted by order dated 05.02.2019. The last date of CIRP is stated to be 18.05.2019.

3. It is submitted that Form G was published on 30.10.2018 inviting expression of interest (**EOI**) on or before 26.11.2018. In response to the advertisement, ten EOIs were received. In order to maximize the value of assets, RP and his team were in contact with other Potential Resolution Applicants and as decided in the Fourth Meeting of

CoC held on 27.11.2018, the last date for submission of EoI was extended to 12.12.2018 and the last date for submission of Resolution Plan revised to 23.01.2019. Sixteen EOIs received till the last date were included in the Provisional list of Potential Resolution Applicants and fifteen Potential Resolution Applicants were considered in the final list of Potential Resolution Applicants. Out of these fifteen, 12 Potential Resolution Applicants provided refundable deposit of ₹5,00,000/- and were provided Information Memorandum and access to data room. At the request of the Potential Resolution Applicants, the last date for submission of resolution plan was extended thrice and thus the last date became 13.03.2019.

4. It is stated that the Resolution Professional received Resolution Plan from 3 resolution applicants, i.e., Movie Time Cine Plex Private Limited & Movie Time Cinemas Private Limited, Sahil Virmani and Davinder Kumar and these plans were opened during 9<sup>th</sup> meeting of COC held on 14.03.2009.

5. It was observed that Sahil Virmani submitted bid for Real Estate and did not propose Resolution Plan for taking over all the assets of the Corporate Debtor. The Resolution Plan submitted by Davinder Kumar was not found to be in compliance with Section 29 A of Insolvency and Bankruptcy Code, 2016. Both the Resolution Applicants were asked to revise/modify the plan, so that it is in compliance with the

Code. However, no revised plans were received from Sahil Virmani and Davinder Kumar.

6. The Resolution Plan received from Movie Time Cine Plex Private Limited & Movie Time Cinemas Private Limited was discussed in the Committee of Creditors meeting with Representatives of the Resolution Applicant during the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Meetings of CoC held on 14.03.2019, 28.03.2019, 05.04.2019 and 18.04.2019 respectively. The original Resolution Plan was revised five times by the Resolution Applicant wherein the amount offered to the Financial Creditors was improved and other terms of payment were made more favourable.

7. The resolution plan was finally discussed in the 13<sup>th</sup> Meeting of CoC held on 10.05.2019 and was put for approval of CoC through e-voting from 14.05.2019 to 16.05.2019 wherein 1.41% CoC members voted in favour of the plan, 92.71% voted against the plan and the rest 5.88% abstained from voting.

8. It is submitted that since there is no approved resolution plan in respect of the corporate debtor and the CIRP is ending on 18.05.2019, the Adjudicating Authority (**AA**) pass necessary orders for initiation of liquidation process of the corporate debtor under Section 33(1) of the Code.

9. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records.

10. The provisions of Section 33(1) of the Code are as follows:-

*“33. Initiation of liquidation.-  
 (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.”*

11. In the present case, the CIRP period expired on 18.05.2019 and before that date, no resolution plan under Section 30(6) of the Code was received by the AA. Therefore, the conditions provided for under Section 33(1)(a) of the Code are satisfied and the liquidation order as referred to in sub clause (i) (ii) and (iii) of clause (b) of Section 33(1) of the Code is accordingly being passed in the case of the corporate debtor SRS Limited.

12. We may add here that Regulations 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (**CIRP Regulations 2016**) have been inserted by Notification No. IBBI/2019-20/GN/RAG/048 dated 25.07.2019. These Regulations relate to

meeting of liquidation costs, assessment of sale as a going concern and fee of the liquidator and require that the COC to make a best estimate of the amount required to meet liquidation cost, recommend that the Liquidator may explore sale of the corporate debtor as a going concern and fix the fee payable to the Liquidator. However, as per the Regulations 39B to 39D, these functions are to be performed by the CoC while approving a resolution plan under sub-section (4) of Section 30 or deciding to liquidate the corporate debtor under sub-section (2) of Section 33 of the Code. In the present case, the resolution plan was not approved by the CoC. Moreover, no decision of the CoC under Section 33(2) of the Code for liquidating the corporate debtor has been brought to our notice. Therefore, the compliance of Regulations 39B, 39C and 39D of the CIRP Regulations, 2016 is not being examined in the present case.

13. Section 34(1) of the Code states that where the AA passes an order of liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP shall, subject to submission of written consent by the RP to the AA in specified form, act as the Liquidator for the purposes of liquidation. The written consent of Shri Ashok Kumar Gulla RP to act as Liquidator is filed vide CA No. 845/2019. Therefore, Shri Ashok Kumar Gulla, Regn. No. IBBI/IPA-003/IP-N00024/2017-18/10174 email [ashok.gulla@rbsa.in](mailto:ashok.gulla@rbsa.in) is appointed as the Liquidator.

14. In view of the satisfaction of the conditions provided for under Section 33(1) of the Code, the corporate debtor SRS Ltd. is directed to be liquidated in the manner as laid down in Chapter III of the Code.

Some of the directions are noted as under:-

- (i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

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

- (ii) That the provisions of sub-section (5) of Section 33 of the Code 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;
- (iii) That this order of liquidation under Section 33 of the Code 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;
- (iv) 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; and

- (v) 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.

15. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

16. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

*“(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*

*(b) on the website, if any, of the corporate debtor; and*

*(c) on the website, if any, designated by the Board for this purpose.”*

17. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 every fortnightly thereafter.

18. It is clarified that the financial creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

19. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Delhi & Haryana forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

October 15, 2019      Pronounced in open court Sd/- 15.10.2019  
Yashpal