

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**M. A. No. 13/2020
In
C. P. No. 2776/IB/2018**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016
In the matter of

TCPL PACKAGING LIMITED
... Operational Creditor
V/s.
PROTHOM INDUSTRIES INDIA PVT. LTD.
... Corporate Debtor

M. A. No. 13/2020

Mr. Devang Sampat

... Applicant/
Resolution Professional

Order delivered on 06.11.2020

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Amit Karle, Advocate

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (PROTHOM INDUSTRIES INDIA PVT. Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *"To pass necessary order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for commencement of liquidation process of the Corporate Debtor;*
- b. *To any other order as this Tribunal deems fit and proper in the interest of justice.*

2. The Adjudicating Authority vide its order dated 28.02.2019 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. PROTHOM INDUSTRIES INDIA PVT. LTD., wherein Mr. Vinodkumar Pukhraj Ambavat, was appointed as Interim Resolution Professional (IRP). Thereafter in the 1st Committee of Creditors (CoC) meeting held on 03.04.2019, Mr. Devang Sampat was resolved to be appointed as Resolution Professional (RP) and the same was approved by this Bench vide order dated 01.05.2019.
3. The RP submits that the public announcement was made on 08.03.2019, in "Financial Express" in English and in regional language in Marathi in "Navrashtra" Pune edition.
4. It is submitted that the CIRP period was extended by 90 days w.e.f. 28.08.2019 and the said extended period of CIRP came to an end on 26.11.2019.
5. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was not published. Thereafter, no extension has been sought and no EoI was invited and no Resolution plan was received.
6. The CoC in its 2nd meeting held on 07.08.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation.
7. The CoC in the 5th CoC meeting held on 04.11.2019, it was informed in the meeting that the Corporate debtor Company is not in operation and there would be no loss of employment and hence Corporate debtor is not a going concern and they were not hopeful for getting potential resolution applicant on account of the following grounds:
 - i. That the Corporate Insolvency Resolution Process (CIRP) period has expired on 26.11.2019;
 - ii. That the Corporate Debtor is not operational and not a going concern, hence it has no enterprise value;
 - iii. That no loss of Employment;

- iv. That there is no substantial value observed in the valuation reports;
 - v. That no invitation for expression of interest was issued.
8. Hence, The CoC in its 5th meeting held on 04.11.2019, with 67.83% voting rights passed a resolution for liquidating the company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s 33 of the Insolvency & Bankruptcy Code, 2016 (Code).
9. The Applicant/ Resolution Professional Mr. Devang P. Sampat, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.
10. Upon hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code Regulations made thereunder. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered;

ORDER

- a. The Miscellaneous Application is hereby allowed.
- b. Mr. Devang P. Sampat, Registration No. IBBI/IPA-001/IP-P00224/2017-2018/10423, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, 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.
- j. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)