

**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. 748/2020
In
CP (IB) No. 8/Chd/Pb/2019
(Admitted)**

Under Section 7 of IBC, 2016

In the matter of:

**State Bank of India
Vs.**

...Petitioner-Financial Creditor

M/s Gurdaspur Overseas Limited

...Respondent-Corporate Debtor

In the matter of IA No. 748/2020

Madan Gopal Jindal

having its Registered Address at
M.G. Jindal & Associates, SCO: 7-8, 4th Floor,
Jandu Tower, G.T. Road, Miller Ganj,
Ludhiana (Punjab) 141003

...Applicant/Resolution Professional

Judgement delivered on: 30.06.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Applicant : Mr. Nahush Jain, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 748/2020

The present application has been filed by the Resolution Professional to liquidate Corporate Debtor under Section 33(1) & (2) of the Insolvency and

IA No. 748/2020

In

CP (IB) No. 8/Chd/Pb/2019

(Admitted)

Bankruptcy Code, 2016. In this case, the petition for initiation of CIRP process filed by State Bank of India (Financial Creditor) against the Corporate Debtor under Section 7 of the IBC, 2016 was admitted by this Tribunal by order dated 05.09.2019. Accordingly, Mr. Mahesh Bansal was appointed as IRP. The IRP made public announcement in prescribed Form A, in accordance with Regulation 6 of IBBI (CIRP) Regulations, 2016 (hereinafter referred to as Regulations) read with Section 13(1)(b) and 15 of the Code.

2. It is submitted that the IRP constituted the Committee of Creditors (CoC). In the First Meeting of Committee of Creditors (CoC) which was convened on 03.10.2019, as a result of voting of members of the CoC, Mr. Madan Gopal Jindal (IRP) was appointed as Resolution Professional (RP) replacing the IRP, to carry out the CIR Process. In order to carry out the CIRP, the Resolution Professional contacted the Erstwhile Directors of the Corporate Debtor and sought specific information of the Corporate Debtor and all was provided by the Corporate Debtor.

3. It is averred that the present application Form G (1st) was earlier issued on 19.11.2019, however, no Expression of Interest (Eoi) was received till the last date i.e. 04.12.2019. Thereafter, in view of maximising the value of assets of the Corporate Debtor it was resolved by the CoC members in its 4th meeting held on 26.12.2019 to republish the Form G. In view of the same, the Resolution Professional had again re-issued the Form G on 03.01.2020, inviting Expression of Interest from the prospective resolution applicants, however, no Eoi was received till 18.01.2020. Copy of minutes of 4th meeting of CoC is attached as Annexure A-3. It is noted that this Bench granted extension via order dated 02.03.2020 for a period of 90 days beyond 02.03.2020 uptill 31.05.2020.

4. It is contended by the applicant that the 6th meeting of CoC was held on 29.07.2020 where, the Form G (3rd) published on 15.03.2020 was approved and ratified, however, due to COVID-19 no EoI was received. It is stated that one EoI received from M/s Aggarwal Construction Company on 08.06.2020 and subsequently a resolution plan was also received by the Resolution Professional on 28.07.2020. The same was to be decided in the next CoC meeting.

5. It is contended by the applicant that 8th meeting of Committee of Creditors was held on 14.10.2020, whereby, resolution plan was discussed by the CoC and resolution applicant was asked to increase the bid amount, however, he denied the same and only requested for more time. The same was discussed and it was observed that the resolution applicant was eligible but the plan was not feasible and it did not contain any financial proposals /projections and even the observations made by the Resolution Professional remain non-cured. Accordingly, the CoC unanimously decided to reject the Resolution Plan. Further, a resolution was passed authorizing the Resolution Professional to file application under Section 33 of IBC for liquidation of the Corporate Debtor. Copy of the minutes of 8th meeting of CoC is attached as Annexure A-9.

6. It is submitted that eight meeting of Committee of Creditors took place on 14.10.2020, whereby the members of CoC discussed the possibilities for future course of business. Subsequently, the Agenda/resolution for liquidation was put to vote. In the same meeting the members of CoC discussed on the Agendas concerning Regulation 39B, 39C and 39D.

7. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and the same is reproduced below:-

"Section 33(2): Initiation of liquidation

(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 percent, 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.]

8. 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.

9. In the present case, the Resolution Professional has published the Form G inviting the Expression of Interest (EOI) on 19.11.2019, 03.01.2020 and 15.03.2020. However, pursuant to above publications, one EOI was received and the resolution plan of the resolution applicant was rejected by CoC. In the Eight meeting of COC held on 14.10.2020, the COC has decided to liquidate the Corporate Debtor by passing Resolution in the aforesaid meeting and further resolved to appoint Resolution Professional as Liquidator.

10. It is observed that IA No. 747/2020 has been filed under Rule 11 of NCLT Rule, 2016 read with Regulation 40C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for exclusion of 187 days of CIRP i.e. the period from 25.03.2020 till 31.08.2020 and further exclusion from 25.09.2020 till 02.10.2020 and from 07.09.2020 till 03.10.2020 is excluded from CIRP period and the IA No. 747/2020 was allowed vide order dated 06.04.2022 of this Tribunal.

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

12. It is submitted that the CoC in its 8th meeting held on 14.10.2020 has resolved to appoint the present RP i.e. Mr. Madan Gopal, Registration No. IBBI/IIPA-002/IP-N00137/2017-2018/10352 as liquidator and he has filed his consent in Annexure A-10.

13. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. M/s Gurdaspur Overseas Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code.

14. 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 Resolution Professional has given his consent to act as Liquidator, therefore, Mr. Madan Gopal Jindal bearing Registration No. IBBI/IIPA-002/IP-N00137/2017-2018/10352, at SCO: 7-8, 4th Floor, Jandu Tower, G.T. Road, Miller Ganj, Ludhiana (Punjab)-141003, Mobile No. 9814170354, e-mail: mgjindal@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), Punjab and Chandigarh 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.

15. Thus, IA No. 748/2020 is allowed and stands disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

June 30, 2022
HM/ASH