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

IA No.23/2020
IN
CP (IB) No. 222/Chd/Hry/2019
(Admitted)

Under Section 33(2) of Insolvency and Bankruptcy Code, 2016.

In the matter of :

M/s Abhyudaya Co-operative Bank Limited … Financial Creditor

Vs.

M/s Bhagwandas Ispat Pvt. Ltd. …Corporate Debtor

And in the matter of:

IA No.23/2020

Ms. Prajakta Menezes,
Resolution Professional/Applicant
M/s Bhagwandas Ispat Pvt. Ltd.
2D-1104, Dreams CHS Ltd.,
LBS Marg, Bhandup West,
Mumbai-400078 …Applicant/Resolution Professional

Judgement delivered on: 14.02.2020

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

For the Applicant : Mr. K P S Dhillon, Advocate

Per: Pradeep R. Sethi, Member (Technical)

ORDER

The instant application is filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (**Code**) praying *inter alia* for an order that M/s Bhagwandas Ispat Pvt. Ltd. (**Corporate Debtor**) be liquidated in the manner provided in the Code.

2. It is stated that the petition under Section 7 of the Code filed by a Financial Creditor i.e. M/s Abhyudaya Co-operative Bank Ltd. for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of the corporate debtor was admitted vide order dated 23.10.2019. It is submitted that the applicant was appointed as Interim Resolution Professional (**IRP**). The Committee of Creditors (**CoC**) was constituted with the only financial creditor i.e. Abhyudaya Co-operative Bank Ltd. with 100% voting share. It is stated that the IRP was subsequently confirmed as Resolution Professional (**RP**) in the first meeting of the CoC held on 22.11.2019.

3. It is submitted that the suspended Directors of the corporate debtor failed to provide any documents/information and an application under Section 19(2) of the Code seeking directions for cooperation from the Directors of the corporate debtor was filed.

4. It is stated that the applicant RP visited the factory premises situated at Murbad, Thane on 03.11.2019 wherein the applicant observed that there is open land of 2.5 acres approx. without any shed, machinery or any assets at the factory premises.

5. It is submitted that in the 2nd meeting of the CoC held on 09.12.2019, the members were informed that in absence of requisite information/documents e.g. assets and liabilities as on insolvency

commencement date, latest annual financial statements, audited financial statements of the corporate debtor for the last two financial years and provisional financial statements etc., the applicant RP was not in a position to prepare the information memorandum as per the provisions of the Code and in the absence of appropriate information memorandum, further measures for the resolution of the corporate debtor comprising of publishing Form G, invitation of expression of interest, issue of request for resolution plan shall not be effective. It is submitted that the RP also informed the members of the CoC that the corporate debtor has not business operations, the machines in the factory have been sold by the lender under the SARFAESI Act and the shed of the factory has been demolished.

6. It is stated that in view of the above discussion, the CoC advised the applicant that in view of following reasons they propose to liquidate the corporate debtor before the expiry of CIRP period in terms of Section 33(2) of the Code:

a) There being no business operations in corporate debtor, neither any machinery or factory shed exists.

b) Non-availability of information/documents coupled with non-cooperation from the Directors of the corporate debtor, which has hampered the process of preparation and issuance of Information Memorandum and related further measures for resolution of the corporate debtor.

7. It is stated that based on the above reasons in the said meeting, the CoC unanimously resolved to liquidate the corporate debtor and appoint the applicant as the Liquidator.

8. It is prayed that the liquidation order under Section 33(2) of the Code be passed, the applicant be appointed as Liquidator, and necessary direction be given under Section 35(1) of the Code.

9. We have carefully heard and considered the arguments of the learned counsel for the applicant and have also perused the record. The relevant provisions of Section 33(1) and 33(2) 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."*
>
> *(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 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 purposes 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.

10. In the present case the applicant RP has stated that there is only open land of 2.5 acres approx. without any shed, machinery or any assets at the factory premises of the corporate debtor situated at Murbad, Thane and that the corporate debtor has no business operations, the machines in the factory have been sold by the lender under the SARFAESI Act and the shed of the factory has also been demolished. It is further stated that due to non-availability of information/documents coupled with non-cooperation from the suspended Directors of the corporate debtor, the information memorandum could not be prepared and further measures for the resolution of the corporate debtor comprising of publishing of Form G, invitation of expression of interest, issue of request for resolution plan could not be undertaken. Based on these reasons the CoC in its 2nd meeting held on 09.12.2019 unanimously decided to liquate the corporate debtor. The resolution has been passed well before the expiry of CIRP and no resolution plan was under consideration by the CoC. We may add that the explanation to 33(2) of the Code states that the CoC may take the decision to liquidate the corporate debtor at any time before the preparation of the information Memorandum.

11. In view of the above discussion, we are satisfied that the conditions provided for in Section 33(2) of the Code are fulfilled. We therefore, pass order requiring the corporate debtor to be liquidated in the manner as laid

down in Chapter III of the Code. Directions for issue of public announcement stating that the corporate debtor is in liquidation and requiring such order to be sent to the authorities with which the corporate debtor is registered are being issued below.

12. Section 34(1) of the Code *inter alia* states that where the AA passes an order for liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP under Chapter II shall, subject to submission of written consent by the RP to the AA in specified form, shall act as the Liquidator for the purposes of liquidation.

13. In the present case, the CoC in the 2nd meeting held on 09.12.2019, has resolved that the RP be appointed as liquidator. The copy of the consent of the RP to act as liquidator is dated 09.12.2019 and is filed at Annexure-10 of the application. The Law Research Associate has verified the credentials of Ms. Prajakta Menezes and the verification thereof is placed on record. We therefore, appoint Ms. Prajakta Menezes, Registration No.IBBI/IPA-001/IP-P01349/2018-2019/12016, Address 2D-1104, Dreams CHS Ltd., LBS Marg, Bhandup West, Mumbai-400078, e-maid ID: prajakta@prmlegal.in, Mobile No. 9833939366 as Liquidator for the purposes of liquidation of the corporate debtor.

14. Regulation 39B, 39C and 39D of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations 2016**) are as under:-

"39B. Meeting liquidation cost.

(1) 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, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).
(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.
(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

***Explanation**.-For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

***39C. Assessment of sale as a going concern**.*

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(2) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable

> *to the liquidator, if an order for liquidation is passed under section 33, for –*
>
> *(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;*
>
> *(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and*
>
> *(c) the balance period of liquidation.”*

15. As regard Regulation 39B the minutes of the second meeting of the CoC held on 09.12.2019 refer to unanimous approval given to the plan provided for contribution for meeting the differential expenses between the estimated value of liquid assets and estimated liquidation cost. However, the details of the plan are not available. Therefore, the Liquidator is directed to take action as per Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process)Regulations 2016 (**Liquidation Process Regulations 2016**).

16. With reference to Regulation 39C, assessment of sale as a going concern, no specific recommendation has been made by the CoC. The Liquidator, is therefore directed to take action as per Regulation 36A of the Liquidation Process Regulations, 2016.

17. With regard to Regulation 39D, fee of the Liquidator, the CoC in the 2nd meeting has resolved that Ms. Prajakta Menezes be paid a remuneration of ₹ 5.00 lacs plus applicable taxes and out of pocket expenses incurred to be paid from the proceeds of sale of assets/realisation. However, the decision is not in consonance of Regulation 39 D of the CIRP Regulations, 2016 which require fixation of fee payable to the Liquidator separately for the

three periods mentioned therein. Therefore, the Liquidator fee is directed to be paid in accordance with Regulation 4(2) and 4(3) of the Liquidation Process Regulations, 2016.

18. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 shall be strictly complied with. Some of the directions are 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.

19. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 2016 Regulations and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders 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.

20. 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 wherein 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."*

21. In accordance with Regulation 13 of the 2016 Regulations, the Liquidator shall file his preliminary report within 75 days and to file regular

progress reports as per Rule 15 of the 2016 Regulations every fortnightly thereafter.

22. 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.

23. The Liquidator shall take into his possession the assets of the Corporate Debtor.

24. Thus, IA No.23/2020 stands disposed of.

25. Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, NCT of Delhi and Haryana. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

Pronounced in open court.

Sd/-

(Ajay Kumar Vatsavayi)
Member(Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

February 14, 2020.
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