

Sr. No. 27/19

IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH

**Coram: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IA No. 267/JPR/2019

in

IB-45/7/JPR/2018

**UNDER SECTION 33(2) OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016**

In the matter of:

Kamal Kumar Jain

Resolution Professional of

M/s. Guman Furniture and Services

Registered office: 315-A, Road No. 2, Shanti Nagar,

Gopalpura Bypass, Durgapura, Jaipur-302018

...Applicant/Resolution Professional

And in the matter of:

Punjab National Bank

...Petitioner

VERSUS

M/s. Guman Furniture and Services Pvt. Ltd.

...Respondent

For the Applicant : Abhishek Bhandari, Adv.
Saumil Sharma, Adv.

For the Respondent(s): None-appeared

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Assistant Registrar 3/10/2019
National Company Law Tribunal
Jaipur

Order Pronounced On: 01.10.2019

ORDER

1. This Application IA/267/JPR/2019, is filed by the Resolution Professional (for brevity 'Applicant') under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') for initiation of Liquidation Proceedings against Guman Furniture and Services Private Limited, (for brevity 'Corporate Debtor').
2. Earlier, an Application under Section 7 of the IBC, 2016 was filed by the Punjab National Bank (for brevity 'Financial Creditor'). This Tribunal admitted the insolvency petition on 01.03.2019 and appointed Mr. Kamal Kumar Jain as Interim Resolution Professional ('IRP').
3. The first meeting of the Committee of Creditors (for brevity 'CoC') was held on 09.04.2019, wherein the CoC resolved to appoint Mr. Kamal Kumar Jain as Resolution Professional (for brevity 'RP'), and the same was confirmed by this Tribunal vide its order dated 11.04.2019.
4. It is submitted that during the pendency of the CIRP against the Corporate Debtor, the RP filed an Interim Application, IA No. 164/JPR/2019 under Section 19(2) & 19(3) of the IBC, 2016 before this Tribunal for directing the erstwhile directors of the Corporate Debtor to

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cooperate and extend assistance to the RP for smooth pursuance of the CIRP and the same was disposed off vide order dated 5.08.2019, as the Erstwhile directors undertook to cooperate with the RP and to furnish all the documents as required.

5. The Applicant has submitted that when he enquired about the documents which are imperative for ascertaining the financial position of the Corporate Debtor, the erstwhile directors of the Corporate Debtor stated that the books of accounts and other financial documents have been destroyed due to a massive fire at the office premises of the Corporate Debtor.
6. The Applicant has submitted that since the RP has no information qua the financial accounts, assets, liabilities etc., of the Corporate Debtor, therefore the Information Memorandum could not be prepared and circulated. Moreover, for the abovementioned reasons, the particulars of invitation for expression of interest (EOI) in Form G, in order to invite prospective resolution applicants could not be prepared and published in newspapers and the process of CIRP has come to an absolute standstill.

7. The Applicant has submitted that in the fourth Meeting of CoC, held on 22.07.2019, he informed the CoC that, despite all his possible efforts, not even a single person could be traced, or communicated with, who could



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provide relevant information pertaining to the operations, financial accounts, location of assets or whereabouts of the erstwhile directors or personnel of the Corporate Debtor. Therefore, due to circumstances beyond the control of the RP, no significant progress could be made with respect to the CIRP process till date.

8. It is also submitted by the Applicant that the annual financial statement of the Corporate Debtor has not been prepared since 31.03.2015. Moreover, due to non-availability of books & accounts and financial records, preparation of up to date financial statement of the Corporate Debtor is not possible. The only records available with the RP are the bank statements from which it is clearly evident that the Corporate Debtor, along with the erstwhile directors conducted their business in order to defraud the creditors. The Applicant has further submitted that the erstwhile directors of the Corporate Debtor are facing criminal and civil suits filed by various banks and investigating agencies, due to which a lot of financial documents and statements with respect to the corporate debtor are seized by the investigating agencies and therefore, the RP could not prepare a list of assets and liabilities of the Corporate Debtor.

9. It is submitted that the Committee of Creditors, vide fifth Meeting of CoC held on 13.08.2019 resolved that despite best efforts of the RP and

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the COC, neither any information pertaining to the financial statements nor the assets belonging to the Corporate Debtor could be ascertained nor whereabouts of any of the erstwhile directors are known to the CoC or the RP. Therefore, the CoC unanimously resolved to proceed with the liquidation of the Corporate Debtor. The operative part of the Resolution is reproduced as below: -

“RESOLVED THAT the proposition for liquidation of the Corporate Debtor is hereby approved.”

“RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to file necessary application before the Hon’ble NCLT to enable initiation of liquidation process of the corporate debtor as may deem fit and justified in given circumstances.”

10. It is further seen that the RP had also filed an Application vide IA No. 214/JPR/2019 under Section 66(1) of the IBC, 2016 seeking direction against the directors of the Corporate Debtor to make such contributions, jointly and/ or severally to the assets of the Corporate Debtor for the remittance of the amount of Rs. 16,27,93,947/- (being outstanding amount of claim admitted of sole financial creditor Punjab National Bank as on 01.03.2019) plus future interest and charges in the account of the Corporate



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Debtor. This IA was disposed off vide order dated 19.07.2019 as the RP prayed to withdraw the same.

11. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor the provisions of Section 33(2) of IBC, 2016 are as follows: -

“(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 creditor 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-clause (1), (ii) and (iii) of clause (b) of Sub-Section (1)”

12. This Tribunal in the circumstances of the case, taking into consideration the provisions of law as well as on facts, is constrained to order for liquidation of the Corporate Debtor and amidst such background the Corporate Debtor stands liquidated with the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of the IBC, 2016 and more particularly as given in Chapter – III of IBC,



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2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

- a. **Mr. Brij Kishore Sharma**, Resolution Professional holding Registration No. IBBI/IPA-002/IP-N00036/2016-17/10075, is hereby appointed as Liquidator, for which he has given written consent.
- b. **Mr. Brij Kishore Sharma** is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. The Registry is directed to communicate this Order to the Registrar of Companies, Jaipur and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly, in relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation



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- e. The Order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the IBC, 2016 shall commence;
- f. This order is 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 IBC, 2016;
- g. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the IBC, 2016 and in accordance with the relevant regulations.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- i. Copy of this order be sent to the Corporate Debtor and the Liquidator for taking necessary steps.

PS-
SHRI RAGHU NAYYAR,
TECHNICAL MEMBER

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PS-
DR. POONDLA BHASKARA MOHAN
JUDICIAL MEMBER

[Signature]
Assistant Registrar
National Company Law Tribunal
Jaipur

08/10/2019