

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ
(Special Bench)**

**CA No.86/ALD/2019
&
CA No.64/ALD/2019
in
CP (IB) No.132/ALD/2017**

In the matter of:

An application under section 33(1) of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Asset Reconstruction Company (India) Limited ... Financial Creditor

Versus

Shamken Cotsyn Limited ... Corporate Debtor

And

In the matter of:

Mr. Ansul Gupta
(RP of Shamken Cotsyn limited) ... ***Applicant***

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Prasanta Kumar Mohanty : Member (Technical)

Appearances (through video conference):

For the Applicant : Mr Milan Negi, Advocate

For the CoC : Mr Dinkar Singh, Advocate

For the suspended Management : Mr Arun Saxena, Advocate

Date of hearing: 10.01.2022

Date of pronouncement: 31.01.2022

COMMON ORDER

(disposing of CA No.86/ALD/2019 & CA No.64/ALD/2019)

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.

CA No.86/ALD/2019

2. This is an application filed by the Resolution Professional ('RP') upon the instructions of the Committee of Creditors ('CoC') seeking liquidation of the

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Corporate Debtor, viz., Shamken Cotsyn Limited [CIN: L17123UP1987PLC-026885], on the ground that no resolution plan was received. The Applicant has sought for the following reliefs:

- a. *Pass an order under section 33(2) of the Insolvency & Bankruptcy Code, 2016 for liquidation of the Corporate Debtor i.e., Shamken Cotsyn Limited.*
 - b. *Pass an order for appointment of liquidator in respect of the Corporate Debtor.*
3. This Adjudicating Authority *vide* its order dated 29.05.2018 on a Petition filed by Asset Reconstruction Company (India) Limited (*'Financial Creditor'*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (*'CIRP'*) against the Corporate Debtor and appointed Mr. Anshul Gupta as the Interim Resolution Professional (*'IRP'*) who was later confirmed as the Resolution Professional.
 4. It is stated that Form-G was published and the last date submission of Expression of Interest (EoI) was on 28.08.2018 and the last date for submission of Resolution Plan was 12.10.2018. In pursuance thereof, three EoIs were received, out of which two were withdrawn. The party who remained in fray submitted its Resolution Plan on 12.10.2018. However, EMD of ₹50 Lakhs was not provided, hence such Resolution Plan was not put before CoC for its consideration.
 5. Thereafter, CoC directed RP to issue fresh Form-G which was done and one Resolution Plan was received. However, this Resolution Plan was also withdrawn before the approval of the same by the CoC.
 6. Therefore, in the 11th CoC meeting which was convened on 18.02.2019, the CoC decided to proceed with the liquidation of the Corporate Debtor with 100% voting share as the Resolution Plan was withdrawn by the Resolution applicant at the last moment. The RP also submitted to CoC that he was not willing to function as liquidator and to appoint another professional as liquidator.

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Subsequently on 22.02.2019, it was intimated by ARCIL, the largest lender in the case that the CoC has proposed to appoint Mr. Sanjay Gupta as the liquidator of the corporate debtor.

7. Hence, the RP has filed an application under section 33(1) (b) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor.
8. We have considered the averments and heard the learned Counsel.
9. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.
10. This Bench, therefore, hereby orders as follows:
 - a. Prayers as sought for in **CA.No. 86/2019** filed by Mr. Anshul Gupta RP of Shamken Cotsyn Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
 - b. Mr. Sanjay Gupta [Reg No.IBBI/IPA-001/IP-P00117/2017-18/10252], email: sanjaygupta@aaainsolvency.com, Phone: 9412705345, having address at E-10A, Kailash Colony, Greater Kailash-1, New Delhi 110048, whose name has been proposed by CoC, is hereby appointed as liquidator as provided under section 34(1) of the Code subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

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- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. 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.
- h. In accordance with section 33(7) of the Code, 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.
- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kanpur, Uttar Pradesh, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Kanpur, Uttar Pradesh.

CA No.64/ALD/2019

11. CA No.64/ALD/2019 has been filed on behalf of a member of the suspended board of the corporate debtor, Mr. Sanjay Chaturvedi, under section 60(5) of

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Code with the prayer to stay the decision of CoC taken to move the corporate debtor into liquidation in 11th COC meeting held on 18.02.2019.

12. The CIRP of the corporate debtor has commenced on 29.05.2018, *i.e.*, more than three and a half years ago. It is not the case of the applicant in CA No.64/ALD/2019 that any resolution plan has been received or that such plan has not received consideration by the CoC. At this point of time, when there are no resolution plans in respect of the corporate debtor filed from any quarter, we do not find any infirmity in the decision of the CoC to liquidate the corporate debtor. The CIRP cannot be extended indefinitely until a resolution plan is received. That will defeat the purpose of the Code itself.
13. Therefore, we do not find any merit in CA No.64/ALD/2019 filed by a member of the suspended board.
14. Considering these facts and legal position, **CA No.64/ALD/2019** is dismissed as such.
15. The application bearing **CA No.86/ALD/2019** and **CA NO.64/ALD/2019** shall stand disposed of in accordance with the above directions.
16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
17. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
18. List the main **CP (IB) No. 132/ALD/2017** for reporting progress on **26.04.2022**.

—Sd—

Prasanta Kumar Mohanty
Member [Technical]

Swati Gupta (LRA)

Rajasekhar V K
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by Rajasekhar V K
Date: 2022.01.31
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Rajasekhar V.K.
Member [Judicial]