

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**COURT-IV**  
**AT NEW DELHI**

**I.A. 3442/ND/2020**

**IN**

**Company Petition No. (IB) - 1416(ND)/2018**

*Under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 for  
liquidation of the corporate debtor*

**In the matter of:**

Prashant Agrawal  
F-106, 1<sup>st</sup> Floor, Sumer Complex  
Gautam Marg, Behind Bagadia Bhawan  
C-Scheme, Jaipur-302001, Rajasthan

... Applicant/Resolution Professional

**AND**

**In the matter of:**

Mr. Ram Pal Toshniwal  
(Sole Proprietor of M/s Ridhi Sidhi)

...Applicant/Operational Creditor

Versus

R.K Silk Mills India Limited

....Respondent/ Corporate Debtor

**Order delivered on: 21.02.2022**

**CORAM:**

**DR. DEEPTI MUKESH, HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**Per SMT. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)**

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1. This is an application filed by the Resolution Professional under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the Corporate Debtor, R.K Silk Mills India Limited.
2. The facts in brief are that the operational creditor, Mr. Ram Pal Toshniwal, sole proprietor of M/s Ridhi Sidhi, had filed an application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The said application was admitted by this Tribunal on 19.11.2019 initiating CIRP against the corporate debtor and appointed Mr. Prashant Agrawal as the Interim Resolution Professional (IRP). The IRP made the Public Announcement in 'Form A' in respect of initiation of CIRP.
3. Pursuant to the aforesaid order dated 19.11.2019, the applicant made a public announcement in accordance with section 15 of the code read with regulation 6 of the Chapter III of the IBBI (Insolvency Resolution Process for Corporate Persons) regulations, 2016 in newspapers, Financial Express (English) and Jansatta (Hindi) and also on the website of the IBBI.
4. The IRP subsequently held first meeting of Committee of Creditors (CoC) on 29.12.2019 with presence of 100 percent quorum wherein the applicant was appointed as RP with 100% voting rights in accordance with the section 22(3)(a) of the IBBI code, 2016. The minutes of the meeting has been filed with NCLT, Delhi Bench and

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the same has been taken on record by the Adjudicating Authority by its order dated 27.01.2020.

5. FORM-G i.e invitation of expression of interest("EOI") for inviting expression of interest from prospective Resolution Applicants was issued by the applicant. However, since no one had taken any interest in submitting the expression of interest, the RP called and conducted third meeting of committee of creditors on 12.06.2020 through video conferencing with an agenda *"to consider and take decision regarding extension of time line of corporate insolvency resolution process or to go into liquidation as per section 33 of the IBBI, code, 2016"*.
6. That in the said meeting, the RP apprised the members of committee of creditors that Corporate Insolvency Resolution Process of the corporate debtor was commenced on 19.11.2019 which must be completed till 18.05.2020. however, due to outbreak of COVID-19, the Government of India has declared lockdown w.e.f 25.03.2020 which is still in continuation, as a measure to combat and contain spread of COVID-19 and said time period has been excluded from the calculation of computing the period of CIRP by IBBI by inserting regulation 40C of the IBBI(Insolvency Resolution Process for Corporate Persons) regulations, 2016. However, till the date of 25.03.2020, a total period of 127 days have already been passed before imposition of lockdown, and CoC must decide to extent the time limit of CIRP or go to liquidation as per section 33 of the Code,

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2016, since no one have shown interest to submit expression of interest and subsequently resolution plan.

7. That under the said agenda, one of the operational creditor, Mr. Anand Toshniwal proposed that both the operational creditors i.e M/s Ridhi Sidhi and M/s Raja Enterprises, together, are interested to submit resolution plan. In this regard, the RP informed that last date to submit Expression of Interest was 17.02.2020 and issuing of Information Memorandum, evaluation matrix and request for resolution Plan was 03.03.2020, which already have been expired now, although the last date of submission of Resolution Plan was 02.04.2020 while due to imposition of lockdown in respect to COVID-19, a notification no. IBBI/PR/2020/06 dated 29.03.2020 issued by IBBI for excluding the days of CIRP for all purposed w.e.f 25.03.2020. Since, lockdown is still in continuation and therefore there is still time left for submission of the resolution plan and it would be seven days from the date of lifting of lockdown, being the difference of days between 25.03.2020 and 02.04.2020
8. The operational creditors to this, replied that they are willing to submit resolution plan if condonation of delay is granted by CoC for seeking for expression of interest and after assessing the eligibility criteria, if given a chance to them to submit the resolution plan. On the request of operation creditors and appraising the situation, the member of committee of creditors, who were present at the meeting

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with 75% voting rights, decided to give chance to the operational creditors and resolution professional to access eligibility criteria on submissions of expression of interest and provide them all relevant documents/ information enabling them to submit resolution plan on or before 15.06.2020. therefore, the meeting of CoC have decided to discuss this agenda for next meeting to be held soon after 15.06.2020..

9. That after non-receipt of resolution plan on or before 15.06.2020, the RP again called and conducted fourth meeting of committee of creditors on 22.06.2020 with an agenda ITEM No. 4, "To report to the committee of Creditors regarding Non-receipt of Resolution Plan and to consider initiation of liquidation under 33 of IBBI, code, 2016" wherein the RP proposed before the member of committee of creditors to approve liquidation process against the corporate debtor and sought vote for the same. The said matter was discussed and the members of the committee of creditors with 100 percent voting rights approved the liquidation process as per section 33 of the IBBI, 2016.
10. That further, the RP being eligible to be appointed as Liquidator, presented his consent before the members of committee of creditors and proposed to pass resolution for his appointment as Liquidator in accordance with the provisions of section 34 of the Code, 2016. After discussion, the members with 75.7% voting rights approved the appointment of applicant as Liquidator.



11. In view of the submission made by the parties, the liquidation has to follow as recommended by the Committee of Creditors in terms of provisions of Section 33 (1) of the Code. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences and in present case the consequence is liquidation of Corporate Debtor.
12. In the factual background, since there is no resolution plan, period of CIRP has since been ended without any approved resolution plan, the payer for liquidation of the corporate debtor under Section 33 of the Code is hereby allowed.
13. Resultantly, the present application IA No. 3442/2020 stands allowed and hereby it is ordered that liquidation of the corporate debtor, namely M/s. R.K Silk Mills Pvt. Ltd. shall be commenced in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:
- a. Mr. Prashant Agrawal, having registration number IBBI/IPA-001/IP-P00053/2017-18/10127, is appointed as Liquidator in terms of Section 34(1) of the Code.
  - b. Mr. Prashant Agrawal, 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 (Regulations);

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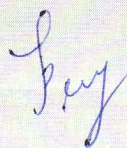
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- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Code shall commence;
- e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code and in accordance with the relevant regulations.
- f.** The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- g.** The liquidator shall also follow pending application, if any, for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- 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 Regulations. Resultantly the present application stands allowed

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- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

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(SUMITA PURKAYASTHA)

MEMBER (T)

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(DR. DEEPTI MUKESH)

MEMBER (J)

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