

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD**

**CA NO. 85/2019 & CA NO. 322/2019 IN
COMPANY PETITION NO. (IB) 131/ALD/2017**
(Under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 for
liquidation of the corporate debtor)

IN THE MATTER OF:

MR. ANSUL GUPTA
(RESOLUTION PROFESSIONAL)
SHAMKENS SPINNERS LIMITED

.....APPLICANT

AND

IN THE MATTER OF:

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED

.....FINANCIAL CREDITOR

VERSUS

SHAMKEN SPINNERS LIMITED

.....CORPORATE DEBTOR.

ORDER PRONOUNCED ON :26.10.2021

CORAM:

Hon'ble Virendra Kumar Gupta Member, Technical

Hon'ble Rohit Kapoor, Member, Judicial

MEMO OF PARTIES

Mr. Ansul Gupta
(Resolution Professional)
Shamkens Spinners Limited
116, D Block, Sarita Vihar,
New Delhi-110076

.....APPLICANT

Appearance:

For RP :Mr. Zain Abbas, Advocate
For COC: Mr. Dinkar Singh, Advocate
For Suspended Management: Mr. Arun Saxena, Adv.

CA NO. 85/2019 & CA No.322/2019
Mr. Anshul Gupta (RP) and Asset Reconstruction Company (India) Limited
vs. Shamkens Spinners Ltd.

—Sd—

—Sd—

ORDER

[Per Bench]

1. These applications involve connected issues, hence, these are being disposed of through common order.

CA NO. 85/2019

2. This is an application filed by Resolution Professional under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the Corporate Debtor "M/s Shamken Spinners Limited" and also for the appointment of the Liquidator thereof.
3. The Corporate Debtor was admitted into CIRP by this Adjudicating Authority vide its order dated 29.05.2018. The RP, who was originally appointed as an IRP who conducted the CIR process as per the provisions of the Code and CIRP Regulations, 2016 made thereunder. The Information Memorandum was approved by the CoC in its meeting held on 07.08.2018 based on which Form-G was published which prescribed last date for submission of Resolution Plan as 12.10.2018. In pursuance thereof, three EOI's were received, however, two were withdrawn. The party who remained in fray submitted its Resolution Plan on 12.10.2018, but

CA NO. 85/2019 & CA No.322/2019

Mr. Anshul Gupta (RP) and Asset Reconstruction Company (India) Limited
vs. Shamkens Spinners Ltd.

—Sd—

—Sd—

EMD submitted of Rs. 50 Lakhs was not provided, hence, such Resolution Plan was not put before CoC for its consideration by RP.

4. Thereafter, CoC directed RP to issue fresh Form-G which was done and one Resolution Plan was received. However, that Resolution Plan was also withdrawn before the approval of the same by the CoC. The same Resolution Applicant then again approached the CoC. However, in spite of request by CoC, the Resolution Applicant did not take further action resulting into decision by CoC to proceed with the liquidation of the Corporate Debtor. The RP also submitted to CoC that he was not willing to function as liquidator.
5. The CoC after considering these facts and circumstances passed resolution for liquidation of the Corporate Debtor unanimously in its 11th meeting which was held on 18.02.2019 and also proposed the name of Sh. Sanjay Gupta Regn No.: -IBBI/ IPA-001/ IP-P00117/2017-18/10252 to act as a liquidator.
6. Thereafter, this application has been filed by the outgoing RP. The learned counsels for the CoC and RP appeared and narrated these facts and also contended that as per the provisions of Section

CA NO. 85/2019 & CA No.322/2019

Mr. Anshul Gupta (RP) and Asset Reconstruction Company (India) Limited
vs. Shamkens Spinners Ltd.

—Sd—

—Sd—

33(1)(a) of the Code, liquidation order was required to be passed as no resolution plan was approved by CoC and CIRP period had also expired. Further as regard to the Resolutions required under Regulation 39B, 39C and 39D were not passed as these Regulations were inserted in CIRP Regulations with effect from 25.07.2019. The learned counsel further submitted that Resolution as per the Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 was also not passed as the same was also inserted from 25th July, 2019. It was also contended that the CoC was not averse from the proposition to sale the Corporate Debtor as a going concern during the Liquidation Process as prescribed in Regulation 32 and 32A of IBBI (Liquidation Process), 2016 and an appropriate direction may be given by this Adjudicating Authority in this regard.

7. We have considered the submissions made on behalf of the RP as well as CoC and material placed on record, it is not disputed that the Resolution Plan received has been rejected by the CoC inspite of giving number of opportunities to the prospective Resolution Applicant. Two other parties who had given their EOIs withdrew themselves. In these circumstances, there remains no other option but to pass the order of liquidation particularly when CoC

CA NO. 85/2019 & CA No.322/2019

Mr. Anshul Gupta (RP) and Asset Reconstruction Company (India) Limited
vs. Shamkens Spinners Ltd.

—Sd—

—Sd—

has also unanimously decided so. Further, the Resolution Professional has not shown his willingness to continue as liquidator and, therefore, the name of one eligible insolvency professional has been proposed to act as liquidator.

8. As regard to the requirements of Regulations 39B, 39C and 39D of CIRP Regulations as well as Regulation 2B, 4, 32 and 32A of the of IBBI (Liquidation Process) 2016, we are of the view that the requirements of these Regulations need to be considered by the Liquidator as the liquidation process is commencing after the insertion of these Regulations and these Regulations aim to achieve the objective of Code that the Corporate Debtor should remain a going concern to the extent possible and all efforts to be made for that purpose.
9. As far as the passing of appropriate resolutions to give effect to these Regulations, the learned counsel for the RP and CoC have already expressed their view that CoC/ Liquidator would take all steps to comply with the requirements of these Regulations.
10. Considering the overall facts and the submissions so made, we hold that the Corporate Debtor needs to be liquidated. We further

—Sd—

—Sd—

hold that during the course of the liquidation, the liquidator shall first try to transfer the Corporate Debtor through compromise or arrangements in terms of Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 and, thereafter, the liquidator shall also try to dispose of Corporate Debtor as a going concern. We further hold that for these purposes, the valuation of the business/assets of the Corporate debtor would be done afresh. Accordingly, we pass the following order.

ORDER

- i. We order that the liquidation of the Corporate Debtor is commenced from the date of this order and Corporate Debtor would be liquidated in accordance with the provisions of law in due course. We further direct the Liquidator to make public announcement as regard to the fact that the Corporate Debtor is in liquidation as per the provision of Section 33 (1)(b)(ii) of the Code.
- ii. Mr. Sanjay Gupta, Regn No.: -IBBI/IPA-001/IP-P00117/2017-18/10252 is hereby appointed as Liquidator in terms of Section 34(1) of the Code.
- iii. As a consequence of the application being allowed the Moratorium as envisaged under Section 14 of the Code, 2016 shall cease to

CA NO. 85/2019 & CA No.322/2019

Mr. Anshul Gupta (RP) and Asset Reconstruction Company (India) Limited
vs. Shamkens Spinners Ltd.

—Sd—

—Sd—

have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence from the date of this order.

- iv. The liquidator shall first try to transfer the corporate debtor by compromise or arrangements in terms of Regulation 2B of IBBI (Liquidation Process) Regulations, 2016, thereafter the liquidator shall try to sale the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32 (e) or 32(f) of IBBI (Liquidation Process) Regulations, 2016. The Liquidator to conduct the process of Liquidation in the manner laid down in Chapter III of Part-II of the Code subject to direction given in Clause iv of this order.
- v. The liquidator shall be paid fees in accordance with the provisions of Regulations, 2016 as amended with effect from 25th July, 2019 in the order of priority as prescribed in Section 53 of the of the Code.
- vi. The persons as specified in Regulation 9 of IBBI (Liquidation Process) Regulations, 2016 are directed to extend all co-operations to the liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- vii. That after commencement of the liquidation of Corporate Debtor by virtue of this order, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the Corporate

—Sd—

—Sd—

Debtor. However, the liquidator may institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority as mentioned in Sub Section 5 of Section 33 of the Code.

- viii. The Liquidator is at liberty to seek any directions, if need be from this Tribunal during the Liquidation Process as per provisions of Section 35(1) (n) of the Code.
- ix. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workers of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- x. The Liquidator to 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 Board of India (Liquidation Process) Regulations, 2016. The liquidator is further directed to file the quarterly progress report in every three months before this Authority.

CA NO. 322/2019

- 11. During the course of hearing, the learned counsel appearing on behalf of the applicant submitted that they were opposing the application for passing of order of liquidation. However, on perusal of the prayers made in this application, it is noted that the

CA NO. 85/2019 & CA No.322/2019
Mr. Anshul Gupta (RP) and Asset Reconstruction Company (India) Limited
vs. Shamkens Spinners Ltd.

—Sd—

—Sd—

applicant has sought direction from this Authority for the members of the CoC to disclose the reasons of rejecting fresh plan of the applicant.

12. There is no other specific ground relating to the objection against passing of the Liquidation order which is claimed during the course of hearing. Even otherwise as per the settled judicial position, the Resolution Applicant does not have a vested right to get its plan considered and approved necessarily. Further, no regulation or provisions of the Code has been brought to our notice which requires the CoC to communicate the reasons for rejecting the plan to resolution applicant.

13. We are further of the view that the applicant herein may get an opportunity to participate in the process of transfer of Corporate Debtor as a going concern during the liquidation process as ordered by us in CA NO. 85/2019 herein above, hence, no prejudice is caused to the interests of the applicant. Considering these facts and legal position we dismiss this application.

14. Accordingly, this application stands dismissed and disposed of in terms indicated above.

—Sd—

—Sd—

15. In the result, CA No. 85/2019 is allowed and CA 322/2019 stands dismissed .
16. The Registry is directed to upload this order on the Official website. The authenticated copy of this order shall also be sent by the Registry to the financial creditors, corporate debtor, and the Liquidator for taking necessary steps. In addition, a copy of said order shall be also be forwarded to IBBI for its records and to ROC for updating the Master Data.
17. Accordingly ,**CA No. 85/2019** is **allowed** and **CA 322/2019** is **dismissed** and stands disposed of.

—Sd—

(ROHIT KAPOOR)
MEMBER (J)

—Sd—

(VIRENDRA KUMAR GUPTA)
MEMBER (T)

Order Signed on: 26-10-2021

Swati Gupta
(LRA)