

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

M.A. No. 351 of 2020
In
C.P. No. 506/IB/2018

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of
Mr. Dinesh Sharma ... Petitioner
Operational Creditor
V/s.
M/s. Peerless Fabrikkerne (India) Ltd.
... Corporate Debtor

M.A. No. 351/2020

Mr. Adesh Kumar Gupta ... Applicant/
Resolution Professional

Order delivered on 04.10.2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Karl Shroff, Advocate

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. It is an application filed by the Applicant/ Resolution Professional, seeking liquidation of the Corporate Debtor namely (M/s. Peerless Fabrikkerne (India) Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:



- a. To allow present application under Section 33 of the Code for liquidation of the Corporate Debtor;
 - b. To pass an appropriate order permitting the initiation of liquidation process of the Corporate Debtor;
 - c. To appoint the Applicant as Liquidator under Section 34(1) of the Insolvency and Bankruptcy Code, 2016;
 - d. To pass appropriate orders Under Section 39B of the Code to provide for meeting liquidation cost as the Committee of Creditors has rejected the resolution relating to the same and to direct the members of CoC to contribute to the same as proposed in the relevant resolution by the Resolution Professional;
 - e. To pass appropriate orders for the liquidator to consider feasibility/non-feasibility of sale of the Corporate Debtor as going concern as per Regulation 39C of Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Person), 2016;
 - f. To pass appropriate orders Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Person), 2016 for providing for fees of the Liquidator as the CoC has not approved/ rejected the resolution relating to the same."
2. The Adjudicating Authority vide its order dated 13.03.2019 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Peerless Fabrikkerne (India) Ltd., wherein Mr. Adesh Kumar Gupta, was appointed as Interim Resolution Professional (IRP). Thereafter, in the 1st Committee of Creditors (CoC) meeting held on 22.04.2019, Mr. Adesh Kumar Gupta, was resolved to be appointed as Resolution Professional (RP).



3. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form A was published on 02.04.2019 in "Free Press Journal" in English and "Navshakti" Marathi Edition in Marathi, the late date for submission of claims was 12.04.2019.
4. It is further submitted by the Counsel for the Applicant that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 03.08.2019 and 25.09.2019 being the last date for submission of Resolution plan. It is submitted that the CIRP period was further extended by 90 days vide an order dated 09.09.2019. Thereafter, no EoI was invited.
5. The CoC in its 1st meeting held on 22.04.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation.
6. The Counsel for the Applicant submits that the in response to the publication in Form G an invitation for Expression of Interest was received from M/s. Infix Services Pvt. Ltd. Thereafter, the prospective resolution applicant was provided with the information, evaluation matrix and others necessary documents and given time submit Resolution plan on or before 05.10.2019, the Resolution Applicant submitted the Resolution plan prior to the due date but the said Resolution plan was rejected by the CoC in its 7th CoC meeting held on 15.09.2019.
7. The CoC was informed that the assets of the Corporate Debtor comprise of machineries, equipment which are very old and outdated and certain inventories being customer specific cannot be sold in local market. The CoC was also informed about the present situation



of factor situated in SEEPZ-SEZ, Andheri (lease hold premises) which is closed for operation and which is in dilapidated condition, requiring huge cost towards repairs and there are no employees and workmen.

8. The CoC in the 7th CoC meeting held on 15.09.2019, it was informed in the meeting that there are no chance of revival of the Corporate debtor Company. The following Resolution was passed;

"Resolved that as there is no business activity of the Corporate Debtor at present and despite publication of expression of interest, only one Resolution Plan was received which has not been approved by the CoC and also the liabilities of the Corporate Debtor far exceed the assets available, it is not feasible to resolve the Corporate Debtor;

Resolved further that that CoC hereby decides to approach the Hon'ble National Company Law Tribunal with the recommendation for Liquidation of the Corporate Debtor;

Resolved further that Mr. Adesh Kumar Gupta, Resolution Professional be and is hereby authorised to file application with the Hon'ble NCLT for Liquidation of the Corporate Debtor namely Peerless Fabrikkerne (India) Ltd. under Section 33 of the Insolvency and Bankruptcy Code, 2016 and regulations made thereunder."

9. Hence, the CoC in its 7th meeting held on 15.09.2019, with 67% voting rights passed a resolution for liquidating the company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).



10. The Applicant/ Resolution Professional Mr. Adesh Kumar Gupta, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.
11. Upon hearing the submissions of the Applicant and on the perusal of the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code; Regulations made thereunder. The reasons assigned in the petition with regards to taking the decision of liquidation of Corporate Debtor by COC appears to be convincing. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered;

ORDER

- a. The Miscellaneous Application No. 351 of 2020 is hereby allowed.
- b. Mr. Adesh Kumar Gupta, having Registration No. IBBI/IPA-001/IP-P00747/2017-2018/11251, Email Id: adeshkgupta@probizadvisor.com, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by



following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, 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.

- j. 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.
- k. The Miscellaneous Application No. 351 of 2020 is hereby allowed and disposed of.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)

