THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)

IA No. 578/2020
In
CP (IB) No. 376/Chd/Pb/2018
(Admitted Matter)

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016

In the matter of:-

State Bank of India ….Financial Creditor
Vs.
Saber Paper Boards Private Limited …Corporate Debtor

And in the matter of IA No. 578/2020:-

Mr. Vikram Bajaj,
Resolution Professional
of Saber Papers Limited,
308, 3rd Floor, Pearl Business Park,
Netaji Subhash Place, Pitampura,
Delhi-110034. …Applicant-Resolution Professional

Order delivered on 15.12.2020

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

Present through Video Conferencing:-

For the Applicant : Mr. Abhishek Anand, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

IA No. 578/2020

This application has been filed by Mr. Vikram Bajaj, the Resolution Professional of M/s Saber Paper Boards Private Limited (Corporate Debtor) under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s Saber Paper Boards Private Limited (Corporate Debtor).

2. CP (IB) No. 376/Chd/Pb/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by “State Bank of India” to initiate Corporate Insolvency Resolution Process (in short CIRP) against M/s Saber Paper Boards Private Limited was admitted on 07.01.2020 and Mr. Vikram Bajaj was appointed as IRP. Subsequently, in the 1st meeting of CoC held on 05.02.2020, it was resolved to appoint the IRP as Resolution Professional by 100% voting share. Copy of the minutes of first meeting of CoC is attached as Annexures A-3 of the application.

3. It is submitted that RP appointed two registered valuers for land and building, plant & machinery and securities and financial assets to determine fair and liquidation value in accordance with Regulation 35 of the CIRP Regulations. Thereafter, invitation for Expression of Interest in Form-G was published in Business Standard (English and Hindi), All India Edition and Desh Sewak (Hindi), Punjab Edition on 29.02.2020. Copy of minutes of 2nd CoC meeting and Form G dated 29.02.2020 along with newspaper cuttings are attached as Annexures A-4 and A-5 (colly) respectively. After publication of EOI, RP has received 8 expressions of interest till 15.03.2020 i.e. last date of submission of EOI. However, after verification by RP, documents of four prospective resolution applicants were found to be complete. CoC in its 4th meeting resolved to provide additional time for completion of documents and copy of minutes 4th meeting of CoC dated 11.05.2020 is attached as Annexure A-7 of the application.

4. In the 5th meeting, Committee of Creditors has been reconstituted as Resolution Professional has received a claim from Canbank Factors Ltd. and the same was admitted provisionally. Moreover, last date for submission of resolution plan was again extended due to restriction imposed on travelling as a result of Covid-19. Copy of minutes of the said meeting dated 06.08.2020 is attached as Annexure A-8 (colly) of the application. However, no resolution plan was submitted by the resolution applicants till the last date. Further, in the 7th meeting, CoC has passed the following resolution with 99.62% voting share which is as follows:-

> "Resolved that the Committee of Creditors of Saber Paper Boards P Ltd. terms of regulation 33(2) of IBC, 2016 be and hereby decides to liquidate the corporate debtor – Saber paper Boards Private Ltd."

Copy of minutes of 7th CoC meeting is attached as Annexure A-10 (colly) of the application.

5. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under:-

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."*

6. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

7. The relevant provisions of Section 33(2) of the Code are as follows:-

> *"33. Initiation of liquidation. –*

> *(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 creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."*

8. **Prescribed period for filing application** - In the present case, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 07.01.2020 and the present application is filed by Resolution Professional on 13.10.2020. The period of 180 days were completing on 05.07.2020. But, as per Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020 issued by IBBI, the period of lockdown is excluded for the purpose of calculating the timelines in CIRP Period. Hence, after excluding the lockdown period, the present application is filed within the prescribed period..

9. **Appointment of Liquidator –** Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the Liquidator for the purpose of liquidation. The CoC in its 7th meeting held on 16.09.2020, with 99.62% voting share, resolved to appoint the RP Mr. Vikram Bajaj, as Liquidator (Annexure-10). Mr. Vikram Bajaj, Resolution Professional email address-bajaj.vikram@gmail.com with IBBI Registration No.IBBI/IPA-002/IP-N00003/2016-17/10003 has filed his consent in Form AA dated 26.09.2020 (Annexure A-11). The Law Research Associate of this Tribunal has checked the credentials of the proposed Liquidator and nothing adverse is found on record. Therefore, Mr. Vikram Bajaj is appointed as the Liquidator.

10. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019.

11. **Liquidation Cost [(Regulation 39B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –** The COC in its 7th meeting held on 16.09.2020 has resolved that the liquidation fees shall be paid from realization of the assets of the corporate debtor and other liquidation cost shall be contributed as per actuals by the CoC members/Financial Creditors as per their voting share. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

12. **Assessment of Sale as a going concern [Regulation 39C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –** The COC in its 7th meeting has assessed the prospect of sale of the corporate debtor as a going concern under Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; as under:-

> "The RP requested CoC members to deliberate on the sale of corporate debtor/its business as a going concern and grouping of assets and liabilities for the same. The representative of EARCL submitted that the paper unit of the corporate debtor was lying closed and corrugated box unit was also being run by related entity despite cancellation of lease by CoC. As such the value potential of the unit is limited to the value realizable from its assets and the liabilities far exceed the value of the assets. As such the going concern sale of corporate debtor/business does not seem feasible in the case. After deliberations, it was decided to place resolution for sale as going concern for voting and the same

shall be explored only if the resolution is approved. Accordingly following resolution was proposed by the RP”:

> “Resolved that the Committee of Creditors of Saber Paper Boards P Ltd. in terms of regulation 39C of IBBI(CIRP) Regulations, be and hereby recommends that the Liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, before sale of assets of the corporate debtor.”

VOTING

S.No.	Name of Financial Creditors	Vote Share	Voted in favour	Voted Against	Not Voted
1	Edelweiss Asset Reconstruction Company Ltd. (assignment of debt of Central Bank of India)	37.47%	-	37.47%	
2	Edelweiss Asset Reconstruction Company Ltd. (assignment of debt of State Bank of Hyderabad)	10.63%	-	10.63%	
3	State Bank of India	51.52%	-	51.52%	
4.	Canbank Factors Ltd.	0.38%	-	-	0.38%
Total		**100.00%**	**-**	**99.62%**	**0.38%**

DECISION

The resolution has not achieved the requisite voting of 51% in its favour and thus disapproved by the CoC.”

13. **Fees of the Liquidator [Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –** The RP proposed to be appointed as Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such

proportion to the value of liquidation estate assets as may be specified by the Board. Rule 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for Liquidator's fee. Regulation 4(2) thereof states that the Liquidator shall be entitled to such fee and in such manner as has been decided by the CoC. The CoC in its 7th meeting held on 16.09.2020 has resolved that the Liquidator shall be entitled to the fee as stated in Regulation 4(2)(b) of the aforesaid Regulations.

14. **Pending Applications, if any, and its effect -** From the perusal of records, it has been found that an application filed by RP seeking custody and control of the factory premises of the corporate debtor is pending for adjudication before this Tribunal.

15. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the corporate debtor M/s Saber Paper Boards Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:-

(i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

(ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

(iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator; and

(iv) That all the 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 in the liquidator; and

(v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

(vi) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

(vii) That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(viii) That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

16. Thus, IA No. 578/2020 and IA No. 149/2020 stands disposed of.

17. Copy of this order be supplied to the counsel for the Liquidator as well as to the concerned Registrar of Companies, forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/- Sd/-

(Raghu Nayyar)
Member (Technical)

(Ajay Kumar Vatsavayi)
Member (Judicial)

December 15,2020
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