THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

IA No.114/2020
IN
CP (IB) No. 300/Chd/Hry/2019

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

In the matter of :

Karma Holdings Pvt. Ltd. …Operational Creditor
Vs.
B. R. Knitwears Pvt. Ltd. …Corporate Debtor

And in the matter of:

IA No.114/2020

Mr. Naresh Kumar Goel,
Resolution Professional/Applicant
R/o 203, Vardhman Star Mall,
Sector-19,
Faridabad,
Haryana-121002 …Applicant/Resolution Professional

Judgement delivered on: 13.03.2020

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)

For the Applicant : 1. Mr. Nahush Jain, Advocate
2.Mr. Naresh Kumar Goel, RP in person.

Per: Pradeep R. Sethi, Member (Technical)

ORDER

The instant application is filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (**Code**) praying for an order and issuance of directions for liquidation of B R Knitwears Pvt. Ltd. (**Corporate Debtor**).

2. The application for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the corporate debtor was filed by Karma Holdings Pvt. Ltd. (**Operational Creditor**) under Section 9 of the Code and was admitted vide order dated 21.11.2019 and Shri Naresh Kumar Goel was appointed as the Interim Resolution Professional (**IRP**). In the second meeting of the Committee of Creditors (**CoC**) held on 24.12.2019, the CoC resolved to continue the IRP as Resolution Professional (**RP**).

3. The IRP constituted the CoC with Indian Bank, Gurgaon Branch being the sole member having 100% voting power.

4. In the first meeting of CoC held on 17.12.2019, item No.12 thereof related to discussion of such other matters as may be deemed necessary for the smooth functioning of the CIRP. The CoC made discussion on exploring the possibility of liquidation as all the assets of the corporate debtor, except debtors, had already been taken over and auctioned by Indian Bank and there is no possibility of revival of the business of the corporate debtor.

5. In the second meeting of the CoC, item No.8 related to discussion and approving the application to be filed to the Adjudicating Authority (**AA**) under Section 33(2) of the Code for initiation of liquidation of the corporate debtor. The resolution was passed with 100% votes in favour thereof.

6. It has been prayed that order be passed for liquidation of the corporate debtor under Section 33(2) of the Code and Shri Naresh Kumar Goel, IRP be appointed as Liquidator.

7. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the record.

8. Section 33(1) and 33(2) of the Code are as under:-

> *"33. Initiation of liquidation. –*
>
> *(1) Where the Adjudicating Authority, -*
>
> *(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of Section 30; or*
>
> *(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*
> *It shall*
>
> *(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
>
> *(ii) issue a public announcement stating that the corporate debtor is in liquidation;*
> *and*
>
> *(iii) require such order to be sent to the authority with which the corporate debtor is registered."*
>
> *(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).*
>
> *<u>Explanation:</u>*
>
> *For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum."*

9. In the present case, the sole CoC member is Indian Bank and has already auctioned the land and building and plant and machinery of the corporate debtor. However, it is stated that there is significant amount of

debtors in the corporate debtor amounting to ₹926.67 lacs (as per the last audited balance sheet for the financial year ended 31.03.2017 available with the IRP) and for the valuation thereof, two registered valuers are also stated to be appointed by the RP. The CoC has discussed the functioning of the CIRP and has found that liquidation is the only alternative as all the assets of the corporate debtor, except debtors, had already been taken over and auctioned by Indian bank and there is no possibility of the revival of the business of the corporate debtor. The resolution, authorising the RP to file the application before the AA for initiation of liquidation of the corporate debtor has been passed in the second meeting of the CoC held on 24.12.2019 with 100% votes in favour. We note that as per Explanation to Section 33(2) of the Code, the CoC can take the decision to liquidate the corporate debtor at any time after its constitution and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum. The conditions provided for in Section 33(2) of the Code being satisfied, we direct that the corporate debtor M/s B R Knitwears Pvt. Ltd. be liquidated in the manner as laid down in Chapter III of the Code. Directions for public announcement stating that the corporate debtor is in liquidation and requiring such order to be sent to the authority with which the corporate debtor is registered are being given below.

10. Section 34(1) states that where the AA passes an order for liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP under Chapter II, shall subject to submission of written consent by the RP to the AA in the specified form, shall act as a Liquidator for the purposes of liquidation. In the present case, the CoC in the second meeting held on

24.12.2019 has resolved with 100% votes in favour that the existing RP i.e. Mr. Naresh Kumar Goel continues to act as Liquidator. His consent dated 24.12.2019 to act as Liquidator has been filed in Form AA as Annexure-9 of the application. The Law Research Associate of this Tribunal has checked the credentials of Mr. Naresh Kumar Goel, IRP and as per verification there is nothing adverse against him. In view of the above, we appoint Mr. Naresh Kumar Goel, Registration No.IBBI/IPA-002/IP-N00696/2018-2019/12323, Mobile No.98991-02276, E-mail: nkg1964@rediffmail.com as Liquidator.

11. Regulation 39B, 39C and 39D of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations 2016**) are as under:-

> ***"39B. Meeting liquidation cost.***
>
> *(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.*
>
> *(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).*
> *(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.*
> *(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.*
>
> ***Explanation****.-For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*
>
> ***39C. Assessment of sale as a going concern****.*
>
> *(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend 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, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

(c) the balance period of liquidation."

12. As regards Regulation 39B, the CoC has not made a best estimate of the amount required to meet liquidation cost as well as the value of the liquid assets available to meet the liquidation cost. Therefore, the Liquidator will take necessary action under Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process, Regulations 2016**).

13. As regards Regulation 39C, assessment of sale as a going concern, no specific recommendation has been made by the CoC. Therefore,

the Liquidator will take action as per Regulation 32A(3) of the Liquidation Process Regulations, 2016.

14. As regards Regulation 39D, fee of the liquidator, the CoC in its second meeting held on 24.12.2019 has resolved with 100% votes in favour that the fee payable to the liquidator shall be ₹50,000 per month plus applicable taxes and out of pocket expenses till the dissolution of the corporate debtor.

15. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 shall be strictly complied with. Some of the directions are 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;

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;

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.

16. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 2016 Regulations and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders 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.

17. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

> *"(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location wherein the opinion of the liquidator, the corporate debtor conducts material business operations;*
>
> *(b) on the website, if any, of the corporate debtor; and*
>
> *(c) on the website, if any, designated by the Board for this purpose."*

18. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and shall file regular progress reports as per Regulation 15 of the Liquidation Process Regulations, 2016.

19. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

20. The Liquidator shall take into his possession the assets of the Corporate Debtor.

21. Thus, IA No.114/2020 stands disposed of.

22. Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, NCT of Delhi and Haryana. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

Sd/-

(Ajay Kumar Vatsavayi)
Member(Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

March 13, 2020.
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