**NATIONAL COMPANY LAW TRIBUNAL**
**"CHANDIGARH BENCH, CHANDIGARH"**

**CA No.1079 of 2019**
**IN**
**CP (IB) No.97/Chd/Hry/2018**
**(Admitted matter)**

**Under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016.**

**In the matter of:**

**Oriental Bank of Commerce.** ….Petitioner-Financial Creditor.

Versus

**Isolux Corsan India Engineering & Construction Private Limited & Ors.** …..Respondent-Corporate Debtor.

And in the matter of:

**<u>CA No.1079 of 2019:</u>**

Vikram Kumar,
Resolution Professional,
For Isolux Corsan India Engineering &
Construction Private Limited.
(Corporate Debtor).

….Resolution Professional-Applicant.

**Order delivered on: 6.02.2020.**

**CORAM: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)**
**HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Applicant: 1) Mr.Abhishek Anand, Advocate.
2) Mr.Viren Sharma, Advocate

**<u>Per: Pradeep R.Sethi, Member (Technical)</u>**

**<u>ORDER</u>**

**<u>CA No.1079 of 2019:</u>**

The instant application is filed by the Resolution Professional (**RP**) under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016

(**Code**) seeking liquidation of Corporate Debtor-Isolux Corsan India Engg & Construction Pvt.Ltd. (**Isolux**).

2. Vide order dated 11.10.2018, petition under Section 7 of the Code filed by Financial Creditor i.e. Oriental Bank of Commerce was admitted and initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Isolux was directed and the applicant was appointed as Interim Resolution Professional (**IRP**). In the second meeting of the Committee of Creditors (**CoC**) dated 06.12.2018, the applicant was continued as RP of Isolux.

3. It is stated that after approval of the eligibility criteria by the CoC, invitation for Expression of Interest in Form G was issued through advertisement in Financial Express (English) and Jansatta (Hindi) Editions dated 26.12.2018 with last date of submission as 31.01.2019. Since no Expression of Interest was received, the last date for Expression of Interest is stated to be extended to 20.02.2019 vide publication in two newspapers (supra) dated 30.01.2019.

4. Three Expressions of Interest were stated to be received. Since sufficient time for receipt and consideration of resolution plan was not available, application was filed under Section 12 (2) and 12 (3) of the Code seeking extension of 90 days' period of the CIRP. The request was allowed by the Adjudicating Authority (**AA**) vide order dated 19.03.2019.

5. The last date for submission of resolution plan was initially given as 02.04.2019 and on the request of the proposed resolution applicants, the time for submission of the resolution plan was first extended by one month

and thereafter by one month more. Therefore, as per the revised timeline, the last date for submission of resolution plans was 03.06.2019. However, no resolution plan was received by that date. Application was filed before the AA for exclusion of time for computing the CIRP. However, the application was rejected by the AA vide order dated 07.11.2019 and liberty was granted to the applicant to convene a meeting of the CoC to decide the liquidation of Isolux.

6. It is submitted that in the 14th meeting of the CoC convened on 08.11.2019, the applicant apprised the CoC that no resolution plan has been received till date. The CoC thereupon was of the unanimous view that Isolux had to be liquidated as per Section 33 (1) (a) of the Code and no resolution is required to be approved/passed by the CoC for liquidation of Isolux and the RP should file an application for liquidation of Isolux at the earliest.

7. It is stated that in the 14th meeting of the CoC held on 08.11.2019, Agenda Item No.7 related to appointing a Liquidator and approving the fees to be paid to the Liquidator. It is submitted that the resolution did not secure requisite voting of 51% and was therefore, disapproved and in view of Agenda Item No.7, not being approved by the CoC, the applicant has not given his consent to act as a Liquidator and the AA may appoint Liquidator for Isolux in terms of Section 34 (4) (c) of the Code.

8. It has been prayed that the orders be passed under Section 33 (1) (a) of the Code to liquidate Isolux.

9. We have carefully heard and considered the arguments of the learned counsel for the applicant and have also perused the records.

10. The provisions of Section 33 (1) of the Code are as under:-

*"**33.** (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."*

11. In the present case, the CIRP is stated to have expired on 08.07.2019 and no resolution plan under Section 30 (6) of the Code was received by the AA before that date. In the instant application filed by the RP, it is stated that despite issue of invitation for Expression of Interest in Form G on 26.12.2018 with last date of submission as 31.01.2019 and extension of the last date to 20.02.2019, three Expressions of Interest were received. It is further stated that despite the last date of 02.04.2019 for submission of resolution plans and extension of the date twice to 03.06.2019, no resolution plan was received. No resolution plans are stated to be received even on 08.11.2019, when the 14th meeting of CoC was convened. Order is, therefore, being passed requiring Isolux to be liquidated in the manner as laid down in Chapter III of the Code and the directions for issue of public announcement stating that Isolux is in liquidation and requiring such orders to be sent to the authority with which Isolux is registered, are being issued.

12. Section 34 (1) of the Code 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 a written consent by the RP to the AA in specified Form, shall act as the Liquidator for the purposes of liquidation unless replaced by the AA under Section 34 (4) of the Code. The provisions of Section 34 (4) of the Code inter alia states that the AA shall by order replace the RP, if the RP fails to submit the written consent under Section 34 (1) of the Code. The RP Shri Vikram Kumar has not submitted his written consent under Section 34 (1) of the Code. As already noted above, it is stated in the instant application that since Agenda Item No.7 relating to appointing a Liquidator and approving the fees to be paid to the Liquidator was not approved by the CoC in its 14th meeting held on 08.11.2019, the applicant has not given his consent to act as a Liquidator and the AA may appoint a Liquidator for Isolux in terms of Section 34 (4) (c) of the Code. On the failure of the RP Shri Vikram Kumar to submit the written consent, the AA is empowered under Section 34 (4) of the Code to replace the RP by following the procedure provided for in Section 34 (5) to (7) of the Code.

13. Under sub-section (5) of Section 34 of the Code, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as liquidator.

14. Sub-section (6) of Section 34 says that the Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form within ten days of the

direction issued by the Adjudicating Authority under sub-section (5) of Section 34 of the Code.

15. Sub-section (7) of Section 34 of the Code says that the Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as liquidator.

16. In this regard a letter bearing **File No.25/02/2020-NCLT dated 07.01.2020** has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of **letter No. IBBI/IP/EMP/2019/01 dated 31.12.2019** along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2020 to 30.06.2020. **We select Mr. Rajeev Bansal appearing at Serial No.3 of the panel to be appointed as Liquidator.**

17. The Law Research Associate of this Tribunal has checked the credentials of **Mr. Rajeev Bansal** and there is nothing adverse against him. In view of the above, we appoint **Mr. Rajeev Bansal**, Registration No. IBBI/IPA-001/IP-P00226/2017-2018/10425, 2163A, Shri Nagar Colony, Jagadhri, Haryana – 135003, E-mail: carajeevbansal@yahoo.com, as the Liquidator.

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

regulations are as follows:-

*"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.”*

19. As regards Regulation 39B, the CoC did not approve any plan for providing contribution for meeting the difference between the excess of estimated liquidation costs over the liquid assets and was of the view that the estimated liquidation costs can be approved quarterly in the stakeholder consultation committee to be constituted as per Regulation 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations, 2016**). The CoC finally decided that corpus of Rs.30.00 lacs (for expenses other than the Liquidator’s fees) may be sanctioned initially which shall be contributed by all the members of the CoC in the ratio of their voting share in due compliance of Regulation 2A (2) of the Liquidation Process Regulations, 2016 and the subsequent contribution can be made quarterly as per estimated liquidation costs provided by the Liquidator.

20. Therefore, a plan under Regulation 39B (3) of the CIRP Regulations, 2016 has not been approved by the CoC. After taking into consideration the discussion by the CoC in the 14th meeting held on 08.11.2019, the Liquidator may take necessary action under Regulation 2A of the Liquidation Process Regulations, 2016.

21. With reference to Regulation 39C of the CIRP Regulations, 2016, the CoC in the 14th meeting held on 08.11.2019, has approved the sale of business of Isolux i.e. EPC contract awarded by NHAI to Isolux for the construction of the four laning of Hassan to Maranahally. Section of NH 75 in the State of Karnataka as a going concern in liquidation.

22. The appointment of Liquidator as well as fees to be paid to the Liquidator were not approved by the CoC in its 14th meeting held on 08.11.2019. Therefore, the Liquidator's fee is to be paid in accordance with Regulation 4 (2) and 4 (3) of the Liquidation Process Regulations, 2016.

23. 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.

24. 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 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.

25. 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 where in 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."*

26. In accordance with Regulation 13 of the 2016 Regulations, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the 2016 Regulations every fortnightly thereafter.

27. 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.

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

29. Thus, CA No.1079/2019 stands disposed of.

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/- Pronounced in open Court. Sd/-
(Ajay Kumar Vatsavayi) (Pradeep R.Sethi)
Member (Judicial) Member (Technical)

February 6, 2020
Ashwani