

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
AT NEW DELHI**

**C.A. 2587 (PB) /2019**

**IN**

**Company Petition No. (IB) – 361 (PB) /2018**

In the matter of:

Mr. Gyaneshwar Sahai

Applicant/Resolution Professional

AND

In the matter of:

Satkar Air Cargo Services Private Limited

Corporate Debtor

*Under Section 33 (2) of the Insolvency and Bankruptcy Code,  
2016 for liquidation of the corporate debtor*

***Judgment delivered on: 03.12.2019***

**Coram:**

**MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT**

**MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)**

For the RP: Mr Pankaj Jain, Ms Sneha Pandey Advocates.



## **ORDER**

**S. K. Mohapatra, Member**

1. This is an application filed by the Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s. Satkar Air Cargo Services Private Limited.
2. The facts in brief are that the financial creditor, Mr. Ravinder Pal Singh Lamba, had filed an application under Section 7 of the Code bearing number IB-361(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor, M/s. Satkar Air Cargo Services Private Limited. The said application was admitted by this Tribunal on 09.08.2019 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. Satkar Air Cargo Services Private Limited. In the said admission order dated 09.08.2019 Mr. Gyaneshwar Sahai, was appointed as the Interim Resolution Professional in respect of the Corporate Debtor M/s. Satkar Air Cargo Services Private Limited.



3. Pursuant to the receipt of the order dated 09.08.2019 the Interim Resolution Professional had invited claims from creditors of the corporate debtor by making public announcement on 17.08.2019 in English Newspaper 'Financial Express' and in Hindi newspaper, Jansatta, and also at the official website of the IBBI.
4. In terms of Section 18 (1) of the Code, the Interim Resolution Professional collated all claims submitted by the creditors pursuant to the public announcement and after determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors comprising of Mr. Ravinder Pal Singh Lamba as the sole member of the Committee of Creditors being the only financial creditor of the corporate debtor.
5. It is submitted that while continuing the CIRP process, the Resolution Professional came to know that there are no major assets in the company and the very existence of the company as a going concern was not established. The existence of the company was also in doubt and the Resolution Professional apprised this position to the committee of creditors. It is further submitted that there is



no Employee or Workman in the corporate debtor. There are also no major assets in the corporate debtor. It is further submitted that the only asset available is comprised of an Alto Car having registration no. DL9CAK3375, dated 21-Oct-2014, on which there is an outstanding loan of Rs. 35,396.00/-.

6. It has been alleged that the details of majority debtors of the corporate debtor have not been provided by the ex-management of the corporate debtor. It is submitted that there are certain debtors, against whom the corporate debtor has filed recovery suits in different courts in Delhi. It is also submitted that these amounts may be recovered during the liquidation process and there is no need to carry on the Corporate Insolvency Resolution Process. The committee of creditors has decided to write off all the assets except the above-mentioned Alto Car and Debtors who are under litigation. Committee of Creditors stated to have discussed the matter as Agenda No. 7 in its meeting held on 24th October, 2019 and decided to write off the unrecoverable assets.



7. That on the request of committee of creditors the Resolution Professional called the third Committee of Creditors meeting on 24th October, 2019, to discuss liquidation of the Corporate Debtor along with other various agenda. The committee discussed about the early liquidation and appointment of liquidator under Agenda item No. 17 and decided for early liquidation of corporate debtor. In the same meeting the committee of creditors has also disapproved the publication of Form G, for inviting Expression of Interest, to save the cost of CIRP.

8. The relevant resolution for liquidation of the corporate debtor passed by Committee of Creditors with 100 % vote share in its third meeting held on 24th October, 2019 runs as follows:

*“17. To discuss liquidation of the Corporate Debtor, and appointment of liquidator*

*The CoC has discussed the matter that there is no scope to run the CD as going concern, and there is no benefit of running the Corporate Insolvency Resolution Process (CIRP), hence the same should be stopped and liquidation proceedings should be started.*



*The chairman informed that explanation to Section 33(2) provides 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.*

*Section 33(2) provides that, 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 approved by not less than sixty-six per cent of the voting share 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 section 33(1).*

*In the present case the no resolution plan is confirmed, hence the CoC is empowered to take decision to liquidate the corporate debtor.*

*The Resolution Professional has shown his inability to act as liquidator, and asked the CoC to arrange for the*



*liquidator, who has to take charge of the liquidation process.”*

9. Section 33 of the Code provides for initiation of liquidation of the corporate debtor and the relevant portion thereof is reproduced below for ready reference.

*“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 2 [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clausal of sub-section (1).

**[Explanation.** — For the purpose 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.]”

(emphasis given)



- 10.** The explanation to sub-section (2) of Section 33 of the Code empowers the committee of creditors to take decision to liquidate the corporate debtor, at any time after its constitution under sub-section (1) of section 21 and before the preparation of the Information Memorandum.
- 11.** In the present case committee of creditors has come to the conclusion that there is no scope to run the Corporate Debtor as a going concern and the liquidation proceedings should be started as there is no benefit of running the Corporate Insolvency Resolution Process. It has been noted that there is no liquid fund available with the corporate debtor to bear the huge cost of CIRP process. It is pointed out that corporate debtor does not have any major assets and realization of any debt is doubtful.
- 12.** Committee of creditors with absolute 100% vote share decided to go for liquidation of the corporate debtor. Under the provisions of the Code committee of creditors is the decision taking body and is the competent authority for taking appropriate commercial decision. Adjudicating Authority ought not transgress into the commercial decision and jurisdiction of the committee of creditors.



- 13.** In the facts and in conformity with the decision of the Committee of Creditors with 100 % voting share, the liquidation of the corporate debtor under Section 33 (2) of the Code has to follow.
- 14.** The resolution professional has shown his inability to act as a liquidator in the liquidation process and during hearing there was a request to appoint a liquidator to carry on the liquidation process and fix its fees at specified percentage of the liquidation estate assets as per the provisions of IBC, 2016 and relevant rules.
- 15.** Accordingly, the liquidator is being appointed from the list of resolution professionals for appointment of liquidator as made available by the Insolvency and Bankruptcy Board of India.
- 16.** In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. Satkar Air Cargo Services Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:



**a.** Mr. Mukesh Kumar Gupta having registration no. IBBI/IPA-001/IP-P00207/2017-18/10407, e-mail; id [guptam11@gmail.com](mailto:guptam11@gmail.com), New Delhi, is appointed as Liquidator in terms of Section 34(1) of the Code. He is directed to file his Written Consent in the specified Form within seven days from the date of this order.

**b.** The Liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

**c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

**d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and



that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

**e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

**f.** The liquidator shall investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.

**g.** The liquidator shall also follow up the pending applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

**h.** The Liquidator shall 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 (Liquidation Process) Regulations, 2016.

i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

j. C.A. 2587 (PB) /2019 filed in IB 361(PB)/2018 is disposed of in the aforesaid terms.

  
12.12.2015  
**(M.M. KUMAR)**  
**PRESIDENT**

  
**(S. K. MOHAPATRA)**  
**MEMBER (T)**