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

IA No. 603/2020
In
CP (IB) No. 395/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 Papers Limited …Corporate Debtor

And in the matter of IA No. 603/2020:-

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. 603/2020

This application has been filed by Mr. Vikram Bajaj, the Resolution Professional of M/s Saber Papers 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 Papers Limited (Corporate Debtor).

2. CP (IB) No. 395/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 Papers Limited was admitted on 18.09.2019 and Mr. Vikram Bajaj was appointed as IRP. Subsequently, in the 1st meeting of CoC held on 21.10.2019, it was resolved to appoint the IRP as RP by 93.3% voting share. Copy of the minutes of first meeting of CoC and voting results are attached as Annexures A-3 and A-4 of the application respectively.

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 and submission of resolution plans for the corporate debtor was published in Business Standard (English and Hindi) All India Edition and Desh Sewak (Hindi) Punjab Edition on 13.12.2019. A copy of Form G dated 13.12.2019 along with newspaper cuttings is attached as Annexure A-6 (colly). After publication only one expression of interest was received till 28.12.2019 i.e. last date of submission of EOI. The fresh invitation for Expression of Interest was republished in Form G on 28.02.2020 as decided by CoC in its 4th meeting held on 24.02.2020.

4. In the 8th meeting of CoC held on 31.08.2020, it was resolved to again issue a fresh invitation of the EOI with the same conditions as only one EOI was received by RP. Copy of minutes of 8th meeting is attached as Annexure-20 of the application. Further, in the 9th meeting held on 17.09.2020, CoC members have decided to liquidate the corporate debtor as no resolution plan has been received by RP and the same was passed with 100% voting share. Copy of minutes of 9th meeting is attached as Annexure A-21 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 Sections 33(1) and 33 (2) of the Code are as follows:-

> *"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)."

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 18.09.2019 and the present application is filed by the Resolution Professional on 13.10.2020. The period of 180 days completed on 16.03.2020. The period of CIRP has been extended by 90 days beyond 180 days after excluding the period of lockdown from 25.03.2020 to 31.07.2020 vide order dated 13.10.2020. 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 ninth meeting held on 17.09.2020, with 100% voting share, resolved to appoint

the RP Mr. Vikram Bajaj, as Liquidator (Annexure-21). Mr. Vikram Bajaj, Resolution Professional with IBBI Registration No.IBBI/IPA-002/IP-N00003/2016-17/10003 has filed his consent in Form AA dated 28.09.2020 (Annexure A-22). 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 9th meeting held on 17.09.2020 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 9th 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; which is reiterated 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 SBI submitted that the paper unit of the corporate debtor has been lying closed since 2013-14 and the land of the unit was declared as benami and subsequently vested with the state government of Himachal Pradesh. As such this does not make a case for going concern sale of corporate debtor/business. After deliberations, it was decided to place resolution for sale as going concern for voting and the same shall be explored by the Liquidator only if the resolution is approved. Accordingly following resolution was proposed by the RP:

> *"Resolved that the Committee of Creditors of Saber papers 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	State Bank of India	90.31%	-	90.31%	
2	Jammu and Kashmir Bank Ltd.	2.50%	2.50%		
3	Asrec (India) Ltd.	3.95%	3.95%		
4.	Corporation Bank	3.24%	-	3.24%	
Total		**100.00%**	**6.45**	**93.55**	**NA**

DECISION

The resolution has not achieved the requisite voting of 51% in its favour and thus not approved 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 9th meeting held on 17.09.2020 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-** The learned counsel for the applicant has stated that there is no pending applications which has any bearing on the order of liquidation.

15. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the corporate debtor **Saber Papers 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) Regulation, 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. 603/2020 stands disposed of.

17. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh 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) (Ajay Kumar Vatsavayi)
Member (Technical) Member (Judicial)

December 15,2020
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