

IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CA No.266, 265 of 2018
IN
CP (IB) No.67/Chd/Pb/2017

In the matter of:

Allahabad Bank

...Financial Creditor -Petitioner

Versus

Supreme Tex Mart Ltd.

...Respondent-Corporate Debtor

And in the matter of:

CA No.266 of 2018

Supreme Tex Mart Limited

...Applicant-Corporate Debtor

Versus

Bhupesh Gupta, Resolution Professional,
Supreme Tex Mart Limited

...Resolution Professional

And in the matter of:

CA No.265 of 2018

Supreme Association of Employees and Others

...Applicants

Versus

Allahabad Bank and Another

...Respondents

Order delivered on 08.08.2018.

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

Present:-

For the Resolution Professional: 1) Mr.Atul V. Sood, Advocate
2) Mr.NahushJain, Advocate
3) Mr.Bhupesh Gupta, Resolution
Professional in person

For the Applicant : Mr.Akaant Kumar Mittal, Advocate
(CA No.265 of 2018)

Per: R.P.Nagrath, Member (Judicial):

ORDER

There are two other miscellaneous applications, CA No.198 of 2018 and CA No.180 of 2018 and learned counsel for the applicants in those applications are Mr. Munish Jain, Advocate and Mr. S.P. Sharma, Advocate, respectively, but these applications are being taken separately.

2. CP(IB) No.67/Chd/Pb/2017 was filed by the Financial Creditor against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Act, 2016 (for short hereinafter referred to as the 'Code') for initiating the insolvency resolution process against the Corporate Debtor. The petition was admitted on 29.09.2017, declaring moratorium in terms of Section 14 of the Code and by another order dated 11.10.2017, Mr. Bhupesh Gupta, Registered Resolution Professional, was appointed as Interim Resolution Professional with necessary directions. The Interim Resolution Professional constituted a Committee of Creditors, comprising of 12 Financial Creditors, mostly banks except for SBI Global Factors Limited with 0.65% of the voting share. The Committee of Creditors confirmed the Interim Resolution Professional as Resolution Professional in first meeting of the Committee of Creditors, held on 09.11.2017.

3. It is stated in CA No.266 of 2018, filed by the Resolution Professional that the Interim Resolution Professional caused the public announcement on 13.10.2017 and on evaluating the claims received from Financial Creditors, the Committee of Creditors was constituted. The Valuers

were also appointed and liquidation value of the Corporate Debtor was got assessed. The Valuation Reports are at Annexure A-2 (Colly).

4. Thereafter, the Committee of Creditors in the meeting held on 27.12.2017, finalized the criteria for inviting Expression of Interest ('EOI') for submission of the Resolution Plan and publication of the same in the newspapers. Copy of the minutes of meeting dated 27.12.2018 is at Annexure A-3.

5. Four entities submitted their Expression of Interest. After detailed discussion, the Committee of Creditors decided to re-invite Expression of Interest and Resolution Plans from the prospective Resolution Applicants as per the revised conditions and extended the time for submission of the Resolution Plans. The publication was then made in the newspaper. In the meanwhile, the Resolution Professional filed CA No.76 of 2018, before this Tribunal, seeking extension of time by 90 days for completion of the Resolution Process under sub-section (2) of Section 12 of the Code on the basis of decision of the Committee of Creditors, held on 20.02.2018. The application was allowed and period of completion of insolvency process was extended by 90 days, vide order dated 23.03.2018. Two plans were received, one of which was rejected, as discussed in the meeting of the Committee of Creditors, held on 18.04.2018 (Annexure A-5).

6. In the 5th Meeting of Committee of Creditors, it was decided to get fresh valuation of the company by a 3rd Valuer, because of variations in the earlier two valuations. Valuation Report is at Annexure A-6. In the next meeting dated 01.05.2018, due diligence report was placed before the

Committee of Creditors, wherein the Resolution Plan was discussed and the Resolution Applicant was advised to improve the bids, which was agreed by the Resolution Applicant. Copy of the minutes of meeting is at Annexure A-7.

7. In the 7th Meeting of Committee of Creditors, held on 21.05.2018, the Resolution Plan was discussed. The Plan was presented, details of which were discussed and the Resolution Applicant was asked to revise the bid and quote a total amount, leaving it for the Committee of Creditors to decide about the distribution amount of the Financial and Operational Creditors, as well as the employees. The Committee of Creditors also advised Resolution Applicant to come out with a better plan as per the meeting held on 21.05.2018, copy of which is Annexure A-8.

8. In the next meeting, held on 25.05.2018, the Committee of Creditors rejected the Resolution Plan offered by Sole Resolution Applicant in which the two Joint Resolution Applicants along with their authorized representative were present. The Plan was discussed and rejected by the Committee of Creditors. The Resolution Professional was advised to invite the fresh Resolution Plans with the same terms and conditions in the meeting held on 25.05.2018. The publications were again made, but no fresh bids were received. However, the previous Resolution Applicants had expressed their intention to come out with a better Resolution Plan. In the meeting held on 13.06.2018, the joint Applicants presented the Resolution Plan of ₹ 231.16 Crores, out of which ₹ 200 Crores was meant for the Financial Creditors, ₹ 14.14 Crores for operational creditors and ₹ 17.02 Crores towards the statutory dues with the further details of the Plan. The Committee

of Creditors discussed the plan and rejected the same unanimously as the upfront cash payment of ₹ 70 Crores was considered too low and the remaining deferred payment of ₹130 Crores was over a prolonged period of 7 years that too was unsecured. The COC advised the Resolution Applicants in the meeting held on 13.06.2018 to come up with a better plan by 18.06.2018. However, no new offer was made. Copy of the minutes of meeting dated 13.06.2018 is at Annexure A-1. This application has been filed by describing the aforesaid facts.

9. CA No.265 of 2018 has been filed by Supreme Association of Employees of the Corporate Debtor with four of its office bearers, claiming themselves to be Secretary, Treasurer and Members of the Association. Supreme Association of Employees, has been impleaded through Mr.Gaurav Gupta, who is the Chairman. It is stated that after the expiry of 270 days, the Corporate Debtor would lead to its liquidation.

10. The facts highlighted in the application are that the Corporate Debtor has various plants like Spinning Unit 1 and 2 at Kanganwal, Ludhiana; a Dyeing Unit and a Garment Unit. The Corporate Debtor has about 1800 workmen and employees, out of whom 300 are women employees, working directly on the rolls of Supreme Tex, the Corporate Debtor.

11. The prayer made in the application is that the revival of the Corporate Debtor should be uppermost priority and it should never undergo liquidation, merely because the Members of the Committee of Creditors failed to realize the impact of the operations of the Corporate Debtor on which many persons have their livelihood. It was also prayed that decision to reject

the Plans at the instance of some of the Members of the COC may be reconsidered. The prayer ultimately is made that the Tribunal may pass the order of liquidation of the Corporate Debtor, as a going concern and further, that pending the disposal of the application, the order of liquidation may not be passed.

12. In reply, the Resolution Professional has challenged the locus standi of the applicants to file any application because there does not exist any such Association of Employees. There is no authorization attached with the application from the Association to file the present application and other applicants have not filed their affidavit in support thereof.

13. We have heard the learned counsel for the Resolution Professional, the learned counsel for the applicants in CA No.265 and 266 of 2018 and also the learned counsel for the applicants in CA No. 180 of 2018 of this application.

14. The learned counsel for the applicants in CA No.180 of 2018 submits that in the said application, certain transaction entered into by the Corporate Debtor with the related parties are illegal, deceitful, malafide with an intent to defraud the creditors and other persons and ultimately prayed for reversal of those transactions, so that proper opportunity could be granted for submitting of their effective Resolution Plans. Reply to that application has also been filed by the Resolution Professional.

15. We are of the considered view that challenge to the related party transactions in an application under Section 60(5) read with various other

provisions of the Code, is a separate subject and that application is to be decided after hearing the parties in detail. That application in fact, has been filed by a shareholder, having 10.50% of the shareholding in the share capital of the company of the Corporate Debtor.

16. If the period of 270 days from the commencement of insolvency resolution process has expired and no Resolution Plan was approved, the only consequence is the liquidation of the resolution of the Corporate Debtor. Relevant part of Section 33 of the Code read 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.*

(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 clause (i), (ii, and (iii) of Clause (b) of sub-section (1).
(3) to (7).....”*

17. The period of 270 days, as permissible, for completion of the Insolvency Resolution Process expired on 26.06.2018. The Committee of Creditors has taken a decision that if no better Resolution Plan is received by 18.06.2018, the company will go into liquidation and it is no one's case that any new offer was received thereafter. In view of the aforesaid provision of Section 33 of the Code, the Company has to go for liquidation.

18. The only question that remains to be considered is whether the Corporate Debtor should undergo liquidation as a going concern. It is stated in the Application No. CA 266 of 2018 by the Resolution Profession that there are about 1939 employees working in the Corporate Debtor. Our attention has been drawn to Clause (e) of Section 35 of the Code that a liquidator shall have the power and duty to **carry on the business** of the Corporate Debtor for its beneficial liquidation, as he considers necessary. Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process Regulations 2016) as amended by Insolvency & Bankruptcy Code (Amendment) Ordinance, 2018, says that the liquidator may –

- (a) sell an asset on a standalone basis; or
- (b) sell
 - (i) the assets in a slump sale,

- (ii) a set of assets collectively, or
- (iii) the assets in parcels; or
- (c) sell the Corporate Debtor as a going concern.

19. Learned counsel for the applicants in CA No.265 of 2018 submits that the grievance of applicants would be met in case the Resolution Professional continues to carry on the business as a Liquidator and that he sells the Corporate Debtor as a going concern. The Applicant No. 2 to 4, who are described as the office bearers of the Association, are also stated to be the employees of the Corporate Debtor. So, in these circumstances, without going into the question whether the applicant No.1 is a recognized Association, the above aspect as to how to deal with the company by liquidator can be discussed in view of the applicable provisions of the Code and Regulations aforesaid.

20. Looking into the fact that the Corporate Debtor is admittedly a going concern, we hope and expect the Liquidator to abide by the aforesaid provisions of the Code and Regulation 32 of the Liquidation Process Regulations, 2016.

21. In view of the decision by the Committee of Creditors and no Resolution Plan having been put up for approval despite expiry of 270 days, we are satisfied that the provisions of Section 32(2) are complied with and we order that the Corporate Debtor be liquidated in the manner as laid down in Chapter III of the Code. Further directions are issued to the Liquidator to issue a public announcement, stating that the Corporate Debtor is in liquidation. We direct that copy of this order be sent to Registrar of

companies, Punjab and Chandigarh, with which the Corporate Debtor is registered.

22. Section 34 of the Code provides that where the Adjudicating Authority passed 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 the written consent by the Resolution Professional to the Adjudicating Authority in specified form to act as a Liquidator for the purpose of liquidation. Along with this application, Mr. Bhupesh Gupta, Resolution Professional has furnished his written consent (Annexure A-10) dated 09.07.2018, accepting his appointment as an Liquidator, if an order is passed to that effect. He has furnished all other disclosures as required in the form. It is certified that he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency i.e. ICSI.

23. We therefore, while ordering liquidation of the Corporate Debtor, appoint Mr. Bhupesh Gupta, Resolution Professional, having Registration No. IBBI/IPA-002/IP-N00030/2016-17/10067, to act as Liquidator for the purpose of liquidation of the Corporate Debtor. His appointment shall take effect from the date of receipt of this order.

24. All the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

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(i) Subject to Section 52 of the Code, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted against the corporate debtor [Section 33 (5) of the Code, except to the legal proceedings in relation to such transactions, as may be notified by the Central Government in consultation with any financial sector regulator.

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) The order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except where the business of the Corporate Debtor is continued during the liquidation process by the liquidators in view of the observations made above;

(iii) 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

(iv) 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.

25. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 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.

26. 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.”*

27. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the ‘Liquidator’ shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 every quarter thereafter

28. 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.

Copy of this order be supplied to the counsel for the Liquidator, learned counsel for the applicant in CA Nos. 265 of 2018, as well as to the Registrar of Companies, Punjab and Chandigarh immediately. Consequently, CA No.265 of 2018 also stands disposed of.

Pronounced in open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

August 08, 2018
Mohit Kumar

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