

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

**CA No.1052 of 2019
IN
CP (IB) No.152/Chd/Hry/2018
(Admitted matter)**

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

In the matter of:

M/s Avon Cottex Private Limited.Petitioner-Operational Creditor.

Versus

M/s Anandtex International Private Limited.....Respondent-Corporate Debtor.

And in the matter of:

CA No.1052 of 2019:

Naresh Kumar Sood,
Resolution Professional,
Anandtex International Private Limited.
(Corporate Debtor).

....Resolution Professional-Applicant.

Order delivered on: 06.12.2019.

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

For the Applicant: Mr.Vishav Bharti Gupta, Advocate.

Per: Pradeep R.Sethi, Member (Technical)

ORDER

The instant application is filed under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 praying, inter-alia, for an order that M/s Anandtex International Private Limited (Corporate Debtor) be liquidated in the manner provided under the Insolvency and Bankruptcy Code, 2016

(Code).

2. It is stated that vide order dated 20.02.2019, the Adjudicating Authority admitted the petition under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of the corporate debtor and appointed Mr.Alok Kaushik as the Interim Resolution Professional (**IRP**). It is submitted that vide order 26.04.2019, the IRP was replaced by Shri Naresh Kumar Sood, Resolution Professional (**RP**). After preparation of information memorandum, the first time Form G is stated to be published on 15.05.2019 and interest was received from one applicant from Ludhiana, but they did not submit the NDA and hence, the information memorandum was not issued to them. A fresh Form G is stated to have been published on 19.06.2019 and another Form G was again published on 31.08.2019. The last date for submission of the Expression of Interest (**EOI**) in the last Form G was given as 15.09.2019 and only one request for EOI was received. The last date for submission of the resolution plan was 26.10.2019. It is submitted that no resolution plan was given by the prospective Resolution Applicant submitting the EOI.

3. It is stated that vide order dated 13.08.2019, extension of the CIRP period by another 90 days' was allowed and the CIRP period has expired on 17.11.2019.

4. The minutes of the 7th meeting of the Committee of Creditors (**CoC**) have been placed at Annexure VI of the application. It is submitted that in item No.9, the submission of application for withdrawal as per the provisions of Section 12A of the Code was discussed with the directors of the suspended

Board and the RP stated that the CIRP period, including the extended period, is expiring on 17.11.2019 and therefore, the appropriate application by the directors of the suspended Board has to be filed before the Adjudicating Authority (**AA**) by 15.11.2019.

5. The CoC considered that no resolution plan was received during the CIRP of 270 days despite invitation of EOI issued thrice and observed that the process cannot be withheld much longer. The CoC thereupon resolved that, if no application under Section 12A is filed in terms of the provisions of the Code and the Regulations by 13.11.2019, the RP may file the appropriate application for an order of liquidation of the corporate debtor as per the provisions of the Code / Regulations and the RP is authorized for the same. It is submitted that this resolution was passed with 100% vote share.

6. It is stated that the approval of the estimated liquidation costs as per Regulation 39 B and 39 D of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process for Corporate persons) Regulation, 2016 (**CIRP Regulations, 2016**) read with Regulation 2 (1) (ea) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [**(Liquidation Process) Regulations, 2016**] was examined and the resolution passed with 100% vote share for the Liquidator's fee for the period of compromise / arrangement under Section 230 of the Companies Act, 2013 and the Liquidator's fee for the period used for sale under clause (e) and (f) of Regulation 32 of the (Liquidation Process) Regulations, 2016 as well as the Liquidator's fee for balance period of

liquidation (approximately one year till the winding up of the corporate debtor) were approved.

7. It is further stated that the CoC recommended with 100% vote share that the Liquidator may first explore the sale of the corporate debtor as a going concern under clause (e) of Regulation 32 of the (Liquidation Process) Regulations, 2016.

8. It is stated that during the 7th meeting of the CoC, it was also decided to propose the name of Shri Bikram Singh Gusain, Insolvency Professional (IBBI Registration No. IBBI / IPA-002 / IP-N00011 / 2016-17 / 10015) as Liquidator and his written consent is stated to be enclosed as Annexure VII of the application.

9. It is prayed that an order be passed requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code; public announcement be issued stating that the corporate debtor is under liquidation; an order be passed requiring sending the liquidation order to the authority with whom the corporate debtor is registered.

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

11. The provisions of Section 33 (1) of the Code reads 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.”

12. In the present case, the CIRP period is stated to have been expired on 17.11.2019 and no resolution plan under Section 30 (6) of the Code was received by the Adjudicating Authority before that date. In fact, an application is received from the RP for liquidation of the corporate debtor, since despite invitation for EOI being issued thrice, no resolution plan was received and moreover despite the last date of 13.11.2019 being given by the CoC for filing of application under Section 12A of the Code by the directors of the suspended Board, no such application was filed. Therefore, the order is being passed requiring the corporate debtor 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 the corporate debtor is in liquidation and requiring such orders to be sent to the authority with which the corporate debtor is registered, are being issued.

13. As discussed above, the CoC with 100% vote share has resolved that Shri Bikram Singh Gusain be appointed as a Liquidator. The relevant minutes of the 7th meeting of the CoC dated 06.11.2019 (Annexure

VI) are as follows:-

“In the last CoC meeting held on 01.11.2019, the RP Mr. Naresh Kumar Sood has expressed his inability to act as RP, due to his pressing family problems and have recused himself. However, Mr. Naresh Kumar Sood will continue to perform his duties as RP till the order of replacement of RP is passed by the Hon’ble NCLT. CoC had approved that the name of Bikram Singh Gusain (IBBI Registration No.IBBI/IPA-002/IP-N00011/2016-17/10015) for replacement of existing RP Mr. Naresh Kumar Sood. RP has, accordingly filed the application for replacement of RP with the Hon’ble NCLT, Chandigarh Bench on 5.11.2019.

New proposed RP, Mr. Bikram Singh Gusain, being eligible to be appointed as Liquidator offers himself for appointment as Liquidator. Mr. Bikram Singh Gusain has placed his written consent to act as liquidator in terms of sec. 34 of the Code and Regulation 3 of IBBI Liquidation Regulations 2016. Written consent to act as liquidator of Mr. Bikram Singh Gusain is attached. CoC may decide liquidator’s fee as per the provisions of Regulation 4 (1), (2) (a) and (b).

“RESOLVED THAT proposed RP Mr. Bikram Singh Gusain, be appointed as Liquidator, approved by the CoC with 100% voice vote share”.

14. CA No.1042 of 2019 was filed by the RP under Section 27 (1) (2) & (3) of the Code and Regulation 3 (1A) of the CIRP Regulations, 2016 seeking replacement of the RP. Vide order dated 20.11.2019, it was observed that since the RP had also filed CA No.1052/2019 seeking liquidation of the Corporate Debtor and the said application has already been heard and the orders reserved, CA No.1042/2019 seeking replacement of the RP has become infructuous. Therefore, Shri Naresh Kumar Sood continues to be the RP.

15. Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, the RP appointed for the CIRP shall subject to submission of written consent by the RP to the Adjudicating Authority in

specified form shall act as Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under Section 34 (4) of the Code.

16. RP Shri Naresh Kumar Sood has not submitted his written consent to act as a Liquidator. On his failure to submit the written consent, the Adjudicating Authority 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.

17. 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.

18. 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.

19. 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.

20. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 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 01.07.2019 to 31.12.2019. **We select Mr. Hitesh Goel appearing at Serial No.47 of the panel to be appointed as Liquidator.**

21. The Law Research Associate of this Tribunal has checked the credentials of **Mr. Hitesh Goel** and there is nothing adverse against him. In view of the above, we appoint **Mr. Hitesh Goel**, Registration No. IBBI/IPA-001/IP-P01405/2018-2019/12224, Mobile No.9650333910, E-mail: hiteshgoel183@gmail.com, as the Liquidator.

22. Regulations 39B, 39C and 39D in the 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.”

23 As discussed above, the RP has stated that the Liquidator’s fee in terms of Regulation 39 D of the CIRP Regulations, 2016 has been approved by the CoC. Further, as discussed above, the CoC has also recommended that the Liquidator may first explore the sale of the corporate debtor as a going concern. However, while making the recommendation of sale as a going concern, the CoC has not identified and grouped the assets and liabilities which according to its commercial considerations, ought to be sold as a going concern under clause (e) or (f) of Regulation 32 of the

(Liquidation Process) Regulations, 2016 (refer clause (2) of Regulation 39 C of the (CIRP) Regulations, 2016). Therefore, the Liquidator is directed to refer to Regulation 32 A (3) of the (Liquidation Process) Regulations, 2016 and identify and group the assets and liabilities to be sold as a going concern in consultation with the consultation committee.

24. The CoC has also not made compliance of Regulation 39 B of the CIRP Regulations, 2016 regarding meeting of liquidation costs and has not approved the plan providing for contribution for meeting the difference between the estimate of value of liquid assets and the estimated liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the (Liquidation Process) Regulations, 2016 regarding contribution to liquidation costs.

25. 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.

26. 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.

27. 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.”*

28. 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.

29. 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.

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

31. Thus, CA No.1052/2019 stands disposed of.

Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, Punjab and Chandigarh. 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)
Member (Judicial)

(Pradeep R.Sethi)
Member (Technical)

December 6th, 2019

Ashwani