

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
ALLAHABAD BENCH
CA No.272 of 2019
IN
CP(IB) No.344/ALD/2018**

IN THE MATTER OF :

Sunder Kumar

..... **Operational Creditor**

V/S

M/s Komorebi Exports Pvt. Ltd

..... **Corporate Debtor**

ORDER DELIVERED ON:05.02.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

Counsel for the Resolution Professional: Mr.Anil Kumar, PCS

Counsel for the COC: Mr.Prabodh Kr. Bajpai,Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

ORDER

1. The present application is filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional, through his Counsel seeking order of the liquidation and appointment of liquidator under Section 33 and 34 of the Insolvency & Bankruptcy Code with such prayer, to pass an order for the liquidation of the Corporate Debtor Company i.e. Shashi Oils & Fats Pvt. Ltd.
2. The Adjudicating Authority on the basis of this petition filed by the financial Creditor under Section 7 of the Code, vide order dated 10.01.2019 initiated the CIRP in respect of Corporate Debtor Company and appointed Mr. Sarvesh Kashyap as the Interim Resolution Professional, who was confirmed as RP of the corporate Debtor on 12.02.2019 by the COC which was approved by this Hon'ble Tribunal.
3. It is submitted that on the basis of the publication in prescribed Form G, the sole resolution applicant namely Aastha Garments expressed their interest and submitted its Resolution plan on last date of invitation i.e 7th July, 2019 which was presented by the RP before COC in its 9th meeting dated 10th July, 2019 and in the 10th COC meeting held on 24th July 2019, discussed the plan in details

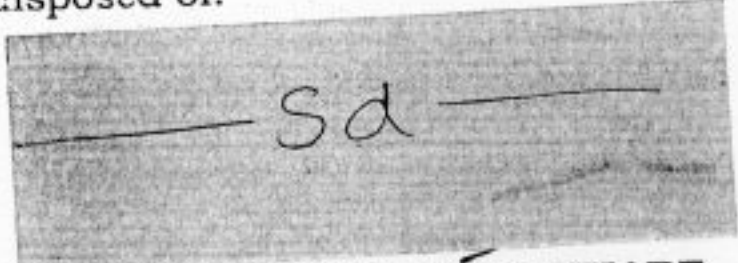
and Resolution Applicant agreed to enhance the offered amount from Rs. 30.97 Lacs to Rs. 32.05 lakh other than the working capital funds of Rs. 15 lakh and payment of Government dues related to labour law and further COC decided that the final approval will be taken only after getting internal approvals.

4. Further submitted that RP sent an email dated 20th August, 2019 and again on 27th August, 2019 to the COC requesting them to take the decision on the Resolution Plan. Further on 5th September, 2019, the 12th CoC meeting was called and the COC after reviewing the Resolution plan in depth rejected the plan considering the adverse observations of the Forensic Auditor's Report and the fact that the advance is covered under CGTMSE scheme where chances of recovery is nearly 75% of outstanding amount and COC further observed that the Resolution Applicant is not commercially feasible and viable.
5. Accordingly, the Applicant apprised the COC that among both the Resolution Plan submitted by PRA's, the Plan submitted by M/s Rafia & Company was not in compliance as per the provision of the Code and the same was not revised so it was not submitted to COC for further consideration and in regard to the Resolution plan submitted by the Promoters/Director of the Corporate Debtor was in compliance of the provisions of the Code. And the same was placed before the COC for approval. Further CoC requested the promoter/director of the Corporate Debtor Mr. Sudhir Kumar Goel to further increase the consideration in the Resolution Plan submitted by them, to which he stated that they are not in the position to increase the offer and to make any changes in Resolution Plan so the same was put up before the CoC.
6. Further submitted by the counsel for the RP that the Resolution Plan has not been approved and has been rejected by 100% vote of COC and the statutory period of 270 days of CIRP also expired on 10.07.2019 and now there is no other option left but to apply for initiation of liquidation process and further prayed in the application that the Resolution Professional Mr. Sarvesh Kashyap having IBBI Regn No. IBBI/IPA-002/IP-127/2017-2018/10296 to act as Liquidator of the Corporate Debtor company.
7. I have gone through the contents of the present Liquidation application and pursued the documents annexed therewith. By

_____ Sd _____

taking into consideration the ground for seeking liquidation, I being Adjudicating Authority is of the view that the liquidation order can be passed in respect of Corporate Debtor i.e. Komorebi Exports Pvt. Ltd, as the Members of the COC are in favour for liquidation of the Company. Therefore, by exercising the power under Section 33(1) it is hereby directed that the Corporate Debtor shall go into Liquidation and the moratorium declared for the Corporate Debtor under Liquidation shall cease to have effect from the date of pronouncement of this Order.

8. This Adjudicating Authority hereby appoint the Resolution Professional as 'Liquidator' under Section 34(1) of the Code as he is not disqualified as per Section 34(4) of the IBC. The Liquidator shall send an intimation to the ROC, Meerut, U.P with which the Corporate Debtor company is registered. The liquidator shall cause public announcement in newspaper by declaring that the Corporate Debtor has gone under liquidation.
9. The Liquidator shall act as per section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") subject to direction time to time as may be issued by this Adjudicating Authority.
10. The liquidator shall file progress report of every three months.
11. With the aforesaid observations, the present CA No.272/2019 is allowed and accordingly stands disposed of.


JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 05.02.2020

Swati Gupta
(LRA)