THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No. 229/2021
In
CP (IB) No. 302/Chd/Hry/2019

Under Section 33(2) of IBC, 2016

In the matter of:
Calzini Fashions Ltd. …Petitioner
Vs.
Shristi Plywood Pvt. Ltd. …Respondent

In the matter of IA No. 229/2021

Naresh Kumar Goel
Resolution Professional
having its Registered Address at
203, Vardhman Star Mall,
Sector 19, Near Badkhal Mor Metro Station,
Faridabad, Haryana-121 002,
…Applicant/Resolution Professional

Order delivered on: 05.07.2022

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Applicant : Mr. Nahush Jain, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 229/2021

The present application has been filed by the Resolution Professional to liquidate Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016. In this case, the petition for initiation of CIRP process was filed by Calzini Fashions Limited (Operational Creditor) against the Corporate Debtor under Section 9 of the IBC, 2016 was admitted by this Tribunal by order dated 21.11.2019. In the instant case no Interim Resolution Professional was proposed by the operational creditor. Therefore, this Tribunal appointed Mr. Ravi Setia as IRP. The IRP made a public announcement dated 11.01.2020 in prescribed Form A, In accordance with Regulation 6 of IBBI (CIRP) Regulations, 2016 (hereinafter referred to as Regulations) read with Section 13(1)(b) and 15 of the Code.

2. In the present application, it is prayed that Mr. Naresh Kumar Goel, the Resolution Professional should continue as Liquidator in terms of Section 34(1) of the IBC Code, 2016; to exclude the period of lockdown from 22.03.2020 to 15.11.2020 from CIRP timeline; and to direct the Corporate Debtor/CoC to remit an amount of Rs.10,57,874/- towards expenses and fees of the RP and counsel of the Corporate Debtor. It is further claimed that an amount of Rs.18,81,644/- is total expenses and fees payable to the RP and counsel of the corporate debtor out of which Rs.10,57,874/- till the date of filing of the liquidation application i.e. 18.02.2021 and balance amount of Rs.8,23,770/- has been incurred by the RP after the filing of liquidation application to the date of filing of the present application.

3. It is submitted that the IRP constituted the Committee of Creditors (CoC). In the first meeting of CoC was convened on 25.01.2020, a resolution was passed by the Members of CoC for replacement of IRP by another Resolution Professional, consequently, Mr. Naresh Kumar Goyal was proposed as Resolution Professional in the said CoC meeting and the same was approved

by this Tribunal by its order dated 18.03.2020. Minutes of the first CoC meeting are annexed as Annexure 5 of the application.

4. It is further submitted that Second Meeting of Committee of Creditors was convened on 28.05.2020, whereby the contents of the Minutes of first CoC meeting circulated by IRP were discussed i.e.

> "*It is stated that IRP made numerous efforts to locate the office of corporate debtor and identification of the Directors so that a contact could be found. The IRP informed the CoC that IRP tried to reach out to Directors through registered post, email, phone calls and even visited the registered office, godown and retail out let of the corporate debtor from the details available on the MCA database and public domain. The residence of the Director was also found closed".*

The Resolution Professional also approached the statutory auditors of the corporate debtor to sought information/document in respect of the corporate debtor. Till date no information has been provided to the Resolution Professional either from the Directors or the corporate debtor. It is stated that on 08.06.2020 M/s. K S Dua & Co., Chartered Accountants having firm Registration No. 017478N has been appointed as Forensic Auditor to conduct Forensic Audit. The report from the Forensic Auditor is yet to be received.

5. The Resolution Professional appointed Mr. Hanspal and Mr. Gyaneshwar Shahi as Registered Valuer on 03.06.2020 in the class of securities and financial assets. An application under Section 19(2) of the Code has been filed on 29.07.2020, seeking direction to personnel/promoters to assist and cooperate with the Resolution Professional in CIRP. The Resolution Professional has also determined that avoidance transactions have been done by the corporate debtor and in compliance to Regulation 35A of the IBBI (CIRP),

Regulations, 2016, a letter has been sent to the Insolvency & Bankruptcy Board of India.

6. It is averred by the applicant that the third Meeting of Committee of Creditors was held on 31.07.2020 and proposed application under Section 33(2) to be filed before this Tribunal for initiation of liquidation of the corporate debtor. The CoC Members "In-Principle" decided that the same to be filed. However, the representatives of Indian Bank submitted that authorization from the appropriate authority is required, therefore, the Agenda is deferred for the next CoC meeting. Minutes of the third CoC meeting is attached as Annexure 11 of the application.

7. It is contended by the Resolution Professional that numerous representations were made to the Indian bank, financial creditor having 98.81% voting rights for the conduct of next CoC meeting. It is submitted that the fourth CoC meeting took place on 06.01.2021. In the said meeting, CoC has passed the resolution for liquidation of the corporate debtor with 100% voting vide Item No. 9 of the aforesaid meeting. In the same meeting, the Members of CoC discussed on the Agenda concerning Regulations 39B, 39C & 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional also made submissions with respect to CIRP Cost before the CoC.

8. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and the same is reproduced below:-

> "Section 33(2): Initiation of liquidation
>
> (1) …………

(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 [approved by not less than sixty-six percent, 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 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.]

9. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

i. before the expiry of the Insolvency Resolution Process period;

ii. 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; and

iii. If does not receive a resolution plan under sub-section (6) of Section 30.

10. In the present case, the COC in its fourth meeting held on 06.01.2021 has decided to liquidate the Corporate Debtor by passing Resolution in the aforesaid meeting and further resolved to appoint Resolution Professional as Liquidator.

11. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

12. It is submitted that the CoC in its 4^{th} meeting held on 06.01.2021 has resolved to appoint the present RP i.e. Mr. Naresh Kumar Goel, Registration No. IBBI/IIPA-002/IP-N00696/2018-2019/12323 as liquidator and he has filed his consent in **Annexure-21.**

13. It is observed that in second meeting of CoC held on 28.05.2020 at Item No. 11, the Members noted that the Indian Bank, Sole Member of CoC had offered a consolidated sum of Rs.75,000/- plus applicable taxes payable to the IRP Mr. Ravi Sethia towards the IRP fees. The same was accepted by Mr. Ravi Sethia and the above is approved by CoC with 100% votes in favour of the above said resolution. At item No. 12 of the above said CoC meeting appointment of Mr. Naresh Kumar Goel as Resolution Professional of corporate debtor w.e.f. 18.03.2020 at a remuneration of Rs.50,000/- per month plus applicable taxes and out of pocket expenses, if any, was put to vote and the aforesaid resolution was passed with 100% votes of the CoC.

14. In the present matter, the petition was admitted by this Tribunal vide order dated 21.11.2019 and the first CoC meeting was held on 25.01.2020 where the decision to replace the IRP was taken and the current Insolvency Professional was appointed as Resolution Professional w.e.f 18.03.2020. The

decision to liquidate the corporate debtor was taken in Fourth CoC meeting which was held on 06.01.2021, whereas the instant IA was filed vide diary No.00309 dated 24.02.2021.

15. It is to be noted that the time period prescribed by the Code is the maximum time provided for the completion of CIRP nothing prevents a resolution process to be completed before the maximum time period prescribed. NCLT, Mumbai Bench in the matter of ***SBI Vs. Jet Airways (India) Limited*** has also held that though the IBC provision provides for 180 days for completion of the CIRP, every effort should be made by the IRP/RP, and members of CoC to expedite the matter and try to finalise the resolution plan on the fast track mode and they should not preferably wait for the completion of the statutory period of 180/270 days timeline permissible under IBC.

16. It is noted that the present applicant was appointed as Resolution Professional on 18.03.2020 and the CoC decided in its 4th meeting dated 06.01.2021 to liquidate the corporate debtor. Subsequently, the present applicant filed an application for liquidation before this Adjudicating Authority on 24.02.2021. It is noted that there is hardly any asset left in the corporate debtor at the time of initiation of the CIRP and, hence, the Resolution Professional should have completed the process within the stipulated maximum period of 180 days. The Applicant has claimed an amount of Rs.10,57,874/- towards expenses upto the date of filing of liquidation application, and a further Rs.8,23,770/- for the subsequent period upto the date of filing of the present application. In view of the limited workload involved in the case of the present corporate debtor, we find the claim in this application unjustified and exorbitant.We,therefore, limit his claim

to the maximum stipulated period of 180 days. Thus,, the above-said consolidated amount pertaining to CIRP cost to the Resolution Professional comes at Rs.3,54,000/-.at the rate of Rs.50,000/- per month plus taxes as approved by the COC in the second meeting on 28.05.2020.We also grant a further amount of Rs 50,000/- extra for the period excluded due to the lockdown period as very little work was done during the said period. A further amount of Rs40,000/- is allowed as out of pocket expenses.The total amount to be remitted by the Corporate Debtor, thus, works out to Rs.4,44,000/-. Considering the facts of the case, no amount as expenses is allowed after filing the application for the Liquidation of the Corporate Debtor. The prayer of exclusion of lockdown period from 22.03.2020 to 15.11.2020 from the CIRP timeline had been allowed vide order dated 05.01.2022 of this Bench.

17. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **Calzini Fashions Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

18. Accordingly, by exercising our power under Section 33(2) pass the following order:-

i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;

ii. Since the Resolution Professional has given his consent to act as Liquidator, therefore, Mr. Naresh Kumar Goel bearing Registration No. IBBI/IIPA-002/IP-N00696/2018-2019/12323, resident of 203, Vardhman Star Mall, Sector 19, Near Badkhal Mor Metro Station, Faridabad, Haryana-121 002, Mob No.9899102276, e-mail: nkg1964@rediffmail.com is hereby appointed as liquidator;

iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

iv. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

v. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

vii. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;

viii. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.

ix. On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the Liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

x. 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;

xi. 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;

xii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

xiii. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, RoC shall send compliance report to the Registrar, NCLT within a period of 30 days;

xiv. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

xv. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

19. Thus, IA No. 229/2021 stands allowed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 05, 2022
AV/ASH