

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CA No. 603/2019  
In  
CP (IB) No. 115/Chd/Pb/2018  
(Admitted)**

**Under Section 33 of the  
Insolvency and Bankruptcy  
Code, 2016**

**In the matter of:**

M/s Bio Diagnostics

... Petitioner-Operational Creditor

Vs.

Ace Healthways Pvt. Ltd.

....Respondent-Corporate Debtor

**And in the matter of:-**

Rajnish Gupta,  
Resolution Professional of  
Ace Healthways Pvt. Ltd.

...Applicant

**Order delivered on 23.08.2019**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

Present: None

**Per: Pradeep R. Sethi, Member (Technical)**

**ORDER**

The instant application is filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (**Code**) seeking further directions with regard to liquidation of Ace Healthways Private Limited (**Corporate Debtor**) undergoing Corporate Insolvency Resolution Process (**CIRP**).

2. The application under Section 9 of the Code was admitted by order dated 18.10.2018. The moratorium was declared by order dated 26.10.2018 and Shri Rajnish Gupta was appointed as Interim Resolution Professional (**IRP**). Shri Rajnish Gupta, IRP was unanimously confirmed as a Resolution Professional in the first meeting of Committee of Creditors (**COC**) held on 29.11.2018. Form G is stated to be published on 24.04.2019 calling for submission of resolution plan. Expression of Interest is stated to be received on 03.05.2019 from Atulaya Healthcare Private Limited, Chandigarh. It is stated that on 17.05.2019, 90 days' time extension of CIRP was granted. The resolution plan is stated to be received on 01.07.2019. The resolution plan was considered by the COC during the 5<sup>th</sup> meeting held on 20.07.2019 and it was observed that the resolution applicant i.e. Atulaya Healthcare Private Limited provided for partially taking over machine and assets namely PET CT Scan 16 Slice and Dexa/Memography of the Corporate Debtor lying at Fortis Hospital, Ludhiana and was not ready for completely taking over the Corporate Debtor as a going concern. It is submitted that the resolution plan was not acceptable to the COC for the reasons given below:-

- i. Purchase of only part of the assets of the Corporate Debtor i.e. Purchase of only PET CT Scan 16 Slice and Dexa/Memography Machines.*
- ii. Non-payment of any amount of dues to Operational Creditors.*
- iii. Bid for acquisition of part of assets of Corporate Debtor is also less than the liquidation value of these assets.*

3. The written consent of the Resolution Professional in terms of Section 34 of the Code is stated to be enclosed as Annexure A-10.

4. Appropriate orders with regard to the liquidation of the Corporate Debtor have been sought.

5. We have carefully considered the application and have also examined the records.

Section 33 (2) of the Code reads as follows:-

*(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 per cent 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).*

6. The decision of the COC to liquidate the Corporate Debtor has been taken unanimously by the COC in its 5<sup>th</sup> meeting held on 20.07.2019. However, the present application is filed by the RP on 26.07.2019 i.e. after the CIRP period expired on 24.07.2019. Therefore, the present case is not being considered under Section 33(2) of the Code.

7. However, Section 33(1) of the Code reads as follows:-

*(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.*

8. The conditions provided for in Section 33(1)(a) of the Code are satisfied since before the expiry of the maximum period permitted for completion of CIRP, a resolution plan under Section 30(6) of the Code is not received. Therefore, in view of the provisions of Section 33(1)(a) of the Code, the corporate debtor is directed to be liquidated in the manner as laid down in Chapter III of the Code.

9. Section 34(1) of the Code provides that 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 the Liquidator for the purposes of liquidation. The written consent of Shri Rajnish Gupta, Registration No. IBBI/IPA-001/IP-P00701/2017-2018/11221 has been filed at Annexure A-10 of the application. Therefore, Shri Rajnish Gupta is appointed as a Liquidator for the liquidation of the Corporate Debtor.

10. It is directed that 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:-

- (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.

11. 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.

12. 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.”*

13. 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 fortnightly thereafter.

14. 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.

15. The Resolution Professional shall take into his possession the assets of the Corporate Debtor.

16. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Chandigarh and Punjab. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

In result thereof, CA No. 603/2019 stands disposed of.

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

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

August 23, 2019  
Yashpal

Pronounced in open court Sd/- 23.8.2019