

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

IA 36/2017
in
CP/491 (IB)/CB/2017

Under Section 33(2) of the Insolvency and Bankruptcy
Code- 2016

In the matter of

M/s. Chivas Trading Pvt. Ltd.
(Financial Creditor)
Vs.

M/s. Abhayam Trading Limited
(Corporate Debtor)

**IA 36/2017 is filed by RP M/s. Rakesh Chaturvedi for
Liquidating M/s. Abhayam Trading Limited (Corporate
Debtor)**

Order delivered on 17th of November, 2017

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Corporate Debtor(s) : Mr. J.R.K. Sarma, Director
For Financial Creditor(s) : Ms. Preeti Mohan, Counsel
For RP : Mr. Akshaya Ramadurai, Counsel

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is an IA 36/2017 filed under
Section 33 (2) of the Insolvency and Bankruptcy Code, 

2016 (I&B Code, 2016 for short) for initiation of Liquidation Proceedings against M/s. Abhayam Trading Limited, (hereinafter called 'Corporate Debtor') as approved by the Committee of Creditors (for short, CoC). The CoC in its 3rd meeting dated 25.09.2017, unanimously passed a resolution to liquidate the Corporate Debtor. The operative part of the Resolution is reproduced below:-

"The Corporate Debtor may be liquidated in accordance with provisions of Sec 33(2) of IB Code and Resolution Professional Mr. Rakesh Chaturvedy be and hereby authorised to move necessary application with Hon'ble National Company Law Tribunal, Chennai Bench for liquidation of the Corporate Debtor"

2. In view of the resolution stated above, the following prayers have been made in the IA:-

"(i) requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the IB Code;

(ii) to appoint the present resolution professional appointed for the corporate insolvency resolution process under Chapter III to act as the liquidator for the purposes of liquidation;

(iii) that the moratorium as per section 14 of the Code shall cease to have effect from the date of such liquidation order."

3. The case under reference is that an Application under Section 7 of the I&B Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was filed by **M/s. Chivas Trading Pvt. Ltd.** (Financial Creditor) against **M/s. Abhayam Trading Limited** (Corporate Debtor), which, vide Order dated 31.05.2017 was admitted by this Adjudicating Authority, the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor, the moratorium was declared and IRP/RP was appointed.

4. The IRP made the public announcement as prescribed under Section 15 of the I&B Code, 2016, pursuant to which, three Financial Creditors filed their claims which were admitted and the CoC was constituted. The first meeting of the CoC was held on 30.06.2017 wherein the CoC unanimously resolved and approved the appointment of IRP viz. Rakesh Tulsidas Chaturvedi as RP, who, after following the laid down procedure, convened second meeting of CoC on 16.08.2017, wherein the Chairman tabled the progress report of the Resolution Professional in the meeting and after having discussion on the agenda, the Committee has observed as follows:-

- > *There is no business prospects with the company,*
- > *There is no substance in chasing the legal suits and cases for recovery as is evident from the legal opinion received,*
- > *There is no point in spending good money to make efforts to recover the bad money having very remote chances of recovery.*
- > *The assets with the company are not sufficient to repay the amounts of creditors*
- > *The assets in form of Land and shares are also not easily realisable.*

5. The Corporate Debtor had also given response on the issue of the resolution of debts proposing that the Company was into finance and leasing business which was now not feasible. The Corporate Debtor has also explained that any Resolution Plan is not possible, which could enable the Company to pay the entire debt. There is lack of business opportunity. However, if the creditors are willing to take substantial haircuts in their loan amounts and grant

additional time to repay, the Company would work on the Resolution Plan proposing new activities of trading. But, the members of the CoC were of the unanimous opinion that even though, they believe that giving additional time to the Company to repay would only add up to their losses. However, the members of CoC have requested the Company to come up with a fully tied up plan in 15-20 days' time and would then take a call whether to go for resolution or liquidation.

6. The IA has been filed within the period of moratorium by the Resolution Professional. We have perused the Application and the record of the minutes of the meeting of the CoC including the Resolution that came to be passed in 3rd meeting of the CoC, we do agree with the view taken by the CoC in its 3rd meeting, i.e. *"The Corporate Debtor may be liquidated in accordance with provisions of Sec 33(2) of IB Code and Resolution Professional Mr. Rakesh Chaturvedy be and hereby authorised to move necessary application with Hon'ble National Company Law Tribunal, Chennai Bench for liquidation of the Corporate Debtor",*. Therefore, we Order as follows:- 

- i. We order for liquidation of the Corporate Debtor viz., M/s. Abhayam Trading Limited which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- ii. We appoint RP viz., Rakesh Tulsidas Chaturvedi as Liquidator, who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;
- iii. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;
- iv. Copy of this Order shall be sent to the Registrar of Companies, RD, OL and the Registered Office of the Corporate Debtor.
- v. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the liquidator, on behalf of 

Corporate Debtor, with the prior approval of this Authority.

- vi. We make it clear that para (v) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- vii. This Order 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.
- viii. 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 viz., Mr. Rakesh Tulsidas Chaturvedi. In addition to this, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code,

2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- ix. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- x. The Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board. Accordingly, the fees of the conduct of the liquidation proceedings shall be paid to the Liquidator from the proceeds of the liquidation estate.

7. In terms of the above, IA 36/2017 filed by the RP under Section 33 (2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor stands disposed of.


S. VIJAYARAGHAVAN
MEMBER (Technical)
PAM


CH. MOHD SHARIEF TARIQ
MEMBER (Judicial)