

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

**CA No.33/2018**

**IN**

**CP (IB) No.50/Chd/Hry/2017  
(Decided matter)**

**Under Sections 27, 33 and 34  
of the Insolvency  
and Bankruptcy Code, 2016**

In the matter of:

Sahara Fincon Pvt.Ltd.

... Financial Creditor

Vs.

Tirupati Ceramics Ltd.

...Corporate Debtor

**AND Misc.Application CA No.33/2018**

In the matter of:

1. Sahara Fincon Pvt.Ltd.  
having its registered office at  
Office No.A-113, Vikas Tower,  
G-Block Community Centre,  
Vikaspuri, New Delhi-110018

2. Sh.Shekhar Bhandari  
Resident of N-89, 1<sup>st</sup> floor,  
Panchsheel Park,  
New Delhi -110017.

... Applicants

**Order delivered on 22.03.2018**

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)  
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Applicant : Mr.Hitesh Sachar, Advocate

For Resolution : Mr.Amit Sharma in person.  
Professional

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

**ORDER**

Petition bearing CP No. CP(IB)No.50/Chd/Hry/2017 was filed by

M/s Sahara Fincon Pvt.Ltd. (Applicant No.1) as a financial creditor for initiating

insolvency resolution process under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the Code) in respect of M/s Tirupati Ceramics Ltd., 37 KM Milestone, NH-10, Delhi-Rohtak Road, Village Jakhoda, Distt. Jhajjar, Bahadurgarh, Haryana (hereinafter referred to as Corporate Debtor). The petition was admitted by order dated 29.09.2017 and Mr. Amit Sharma, bearing IP Regn.No.IBBI/IPA-002/IP-N00172/2017-18/10442 R/o H.No.S-50, Pandav Nagar, Delhi-110092 was appointed as Interim Resolution Professional on 11.10.2017. In the meeting of Committee of Creditors held on 11.11.2017, the appointment of Interim Resolution Professional was confirmed as Resolution Professional.

2. The present application is filed by the financial creditors of the Corporate Debtor. It is stated that the applicants are the only financial creditors of the corporate debtor. It was submitted that in the meeting of Committee of Creditors on 17.01.2018, the members of the Committee decided to not to go ahead with the existing Resolution Professional and passed the resolution for replacement of Mr.Amit Sharma, Resolution Professional. Copy of the minutes of the 3<sup>rd</sup> meeting of the Committee of Creditors is annexed at Annexure-2 of the application. It is further stated that accordingly, the applicant No.1 proposed the name of Mr.Punkaj Jain, Insolvency Professional, Regn.No.IBBI/IPA-001/IP-P00409/2017-18/10969 to act as a Resolution Professional and the same has been accepted by the applicant No.2 and copy of the consent received from Mr.Punkaj Jain is annexed as Annexure-3. It has been prayed that the existing resolution professional Shri Amit Sharma be substituted and replaced and Shri Punkaj Jain appointed as resolution professional and the

Tribunal may pass any other order which it deemed fit and proper in the circumstances of the case.

3. During the course of hearing, the learned counsel for the applicant has referred to the minutes of the 3<sup>rd</sup> meeting of the Committee of Creditors held on 17.01.2018 (item No.5) and stated that the Committee decided with 100% votes that the resolution process of the corporate debtor hereby fails and committee resolved for liquidation of the corporate debtor. The learned counsel for the applicants submitted that the Committee further deliberated on as to whether to continue to go ahead with the existing resolution professional to act as liquidator in the matter or whether a new insolvency professional be proposed for liquidation purpose. It was further submitted that the committee decided to replace the existing resolution professional to act as liquidator in the matter, subject to the approval of the Adjudicating Authority. Therefore, the present application is filed. Shri Amit Sharma, resolution professional was present and stated that he had sent final report dated 22.01.2018 intimating about decision taken by Committee of Creditors in its meeting held on 17.01.2018 for seeking liquidation of the corporate debtor.

4. We have carefully considered the arguments of learned counsel for applicants and the resolution professional in person and perused the record. The relevant sections of the Code are Sections 27, 33 and 34. The same are extracted below:

***“27. (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.*”**

(2) *The committee of creditors may, at a meeting, by a vote of seventy-five per cent of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.*

(3) *The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.*

(4) *The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.*

(5) *Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.*

**33. (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.*

(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 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).*

(3) to (7) .....

**34.** (1) *Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).*

(2) *On the appointment of a liquidator under this section, all 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.*

(3) *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 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.*

(4) *The Adjudicating Authority shall by order replace the resolution professional, if—*

*(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*

*(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.*

(5) *For the purposes of clause (a) of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.*

(6) *The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority under sub-section (5).*

(7) *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 the liquidator.*

(8) *An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.*

(9) *The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.”*

5. The provisions of Section 27 of the Code provide for replacement of resolution professional by the Committee of Creditors at any time during the corporate insolvency resolution process. Moreover, the name of the insolvency professional proposed by the committee is to be forwarded by them to the Adjudicating Authority. Section 33 of the Code states that 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 to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to sub-clauses (i), (ii) and (iii) of Clause (b) of sub-section (1) of Section 33 of the Code. The minutes of the 3<sup>rd</sup> meeting of the Committee of Creditors held on 17.01.2018 are at Annexure-2 of the application. In item No.5 thereof, it is stated that the committee decided with 100% votes that the resolution process of the corporate debtor hereby failed and committee now resolved for the liquidation of the corporate debtor. The resolution was also passed reading as under:-

*“RESOLVED THAT pursuant to section 33(2) of Insolvency and Bankruptcy Code, 2016, the Committee of Creditors of Tirupati Ceramics Limited unanimously resolved to liquidate the Corporate Debtor, M/s Tirupati Ceramics Limited.”*

6. Further resolutions were passed as under:-

*“RESOLVED FURTHER THAT the consents of all the members of Committee of Creditor be recorded to replace and not to go ahead with the existing Resolution Professional Shri Amit Sharma, Resolution Professional for liquidation process.”*

*“RESOLVED FURTHER THAT the committee shall take fresh consent from another registered Insolvency Professional to act as Liquidator in the matter and recommendation be made to Hon’ble NCLT, Chandigarh Bench, Adjudication Authority to appoint such new registered Insolvency Professional to act as Liquidator in the matter.”*

*“RESOLVED FURTHER THAT the Committee of Creditor shall make necessary application before Adjudicating Authority for obtaining orders for initiation of Liquidation proceedings.”*

7. Therefore, the Committee of Creditors has unequivocally decided that the corporate debtor be liquidated. The resolution professional intimated the Adjudicating Authority in this regard vide his final report dated 22.01.2018 (Diary No.233 dated 22.01.2018). In view of these circumstances, the corporate debtor is to be liquidated in the manner laid down in Chapter III of the Code.

8. The further resolutions clearly bring out that all the members of the committee of creditors resolved to replace and not to go ahead with the existing resolution professional Shri Amit Sharma **for liquidation process**. The resolution was also for taking fresh consent from another registered insolvency professional **to act as liquidator**. In these circumstances, the replacement of the resolution professional is not being sought for the corporate insolvency resolution process. Section 27 of the Code is therefore not applicable.

9. The request for replacement of the resolution professional for acting as liquidator cannot be accepted. Section 34(1) states that where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4) thereof. The conditions prescribed by Section 34(4) of the

Code for replacement of resolution professional are not satisfied in the present case in as much as no resolution plan has been submitted by the resolution professional under section 30 and therefore, its rejection for failure to meet the requirements mentioned in Section 30(2) of the Code does not arise and neither has the Board recommended the replacement of resolution professional to the Adjudicating Authority.

10. In view of the above, we pass the order requiring the corporate debtor M/s Tirupati Ceramics Ltd. to be liquidated and appoint Shri Amit Sharma, resolution professional as the liquidator for the purposes of liquidation.

11. The 'Liquidator' shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from today calling upon the stakeholders 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. It is further directed that as per Section 33(5) of the Code,
- (i) 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) However, in terms of sub-section (6) of Section 33 of the Code, 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;
  - (ii) The order for 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) 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) 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.
14. The liquidator shall exercise the powers and perform the duties as prescribed under various provisions and the Code, Regulations and the applicable Rules.

15. 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 every fortnight thereafter.

16. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the corporate and personal guarantees and to take proper steps in this regard.

17. Copy of this order be supplied to the 'Liquidator', applicants forthwith.

Pronounced in open Court.

Sd/-

**(Justice R.P.Nagrath)**  
**Member (Judicial)**

Sd/-

**(Pradeep R.Sethi)**  
**Member (Technical)**

March 22, 2018  
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