

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

CA Nos.213/2017,58/2018, 59/2018 & 60/2018

IN

CP (IB) NO. 68/Chd/Pb/2017
(Admitted matter)

In the matter of:

Singhania International Ltd.

...Operational Creditor-Applicant

Vs.

Aseem Ispat Pvt. Ltd.

...Corporate Debtor-Respondent.

Present: Mr. Harsh Garg and Mr. Pulkit Goyal, Advocates for the Resolution Professional.
Mr. Adesh Kumar Singla, Resolution Professional, in person.
Mr. Gaurav Mankotia, Advocate for the respondent.

CA No.213/2017

This application has been filed by Mr. Vijay Modi a promoter of the Corporate Debtor undergoing insolvency resolution process. One of the prayer made in the application is that since the Corporate Debtor has decided not to present any resolution plan and in case there is no resolution plan, the Committee of Creditors be instructed immediately to seek liquidation of the Corporate Debtor.

Mr. Gaurav Mankotia, Advocate representing the directors of the suspended Board of Directors has filed the statement in compliance with the directions issued on 21.03.2018. The response thereto has also been filed by the Resolution Professional.

From the tabulated information filed by both the parties it prima-facie seems that the promoter-directors are bound to deposit an

amount of ₹18,01,290/- which includes the amount of ₹3,83,774/- being GST payment claimed to have been made by the company after commencement of the resolution process. We are of the view that such payment after the commencement of the resolution plan can be made only by the Resolution Professional if permissible and not by the promoter-directors of the suspended Board of Directors. Regarding the aforesaid amount it seems that misappropriation of funds of the company after admission of the petition. Learned counsel for the suspended Board of Directors seeks time to have instructions. List the matter on 18.04.2018. It is directed that both the directors of the suspended Board of Directors shall appear in person on the next date, failing which the consequences would follow.

CA Nos.58/2018, 59/2018 and 60/2018

Adjourned to 18.04.2018 alongwith CA No.213/2017.

**CP(IB) No.68/Chd/Pb/2017
(Admitted matter)**

CP (IB) No. 68/Chd/Pb/2017 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the 'Code') was admitted by this Tribunal on 20.09.2017 and Mr. Adesh Kumar Singla was appointed as the Interim Resolution Professional on 28.09.2017 who was confirmed as the Resolution Professional in the first meeting of the Committee of Creditors on 25.10.2017.

2. The period of 180 days for completion of the resolution process in terms of sub-section (1) of Section 12 expired on 18.03.2018. Admittedly no resolution plan has been received. The event report has been filed by the Resolution Professional on 16.03.2018 vide Diary No.780. The Resolution Professional has described the detailed procedure he followed with regard to the announcement made in two newspapers and certain claims were also received. It is stated that there are no debenture holders and creditors of the company. Alongwith the event report, minutes of the 9th meeting of the Committee of Creditors held on 13.03.2018 has also been annexed. As per the minutes of the meeting it was unanimously resolved to recommend to the Tribunal for liquidation of the corporate debtor as no resolution plan was submitted. It was also decided to request the Tribunal for appointment of new Liquidator. However, this later request cannot be acceded to in view of the mandate of sub-section (1) of Section 34 of the Code.

3. In view of the above, an order is passed in accordance with Section 33 of the Code for liquidation of the Corporate Debtor and Mr. Adesh Kumar Singla is appointed as the Liquidator. The Liquidator shall issue public announcement to the effect that the Corporate Debtor is in liquidation and to intimate the same to Registrar of Companies, Punjab about this order.

4. 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.

5. 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, or 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.”*

6. It is further directed that as per Section 33(5) of the Insolvency and Bankruptcy Code, 2016,

- (i) Subject to Section 52 of the Code, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted by or 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 IB Code, 2016 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) 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.

7. The liquidator shall exercise the powers and perform the duties as prescribed under various provisions of the Code, Regulations and the applicable Rules. The fee of Liquidator, expenses on public announcements and for service of process etc. incurred by the Liquidator shall be reimbursed and shall form part of the liquidation costs. The Liquidator shall be paid fee in accordance with the Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

8. 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.

9. 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.

10. Section 26 of the Code states that the filing of an avoidance application under Section 25(2)(j) by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process. In view of Section 33 of the Code, the liquidation order is a direct consequence of the insolvency resolution process. Therefore, applications by the resolution professional for avoidance of transactions in accordance with Chapter III of the Code will not abate on the passing of the order of liquidation.

Copy of this order be supplied to learned counsel for the parties and be also sent by the Registry to the 'Liquidator' at his e-mail ID.

Sd/-

(Pradeep R. Sethi)
Member (Technical)

Sd/-

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

April 02, 2018
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