

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
MA 677A/2017 in C.P. NO.29/I&BP/NCLT/MAH/2017**

Under Section 33 of IBC, 2016

Lalit L Bajaj
Resolution Professional

... Applicant

In the matter of

Ultra Drytech Engineering
Limited ... Corporate Debtor

Order delivered on 19.02.2018

Coram: Hon'ble B. S. V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Pravin R. Navandar, Authorised Representative

Per V. Nallasenapathy, Member (Technical)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016.
2. The Corporate Debtor filed a petition for initiation of Corporate Insolvency Resolution process under Section 10 of the Code and an admission order was passed by this Adjudicating Authority on 6.3.2017 wherein moratorium was declared under Section 14 of the Code and appointing Lalit L Bajaj as Interim Resolution Professional. The Insolvency Resolution Professional issued public announcement in Form – A under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate persons) Regulations 2016, on 9.3.2017, wherein the Creditors were called upon to submit the proof of their claim on or

before 21.3.2017. Two registered Valuers were appointed on 25.3.2017 for the valuation of the Company properties.

3. The applicant says that First meeting of COC was held on 12.4.2017, wherein two secured Financial Creditors attended the meeting and Mr. Lalit L Bajaj, Interim Resolution Professional was appointed as Resolution Professional in accordance with the Code. In the said meeting, the Information Memorandum prepared by the Insolvency Resolution Professional was placed before the COC and the same was submitted to IBBI on 13.6.2017 under Regulation 36 of the Insolvency and Bankruptcy Code.

4. The Second COC meeting was held on 29.6.2017 wherein the RP brought forth the details of resolution process carried on by him since his appointment and submission of Information Memorandum.

5. The Third COC meeting was held on 31.8.2017 wherein the COC resolved to extend the resolution period for another 90 days' subject to the approval of NCLT. Even though the RP filed the application for extension of resolution period for another 90 days, no orders were passed in view of the fact as no one appeared before NCLT, but however, the original CIRP of 180 days, as well as the extension of 90 days sought by RP, was already over as on 1.12.2017.

6. The Applicant states that no resolution plan was received by him. The Fourth COC meeting was held on 4.12.2017 wherein the COC resolved to liquidate the Corporate Debtor by 100% voting in favour of liquidation.

7. The documents filed in support of this Application reveals that two Financial Creditors have filed their claim, the said claims were admitted for Rs.21,21,02,094, 41 Operational Creditors filed claims to the extent of Rs.9,07,35,569 and were admitted for Rs.6,92,28,613. The Valuation Report given by M/s. Salvi & Associates and M/s. Anmol Sekhri Consultants Pvt. Ltd. reveals that the liquidation value is Rs.18,20,61,097 and Rs.13,52,59,074 respectively, the average of these two works out to a Liquidation value of Rs.15,86,60,086.

8. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has

complied with the procedure laid under the Code r/w Regulations of CIRP, for the valuation report filed by the valuer has not been disputed by the CoC, on verification, we are of the view that this case is fit to pass liquidation order as mentioned under sub-section 2 of section 33 of the Code and accordingly, the Corporate Debtor is ordered to be liquidated.

9. The Resolution Professional/Applicant herein has stated that he is not willing to act as a Liquidator of the Corporate Debtor. However, section 34(1) of the Code provides 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 a Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4). In view of this provision, this Adjudicating Authority cannot concede the request of the Applicant. Apart from this, the Resolution Professional having dealt with the Corporate Debtor during the last six months it is not advisable to make somebody else as Liquidator.

10. Consequently, the Applicant Resolution Professional is appointed as the Liquidator as provided under section 34(1) of the Code. 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;

11. This Bench hereby directs the personnel of the corporate debtor to extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.

12. Since Liquidation order has been passed no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, save and except as mentioned in section 52 of the Code, as to institution of legal proceedings by the Liquidator, he is at liberty to initiate suit or legal proceedings with prior approval of this Adjudicating Authority, but this direction 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.

13. This order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of business the Corporate Debtor carrying.

14. We hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation Process) Regulations, which forms part of the liquidation cost.

15. The Liquidator appointed herein is directed to issue public announcement stating that the Corporate Debtor is in liquidation and also required to send the copy of this Order to the concerned Registrar of Companies as required under section 33(1) of the Code.

16. Accordingly, this Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of Insolvency and Bankruptcy Code 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations 2016.

Sd/-

V. Nallasenapathy
Member(Technical)

Sd/-

B.S.V. Prakash Kumar
Member (Judicial)