

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

**CP (IB) No.10/Chd/Hry/2017
(Decided matter)**

**Under Section 12 (2) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

SRS Modern Sales Ltd.
SRS Tower, Unit No.700 B,
7th Floor, Near Metro Station,
Mewla Maharajpur, G.T.Road,
Faridabad, Haryana-121003.

..... Applicant/ Corporate Debtor

Order delivered on : 26.02.2018

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

For the Applicant : Mr.Sameer Rastogi, Resolution Professional

For the Secured : Mr.Samir Pal Chugh, Advocate
Creditors

For the Directors of : Dr.Shweta Bajaj, Advocate
suspended Board of
Directors

ORDER(Oral)

Per: R.P.Nagrath, Member (Judicial)

Mr. Sanjay Narayan, Authorised Officer, Union Bank of India who has also got authority from the other two banks of the consortium of the Banks filed affidavit dated 17.02.2018 stating therein that the Bank is taking steps under the SARFAESI Act against the corporate and personal guarantors. Let the same be taken on record.

2. The petition filed by SRS Modern Sales Limited, the corporate debtor in CP No.10/Chd/Hry/2017 under Section 10 of the Insolvency and Bankruptcy Code, 2016 was admitted on 17.04.2017 and the Interim Resolution Professional, namely, Mr. Sameer Rastogi was appointed, who was later on confirmed as Resolution Professional by the Committee of Creditors.

3. In response to the notice sent to the directors of suspended Board of Directors of the company, namely Mr.Naresh Kumar Goyal and Mr.Sushil Kumar who are present in person, are represented by Dr.Shweta Bajaj, Advocate who has filed Power of Attorney for both these Directors.

4. Having heard the Resolution Professional, learned counsel representing the suspended Board of Directors, learned counsel for the consortium of Banks, we find that the Liquidation Order has to be passed in respect of the corporate debtor. Admittedly, the period of 180 days as prescribed under Section 12(1) of the I&B code, 2016 for completion of insolvency process expired on 17.10.2017. The Committee of Creditors comprising of 4 Banks in its 6th meeting held on 16.10.2017 decided that the company be referred for liquidation before the Adjudicating Authority and authorising the Resolution Professional to apply to NCLT, Chandigarh for liquidation of the company on agenda item No.9. The agenda item No.8 shows that promoters/directors of the company had submitted a resolution plan to the Resolution Professional on 12.10.2017 without Annexures. That plan was laid before the Committee of Creditors. All the members of the Committee of Creditors were of the unanimous view that the resolution plan laid before them is unacceptable.

5. Therefore, after the expiry of 180 days or 270 days as prescribed under Section 12(1) of the Code, in case extension of 90 days is granted, the only recourse is to initiate the liquidation process as provided in Chapter III of the Code.

Section 33 (1) of the Code reads as under:-

“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.”

6. Therefore, an order is passed in accordance with Section 33 of the I&B Code for liquidation of the corporate debtor by issuing public announcement stating that the corporate debtor is in liquidation and to intimate the Registrar of Companies, NCT of Delhi and Haryana about this order.

7. Section 34(1) of the code provides 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.

8. Mr. Sameer Rastogi, Resolution Professional shall act as the Liquidator for the purpose of liquidation as he is not disqualified under any of the clauses of sub-section (4) of section 34 of the Code. 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.

9. 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.”

10. 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, 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 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.

11. The liquidator shall exercise the powers and perform the duties as prescribed under various provisions and the Code, Regulations and the applicable Rules.

12. It was contended that there are certain recoverable debts of the company and the report of the liquidator shall contain all these aspects.

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 every fortnight thereafter.

14. 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 and shall also file the reports. In this regard learned counsel representing the consortium of Banks has submitted that the Banks are proceeding under the SARFAESI Act against the personal and corporate guarantors of the corporate debtor. The outcome of those proceedings be filed with the affidavit of Mr. Sanjay Narayan or the other authorised officer of the consortium of Banks for the time being.

15. However, in view of the circumstances of the case, the consortium of the Banks shall bear the expenses of publication of the notices in the newspapers but rest of the expenditures for liquidation cost is a matter which is kept open. The authorised officer Mr. Sanjay Narayan shall provide the funds to the liquidator for publication in the newspapers by 28.02.2018.

Copy of this order be supplied to the 'Liquidator' forthwith. and also to the learned counsel for the consortium of Banks.

Sd/-

(Pradeep R. Sethi)
Member (Technical)

Sd/-

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

February 26, 2018
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