

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

**CA No.311/2018  
IN  
CP (IB) No.73/Chd/Pb/2017  
(Admitted matter)**

**Under Section 33 of IBC, 2016**

**In the matter of:**

Singhania International Limited

Versus

Sham Udyog Limited,

And

**In the matter of:**

Committee of Creditors of  
Sham Udyog Limited through  
Narender Kumar Sharma,  
Resolution Professional

...Applicant

**Order delivered on: 20.08.2018**

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

For the Applicant : 1. Mr. Mohit Sharma, Advocate  
2. Mr. Narender Kumar Sharma,  
Resolution Professional

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

**ORDER (Oral)**

The Petition titled M/s Singhania International Ltd. Vs. Sham  
Udyog Ltd. filed under Section 9 of the Insolvency and Bankruptcy Code, 2016

(for short to be referred hereinafter to as the Code) was admitted by this Tribunal on 21.11.2017 and Mr. Narender Kumar Sharma, Registered Professional with the IBBI was appointed as Interim Resolution Professional. The Interim Resolution Professional was confirmed as the Resolution Professional by the Committee of Creditors in its first meeting held on 02.01.2018. The instant application has been filed by the Resolution Professional on behalf of Committee Creditors of the corporate debtor with a prayer to pass Liquidation Order under Section 33 of the Code based on the decision of meeting held on 02.08.2018.

2. It is stated that on appointment of the Interim Resolution Professional, the public announcement was made on 05.12.2017 in two newspapers i.e. Business Standard (English) and Rozana Spokesman (Punjabi). The Interim Resolution Professional visited the premises of the corporate debtor situated at Village Ghaunspura, Ludhiana Road, Malerkotla, Punjab on 14.12.2017 to take over the assets of the corporate debtor, along with the officers of the Punjab and Sindh Bank, a financial creditor. It was however found that whole of the factory has been dismantled and there was no plant and machinery, inventory and manpower at the site. The Interim Resolution Professional filed CA No.236/2017 of 26.12.2017 before this Tribunal seeking directions for the Directors of the suspended Board of Directors to cooperate with the Resolution Professional and to hand over the books of accounts and balance sheets.

3. It is further averred that under the order of 12.01.2018, the Resolution Professional took over the physical possession of the land of corporate debtor situate at factory site, Village Ghaunspura, Ludhiana road,

Malerkotla, Punjab measuring 22 Bighas 5 Bighas of the land on 24.01.2018. The copies of the balance sheets for the financial years 2012-13 & 2014-15 were handed over to the Resolution Professional on 16.02.2018 and also the audited balance sheets for the financial year 2015-16 later on. The Registered Valuers were also appointed and the Resolution Professional also recommended for carrying out the forensic audit which was accepted by the Committee of Creditors in the meeting held on 21.02.2018. The Statutory Auditors also handed over the original balance sheets audited by him for the period from 2015-16 to 2016-17 and for further period from 01.04.2017 to 21.11.2017. All these documents upto the financial year 2016-17 were filed with the Registrar of Companies in compliance with the provisions of Companies Act 2013.

4. Since the insolvency resolution process could not be completed within prescribed period of 180 days as prescribed in sub-section(1) of Section 12 of the Code, the said period was extended by 90 days by this Tribunal vide order dated 15.05.2018 on the application filed by the Resolution Professional on the basis of decision of Committee of Creditors.

5. It is further stated that the information memorandum prepared by the Resolution Professional was approved by the Committee of Creditors on 08.05.2018 and copy of the minutes of the meeting is at Annexure A-10. The Forensic Auditors have filed the report to the Committee of Creditors, which was discussed in the 6<sup>th</sup> meeting of Committee of Creditors held on 02.08.2018. Based on the explanation given by the Forensic Auditor, the Committee of Creditors decided to challenge the fraudulent and preferential

transactions before this Tribunal. The Resolution Professional is proceeding in the matter on receipt of clarification from the Auditor.

6. Since no resolution plan was received, the matter was placed before the Committee of Creditors in the 6<sup>th</sup> meeting held on 02.08.2018. The Committee of Creditors resolved to liquidate the corporate debtor and authorised the Resolution Professional to file the application under Section 33(2) of the Code. The copy of the resolution is at Annexure A-15. The Committee authorised Mr. Narender Kumar Sharma the applicant herein to act as a Liquidator and he has furnished his written consent as at Annexure A-16 as required by the amended provisions of the Code and Regulations.

7. We have heard the learned counsel for the Resolution Professional and the Resolution Professional who is present in person and perused the records.

8. It is submitted that the corporate debtor is not a going concern but it has the immovable assets. The learned counsel for the applicant submits that there are also the guarantors in respect of loan of financial creditors. It is submitted that there is corporate guarantee as well as the personal guarantee obtained by the financial creditors. It is submitted that against the corporate guarantor the bank has already taken the steps to initiate the appropriate proceedings and the bank may also take the decision with regard to the action against the personal guarantors.

9. Section 33(2) of the Code says that where the Resolution Professional, at any time during the CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the Committee of

Creditors approved by not less than 66% of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Code.

10. In the present case the period of 270 days permissible for completion of the insolvency resolution process was going to expire on 17.08.2018 and in the 6<sup>th</sup> meeting of the Committee of Creditors held on 02.08.2018 the decision was taken by 100% of voting share on agenda item No.8 to liquidate the corporate debtor for completion of the insolvency resolution process of M/s Sham Udyog the authorising resolution professional to make an application in this regard before this Tribunal. The Committee of Creditors took note of the letter dated 19.06.2018 of the Resolution Professional certifying that he has not received any resolution plan upto 18.06.2016, the last date for receipt of the resolution plan. The Committee of Creditors (COC) also accepted the consent given by the Resolution Professional to act as Liquidator.

11. In view of the above, we order the liquidation of the corporate debtor M/s Sham Udyog and appoint Mr. Narender Kumar Sharma, Resolution Professional as the Liquidator for the purposes of liquidation of the corporate debtor, in terms of Section 33(2) of the Code. His appointment will take effect from the date of receipt of copy of this order.

12. The learned counsel for the applicant submits that Resolution Professional now appointed as Liquidator has to file the other applications before this Tribunal as per the decisions of the meeting of corporate debtors. The above contention is noted.

13. It is further observed that all the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

- (i) That as per Section 33(5) of the Code and 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) That 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) That this order of 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) That 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) That 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 publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders 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.

15. 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.”*

16. 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 as per Rule 15 of the Liquidation Process Regulations 2016 every fortnightly thereafter.

17. 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.

Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh immediately.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)

August 20, 2018  
Anchal