

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (Exercising powers of Adjudicating Authority under
 the Insolvency and Bankruptcy Code, 2016)**

**CA No.295/2018
 IN
 CP (IB) No.127/Chd/Pb/2017**

**Under Section 33 of Insolvency
 and Bankruptcy Code, 2016.**

In the matter of :

UCO Bank, having its H.O. at 10, B.T.
 Maharaj Sarani, Kolkata-700001,
 through its Branch Office at
 R.K. Road, Industrial Area A,
 Ludhiana-141003.

...Petitioner/Financial Creditor

Versus.

M/s. KKK Cotspin Pvt. Limited having its
 registered office at 32, Netaji Nagar,
 G.T. Road (West), Jalandhar Bye Pass,
 Ludhiana -141008.

...Respondent/Corporate Debtor

And

In the matter of:

Vivek Kumar Arora
 Resolution Professional
 KKK Cotspin Pvt. Ltd.
 Office: 629, Sector 16-D,
 Chandigarh.

Order delivered on: 25.09.2018

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

For the Applicant : 1. Mr. Arora Vishwas Kumar, Advocate.
 2. Mr. Vivek Kumar Arora, Resolution Professional

Per: Pradeep R. Sethi, Member(Technical)

ORDER

The instant application is filed by Shri Vivek Kumar Arora Resolution Professional (RP) intimating decision of Committee of Creditors (COC) of KKK Cotspin Pvt. Ltd. (Corporate Debtor) to liquidate the Corporate Debtor and seeking orders pursuant to Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code). The petition under section 7 of the Code for initiating the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor was filed by UCO Bank and by order dated 25.01.2018, the petition was admitted and moratorium in terms of Section 14(1) of the Code was declared. Subsequently, by order dated 30.01.2018, Shri Vivek Kumar Arora was appointed as Interim Resolution Professional (IRP).

2. It is stated that on 01.02.2018, public announcement was made in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the Regulations) read with Section 13 (1) (b) and 15 of the Code. It is further stated that after collating claims from the creditors, the COC was constituted by the IRP in accordance with Section 21 of the Code on 20.02.2018 with its members being UCO Bank and Allahabad Bank with voting share of 83.67% and 16.33% respectively.

3. It is submitted that in the first meeting of the COC convened on 27.02.2018, Shri Vivek Kumar Arora IRP was unanimously confirmed as

Resolution Professional (RP). Further that in the second meeting of COC held on 06.04.2018, the decision on publication for invitation of resolution plan was taken and expression of interest for submission of resolution plan was invited by way of newspaper publication dated 11.04.2018 and accordingly, Form G was also published as per Regulations. In the affidavit filed by diary No.3445 dated 12.09.2018, it is stated that till 01.05.2018, the RP has not received any expression of interest and in the third meeting held on 01.05.2018, it was decided by the COC that another advertisement be released forthwith and accordingly, newspaper advertisement was published on 02.05.2018 and Form G was also published as per relevant Regulations. The RP received expression of interest from three parties and sought for EMD and non-disclosure undertaking but no reply was received and the proposed resolution applicants failed to deposit any EMD, non-disclosure undertaking and resolution plan.

4. It is also stated in the said affidavit that in the fourth meeting held on 25.05.2018, it was again decided that it will be prudent to publish one more notice inviting resolution plans from prospective resolution applicants. The expression of interest for submission of resolution plans was invited by way of newspaper publication dated 30.05.2018 and accordingly, Form G was also published as per Regulations. Vide letter dated 12.06.2018, the promoter directors of the corporate debtor expressed their interest in submitting resolution plan but vide letter dated 25.06.2018, they conveyed that since they did not have the necessary resources to propose a resolution plan themselves, they are approaching other interested parties for investment.

5. It is further stated that in the fifth meeting held on 02.07.2018, the COC decided that after submitting EOI dated 12.06.2018 and subsequent letter dated 25.06.2018, the promoters did not provide any resolution proposal/plan and only sought extension of time, and therefore, the same is rejected. It is also stated that the COC decided that a fresh invitation of EOIs be published immediately with the last date for submission of EOI/resolution plan being 15.07.2018 and accordingly, expression of interest for submission of resolution plans was invited by way of newspaper publication dated 03.07.2018 and Form G was also published as per Regulations.

6. In the same affidavit filed by diary No.3445 dated 12.09.2018 it is stated that in response to the publication dated 03.07.2018 the promoter directors of the corporate debtor vide letter dated 09.07.2018 again expressed their interest in submitting a resolution plan alongwith EMD but no resolution plan was submitted by them subsequently.

7. In the sixth meeting of COC held on 18.07.2018, the COC unanimously decided that the corporate debtor be liquidated. The relevant part of the minutes of the meeting are as follows:-

"Agenda No.6.05:

RESOLUTION PLAN/LIQUIDATION.

In the process of making a decision on whether to continue with the CIRP or to liquidate the corporate debtor, the following facts were observed –

- *No Resolution Plan has been received from any prospective Resolution Applicant despite publication of invitation for the same 4 times.*
- *It was also evident from the above that there are negligible chances of receipt of any Resolution Plan in the future as*

well and therefore there was no justification for continuing with the CIRP.

Accordingly the COC unanimously decided that the Corporate Debtor be liquidated.

It was decided that the RP prefer such application before the Adjudicating Authority for liquidation of the corporate debtor.

8. It is prayed that the order of liquidation of the corporate debtor be passed in accordance with Section 33 (2) of the Code.

9. We have carefully considered the submissions and arguments of the learned counsel for the RP and have perused the records. Section 33(2) of the Code reads as follows:-

“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).”

10. In the present case, the RP has submitted the instant application intimating the Adjudicating Authority of the unanimous decision of the COC to liquidate the corporate debtor. As already discussed above, efforts have been made by the COC and RP through newspaper publications and publishing of Form G on 07.04.2018, 02.05.2018, 30.05.2018 and 03.07.2018 inviting expression of interest for submission of resolution plans. However, as per details at Annexure-G of diary No.3445 dated 12.09.2018, expression of interest from three parties were received in response to newspaper advertisement dated 02.05.2018 and the RP sought for EMD and non-disclosure undertaking but no reply was received from three parties. Later,

with reference to newspaper advertisements dated 30.05.2018 and 03.07.2018, Shri Ashok Kumar, Raghav Gupta & Ors. (Directors of suspended Board of Directors of corporate debtor) submitted the EMD but failed to submit the resolution plan upto the last date of submission as per the advertisements. Therefore, despite efforts by the COC and RP, no resolution plans were received necessitating resolution by the COC in its sixth meeting on 18.07.2018 for liquidating the corporate debtor. It has been noted in the order dated 13.09.2018 that the learned counsel for the RP has furnished the consent of Mr. Vivek Kumar Arora Resolution Professional for being appointed as Liquidator.

11. We therefore, conclude that in view of the provisions of Section 33 (2) of the Code, liquidation order as referred to in sub clauses (i) (ii) and (iii) of clause (b) of sub-section 1 of Section 33 of the Code is to be passed.

12. In view of the above, we order liquidation of the corporate debtor – KKK Cotspin Private Limited and appoint Mr. Vivek Kumar Arora bearing Registration No. IBBI/IPA-001/IP-P00122/2017-18/10264 to act as Liquidator for the purpose 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.

13. 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) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor [Section 33 (5) of the Code];

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;

(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.

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 and every fortnight thereafter.

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

CA 295/2018 stands disposed of.

The applicant-Resolution Professional shall deliver a copy of this order to the IBBI.

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

Pronounced in open court

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

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

September 25, 2018
arora