

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (EXERCISING THE POWERS OF ADJUDICATING AUTHORITY
 UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016)**

CA No.105/2019

IN

CP (IB) NO.56/Chd/Hry/2018

**Under Section 33 (1) (a) of the
 Insolvency & Bankruptcy
 Code, 2016**

In the matter of:

PAN Chemicals INC.

....Petitioner-Operational Creditor.

Vs.

M/s Sainath Texport Limited.

....Corporate Debtor.

Order delivered on: 20.02.2019

**Coram: HON’BLE MR. JUSTICE R.P. NAGRATH, MEMBER (JUDICIAL)
 HON’BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Applicant/
 Resolution Professional:

1) Mr.Vishav Bharti Gupta, Advocate
 2) Mr.Vikas Garg, Resolution
 Professional

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

ORDER (Oral)

CA No.105/2019:

This application has been filed by the Resolution Professional under Sections 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 (for short to be referred here-in-after as the ‘Code’) for passing an order of liquidation.

2. CP (IB) No.56/Chd/Hry/2018 filed by M/s PAN Chemicals INC, Operational Creditor against the respondent-Corporate Debtor, M/s Sainath Texport Limited, a partnership concern was admitted by this Tribunal under Section 9 of the Code on 16.04.2018 declaring the moratorium in terms of

Section 14 (1) of the Code. Mr.Vikas Garg, a registered Resolution Professional was appointed as the Interim Resolution Professional with necessary directions on 23.04.2018. The period of 180 days for completion of the insolvency resolution process was expiring on 13.10.2018. The Resolution Professional filed an application CA No.475 of 2018 under Section 12 (2) of the Code read with Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and by order dated 24.10.2018, the period for completion of the insolvency resolution process was extended by another 90 days on the basis of the decision taken in the 4th meeting of the Committee of Creditors (CoC) held on 18.09.2018. This period also expired on 11.01.2019.

3. It is submitted that the Interim Resolution Professional made public announcement within the prescribed time for inviting the claims and after inviting claims, the CoC was constituted and the Interim Resolution Professional was confirmed as the Resolution Professional. He appointed the registered Valuers and the valuation reports were also obtained.

4. In 7th meeting of CoC held on 10.01.2019, on agenda item No.5, the resolution plans submitted by two resolution applicants were deliberated upon. The CoC considered the feasibility and viability of both the resolution plans and it was observed that the amount of both the resolution plans were less than the fair value and liquidation value of inventory and fixed assets of the Corporate Debtor.

5. On agenda item No.7, the CoC decided to initiate the liquidation proceedings against the Corporate Debtor with 98.88% of the voting share.

Rest of the members of the CoC abstained from the voting. The major shareholding was held by State Bank of India and Edelweiss Asset Reconstruction Company Limited. With this background, the instant application has been filed.

6. We have heard the learned counsel for the Resolution Professional and carefully perused the record.

7. Section 33(1) & (2) reads as under:-

“33. (1) 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.

(2) 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 [approved by not less than sixty six percent of the voting share] to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order, as referred to in sub clause (i), (ii), and (iii) of Clause (b) of sub- section (1).

8. The learned counsel for the Resolution Professional also referred to Section 34(1) of the Code which provides that the resolution professional appointed shall act as a Liquidator unless replaced by the Adjudicating Authority under sub-section (4).

Sub-section (1) of Section 34 of the Code read as under:-

“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 subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4)].”

9. As per requirement of the provisions of sub-section (1) of Section 34 of the Code, 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 subject to submission of written consent by the Resolution Professional to the Adjudicating Authority, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

10. With this application, the Resolution Professional has filed Form No.2, the written consent giving the necessary particulars. However, as per Section 34 of the Code, the consent form has to be filed by the Resolution Professional which should be according to Regulation 3 (1A) of the Regulations, which is Form AA as mentioned in the Schedule to the Regulations. Accordingly, the Resolution Professional has handed over the written consent in Form AA dated 04.02.2019 complete in all respect. We find the same to be in order.

11. In view of the above, we order the liquidation of the corporate debtor M/s Sainath Texport Limited and appoint Mr.Vikas Garg, 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 as such will be with effect from the date of receipt of copy of this order.

12. 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 by or against the corporate debtor;

Provided that a suit or other legal proceeding 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 proceeding 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.

13. 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.

14. 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.”*

15. 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.

16. 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 authorised representative of the Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh immediately. Registry is also directed to send copy of this order to the Liquidator at e-mail address.

Consequently, CA No.105/2019 stands disposed of.

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

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

February 20, 2019.
Ashwani