

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

CA No.1172/2019

IN

**CP (IB) No. 286/Chd/Pb/2018
(Admitted matter)**

**Under Section 33(1) (a) of Insolvency
and Bankruptcy Code, 2016.**

In the matter of :

Punjab National Bank

... Financial Creditor/
Non-petitioner

Vs.

M/s. Rama Krishna Knitters Private Limited

....Corporate Debtor/Non-
Respondent

And in the matter of:

**Committee of Creditors of
Rama Krishna Knitters Private Limited
(Corporate Debtor)
(Undergoing Corporate
Insolvency Resolution Process)**

Through

**Mr. Rajender Kumar Jain,
Resolution Professional**

...Applicant/Resolution Professional

Judgement delivered on: 24.12.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Applicant :

Mr. Abhishek Anand, Advocate

Per: Pradeep R. Sethi, Member (Technical)

ORDER

The present application is filed under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 (**Code**) seeking liquidation of Rama Krishna

Knitters Private Limited (**Rama Krishna**). The application is filed by the Resolution Professional (**RP**) on 26.11.2019.

2. It is stated that application under Section 7 of the Code filed by Punjab National Bank for initiation of corporate insolvency resolution process (**CIRP**) of Rama Krishna was admitted by the Adjudicating Authority (**AA**) vide order dated 13.02.2019 and the applicant was appointed as the Interim Resolution Professional (**IRP**). The Committee of Creditors (**COC**) originally constituted by the IRP on 05.03.2019 and reconstituted on the basis of subsequently claims received, is stated to consist of six financial creditors and one operational creditor. The invitation for Expression of Interest (**EOI**) was issued on 16.04.2019 and e-mails from five parties showing interest in the resolution process were received but only one EOI was received in the prescribed format within the stipulated time of 01.05.2019. The EOI is stated to be republished on 24.05.2019 and the last date for submission of the EOI was extended through re-publication in newspapers on 15.06.2019, but no EOIs were received.

3. It is stated that by order of the Adjudicating Authority dated 07.08.2019, the CIRP period was extended by 90 days beyond the initial period of 180 days i.e. 11.08.2019.

4. EOI was re-published in two newspapers on 11.09.2019. The final list of prospective resolution applicants is stated to be Swissline Intertrade Private Limited and Prudent ARC and Resolution Plan was received only from Swissline Intertrade Private Limited. The resolution plan submitted by Swissline Intertrade Private Limited was considered by the COC in its 11th

meeting on 06.11.2019, which continued on 08.11.2019. The matter was put for e-voting and the resolution for approval of the resolution plan was dissented with 99.85%.

5. In the same meeting, resolution was also proposed to approve the liquidation of Rama Krishna under Section 33 of the Code in case the resolution plan is not approved by COC and authorised the RP to file an application with the Adjudicating Authority to liquidate Rama Krishna. It is stated that the matter was put to e-voting and passed with 99.9%.

6. We have carefully heard and considered the arguments of the learned counsel for the applicant and have also perused the record. The relevant provisions of Section 33 (1) (a) and 33 (2) of the code are as follows:-

“33. Initiation of liquidation. –

(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 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).”

7. In the present case, the Adjudicating Authority has not received a resolution plan under Section 30(6) of the Code before the expiry of Insolvency Resolution Process period. We have discussed above that invitation for EOI was published in the newspapers on a number of occasions and that only one resolution plan was received from Swissline Intertrade Private Limited. The said Resolution Plan was considered by the COC in its 11th meeting held on 08.11.2019 and was put to e-vote as Agenda Item No. 11.05. However, 99.85% of the votes were against the acceptance of the resolution plan. The alternative resolution for approval of the liquidation of Rama Krishna under Section 33 of the Code (Agenda Item No. 11.06) was approved with 99.90% votes.

8. The conditions provided for in Section 33(1)(a) are satisfied. Therefore order is passed requiring Rama Krishna, to be liquidated in the manner as laid down in Chapter-III of the Code. Further directions for issuance of public announcement stating that Rama Krishna is in liquidation and requiring the order of liquidation to be sent to the authority with which Rama Krishna is registered are given below.

9. Section 34(1) of the Code states that where the Adjudicating Authority passes an order of liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP under Chapter-II shall, subject to submission of a written consent by the RP to the Adjudicating Authority in the specified form, act as the Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under Section 34(4) of the Code. Vide Agenda Item

No.11.06 of meeting of COC on 06.11.2019, the COC has passed resolution for appointment of the RP Shri Rajender Kumar Jain as the Liquidator under Chapter-III of the Code with 99.90% votes. Vide Diary No. 7000 dated 10.12.2019, the consent of Shri Rajender Kumar Jain RP to act as Liquidator has been filed in Form AA as Annexure-A. The conditions provided for in Section 34(4) of the Code for replacement of RP are not attracted in the present case. Shri Rajender Kumar Jain, Registration No. IBBI/IPA-001/IP-P00543/2017-18/10968, mobile No. 9915598862, e-mail ID: amicusthe@gmail.com, resident of House No. 3698/1, First Floor, Sector 46-C, Chandigarh-160047 is appointed as the Liquidator for the purposes of liquidation of Rama Krishna.

10. Regulations 39B to 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations, 2016**) are as under:-

“39B. Meeting liquidation cost.

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation.-For the purposes of this regulation, ‘liquidation costs’ shall have the same meaning as assigned to it in clause (s) of sub-regulation

(1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

39C. Assessment of sale as a going concern.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

(c) the balance period of liquidation.”

11. As regards Regulation 39B of CIRP Regulations, 2016, the matter was considered by the COC in its 11th meeting (Item No. 11.10.03 to 11.10.05) and the details of the estimated liquidation cost, liquid assets having nil value and approval of plan providing for contribution for meeting the difference between the amount required to meet liquidation cost and value of liquid assets was considered and the relevant resolution was passed with 99.85% votes.

Opening of designated escrow account in scheduled bank for depositing the contribution was also approved with 99.85% vote.

12. In the 11th meeting, the COC examined whether Rama Krishna can be sold as a going concern during the liquidation process (Regulation 39C of the CIRP Regulations, 2016). In Item No.11.01.08, the COC was of the opinion that since Rama Krishna is not a going concern, the Liquidator may sell the assets in parcels or any other mode as mentioned in (a) to (f) of Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations, 2016**).

13. In accordance with Regulation 39D of the CIRP Regulations, 2016, the COC considered the fees payable to the Liquidator during the liquidation process (Item No. 11.10.09). The relevant resolution was passed with 94.33 votes.

14. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 shall be strictly complied with by the Liquidator. Some of the directions are 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.

15. 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.

16. 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.”

17. 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.

18. 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.

19. The Liquidator shall take into his possession the assets of the Corporate Debtor.

20. Thus, CA No.1172/2019 stands disposed of.

21. Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, Punjab and Chandigarh. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

Sd/-
(Ajay Kumar Vatsavayi)
Member(Judicial)

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

December 24, 2019
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