

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

CA No.937/2019
IN
CP (IB) No. 298/Chd/Hry/2018

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

In the matter of :

M/s Vardhman Trading Company ... Operational Creditor

Versus

M/s Allwyn Furniture Private Limited ... Corporate Debtor

And in the matter of :

CA No.937/2019

Sunil Kumar Agrawal,

Resolution Professional/Applicant
 For Allwyn Furniture Private Limited
 Registered Address: E-29 South Extension-II,
 New Delhi-110049.

Correspondence Address:
 904, GF, Sector-7C,
 Faridabad -121006.

...Applicant/Resolution Professional

Judgement delivered on: 20.01.2020

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

For the Applicant : Mr. Vaibhav Sahni, Advocate

Per: Pradeep R. Sethi, Member (Technical)

ORDER



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The instant application is filed under Section 33(2) of the Insolvency & Bankruptcy Code, 2016 (**Code**) praying for passing an order to liquidate Allwyn Furniture Private Limited (**Corporate Debtor**) and appoint the applicant Resolution Professional (**RP**) to act as a Liquidator of the corporate debtor.

2. It is submitted that Vardhman Trading Company filed application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) of the corporate debtor and that the Adjudicating Authority (**AA**) vide order dated 07.01.2019 admitted the application and initiated the CIRP and appointed Shri Sunil Kumar Agrawal as Interim Resolution Professional (**IRP**) vide order 16.01.2019. It is stated that subsequent to the applicant receiving claims submitted by the creditors pursuant to the public announcement, the RP constituted a Committee of Creditors (**CoC**) comprising of one financial creditor being Indian Overseas Bank. The Form G is stated to be issued on 23.03.2019 and advertised in one English and one Hindi newspaper with last date for submission of Expression of Interest (**EOI**) as 10.04.2019 and last date for submission of resolution plan as 22.05.2019 and that no EOI was received. The CIRP was coming to an end therefore, application for grant of extension vide CA No.486/2019 was filed and vide Order dated 07.08.2019, CIRP period was extended up to 04.10.2019.

3. It is stated that the applicant intimated by speed post the ex-Directors of the corporate debtor namely Mr. Jagdish Lal Bhatia and Mr. Anil Kumar regarding commencement of CIRP and to provide certain details i.e. books of accounts, financial statements year ending 31.03.2017, 31.03.2018 and 07.01.2009; list of assets, list of inventory, list of debtors, list of creditors

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and other relevant information but the suspended Directors did not cooperate with the applicant and did not provide any information and documents.

4. It is further stated that the team of applicant visited the registered office of the corporate debtor but no office was found on the given address. Thereafter, the applicant visited the works place and found the same locked. Upon inquiry, it was known that the corporate debtor was not in function from last 7-8 months and that the premises was on rent and the landlord Mr. Hakikat Rai flatly denied to handover the assets of the corporate debtor to the applicant. It is further stated that police assistance was also sought for safe entry in premises of the corporate debtor and take control of assets but the same was not provided despite the repeated follow-ups.

5. The resolution for liquidation is stated to be passed by the CoC (seventh meeting held on 18.09.2019) by 100% voting rights and that the applicant gave his consent to act as the Liquidator of the corporate debtor.

6. An application for liquidation is thereupon stated to be filed vide CA No.937/2019 on 18.10.2019 with the prayer for passing order of liquidation.

7. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the record.

8. The provisions of Section 33(1) and (2) of the Code are as under:-

"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-



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*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)."

9. The present application is submitted under Section 33(2) of the Code. As discussed above, the last date for CIRP was 04.10.2019. The instant CA No. 937/2019 is filed on 18.10.2019 i.e. after the expiry of CIRP. Therefore, the provisions of Section 33(2) of the Code *inter alia* requiring the RP to intimate the AA of the decision of the CoC at any time during the CIRP are not satisfied. The present application is therefore, considered under Section 33(1) of the Code. It is stated that the Form G was issued on 23.03.2019 but no EOI was received. The provisions of Section 33(1)(a) of the Code are satisfied since before the expiry of the maximum period permitted for completion of CIRP under Section 12, the AA has not received a resolution plan under Section 30(6) of the Code. Consequently, order is being passed requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code and the directions for issuance of public announcement stating that the corporate debtor is in liquidation and requiring such order to be

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sent to the authority with which the corporate debtor is registered are being issued.

10. Section 34(1) of the Code states that where the AA passes an order for liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP under Chapter II shall, subject to submission of written consent by the RP to the AA in specified Form, shall act as a Liquidator for the purposes of liquidation unless replaced by the AA under sub section (4). The provisions of Section 34(4) of the Code are not applicable in the present case since the RP has submitted his written consent under Section 34(1) of the Code. The written consent in form AA is at page-58. The Law Research Associate of his Tribunal has checked the credentials of Shri Sunil Kumar Agrawal, proposed Liquidator and there is nothing adverse against him. We therefore, appoint Shri Sunil Kumar Agrawal, Registration No. IBBI/IPA-002/IP-N00081/2017-2018/10222, registered address of E-29, South Extension-II, New Delhi-110049 correspondence address 904, GF, Sector-7C, Faridabad-121006 email address irpallwynfurniture2019@gmail.com and aggarwalsk21@yahoo.com, Mobile No.9811347648 as Liquidator for the liquidation process of the corporate debtor.

11. Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. These regulations are as follows:-

"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



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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."

12. The CoC has not made compliance of Regulation 39 B of the CIRP Regulations, 2016 regarding meeting of liquidation costs and has not approved the plan providing for contribution for meeting the difference between the estimate of value of liquid assets and the estimated liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the Liquidation Process Regulations, 2016 regarding contribution to liquidation costs.

13. The CoC has not made any recommendation regarding sale of the corporate debtor as a going concern (refer Regulation 39C of the CIRP Regulations, 2016). Therefore, the Liquidator is directed to refer to Regulation 32A of the Liquidation Process Regulation, 2016 and take necessary action.

14. As regards Regulation 39D of the CIRP Regulations 2016 regarding fee of the Liquidator, the CoC has fixed the liquidator's fees for all amount of realization at 1% of fees on amount realized/distributed in first nine months and after 9 months at 0.75% (item No.5 of 8th CoC meeting held on 01.10.2019). However, the fixation of the fees is not in accordance with Regulation 39D since no fees is fixed for the period referred to in Regulations 39D (a) and (b) of the CIRP Regulations, 2016. Therefore, the provisions of Rule 4(1) of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 is not applicable. The entitlement of the liquidator for fee shall therefore, be as per Rule 4(2) and 4(3) of the Liquidation Process



Regulations, 2016.

15. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations, 2016**) shall be strictly complied with. 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



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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.

16. 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.

17. 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."

18. In accordance with Regulation 13 of the Liquidation Process Regulations 2016, the Liquidator shall file his preliminary report within 75 days and also to file regular progress reports as per Regulation 15 of the Liquidation Process Regulations, 2016.



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19. 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.

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

21. Thus, CA No.937/2019 stands disposed of.

22. Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, NCT of Delhi and Haryana. 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)

Pronounced in
open court
20.1.2020

— Sd —
(Pradeep R. Sethi)
Member (Technical)

January 20, 2020
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