

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

**C.A. 1783 (PB) /2019
IN
Company Petition No. (IB) – 473 (PB) /2018**

In the matter of:

Mr. Sanjay Gupta

Applicant/Resolution Professional

AND

In the matter of:

Case Cold Roll Forming Limited

Corporate Debtor

*Under Section 33 (2) of the Insolvency and Bankruptcy Code,
2016 for liquidation of the corporate debtor*

Judgment delivered on: 05.11.2019

Coram:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the RP: Mr. Abhishek Anand, Mr. Mohak Sharma, Advs.
For the Respondent: Mr. Rudrajit Ghosh, Adv for Ex-management.



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Case Cold Roll Forming Limited.
2. The facts in brief are that the financial creditor, Oriental Bank of Commerce, had filed an application under Section 7 of the Code bearing number IB-473(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor, M/s Case Cold Roll Forming Limited. The said application was admitted by this Tribunal on 11.12.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Cold Roll Forming Limited and there in appointed Mr. Sanjay Gupta, as the Interim Resolution Professional.
3. In pursuance of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Applicant duly



made a public announcement in Form A in the following newspapers: -

Newspaper	Date	Language	Edition
Financial Express	14.12.2018	English	Delhi – NCR
Economic Times	14.12.2018	English	Delhi – NCR
Economics Times	14.12.2018	Hindi	Delhi – NCR
Ajitsamachar	14.12.2018	Hindi	Himachal Pradesh
Jansatta	14.12.2018	Hindi	Delhi – NCR
Tribune	14.12.2018	English	Himanchal Pradesh

4. In terms of Section 18 (1) of the Code, the Interim Resolution Professional collated all claims submitted by the creditors pursuant to the public announcement and after determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors comprising of Oriental Bank of Commerce as the sole member of the Committee of Creditors being the only financial creditor of the corporate debtor.



5. The Interim Resolution Professional within seven days of his appointment in terms of Regulation 27 of the CIRP Regulations appointed two registered valuers i.e. Mr. Sajnay Chopra and Mr. Gagan Ghai to determine the Fair Value and Liquidation value as per the provisions of the Code.
6. The first meeting of the Committee of Creditors was convened on 10.01.2019, wherein the Interim Resolution Professional was appointed as the Resolution Professional of the Corporate Debtor.
7. In terms of Section 25(2)(h) of the Code, the Resolution Professional invited prospective resolution applicants for submission of the Resolution Plan for the Corporate Debtor in Hindustan Times New Delhi and Mumbai Edition and the Tribune in Chandigarh on 11.02.2019 with the last date for submission of EOI as 26.02.2019 and last date for submission of resolution plan as 25.05.2019.
8. As only one EOI was received that to not in the requisite form, with the approval of Committee of Creditors again a revised Form G was published on 27.02.2019 with the last date of submission of Resolution Plan as 28.04.2019.



9. It is stated in the application that pursuant to the publication in Form G, three expression of interests have been received by the applicant for the corporate debtor form the following prospective resolution applicants:

i. Valmont Structure Pvt Ltd.

ii. Jatalia Global Ventures Ltd.

iii. Avonmore Capital & Management Services Ltd.

10. With the approval of the Committee of Creditors, resolution professional published revised Form G on 01.05.2019 by extending the last date of submission of resolution plan till 07.05.2019.

11. It is submitted that in terms of Regulations 36 A (10) of the CIRP Regulations, 2016 the RP issued the provisional list of eligible prospective resolution applicant who had submitted the Expression of Interest and were eligible as per the criteria. The provisional as well as the final list contained the following two prospective resolution applicants:

i. Valmont Structure Pvt Ltd.

ii. Jatalia Global Ventures Ltd.



12. As the initial CIRP period of 180 days was expiring, an application was filed by the resolution professional for extension of CIRP period which was allowed on 14.06.2019 by extending the initial insolvency resolution period by further time of 90 days.

13. It is submitted that the plans were considered and several opportunities were given to improve the offer. In the twelfth meeting of the Committee of Creditors convened on 26.06.2019, the resolution professional apprised the Committee of Creditors that one, Jatalia Global Ventures Private Limited has submitted the revised resolution plan on 11th June 2019 with a conditional clause that on making the upfront payment of Rs. 9 crores within 90 days the existing bank is to share *pari passu* charges on the property and Plant & Machinery of the Corporate Debtor with other lenders. Further, the resolution applicant was to be free to transfer/mortgage the *pari passu* charges on the said property to repay the dues. It is submitted that the members of the Committee of Creditors disagreed on the said clause and requested the resolution applicant to remove the same and to submit another revised resolution



plan by 1st July 2019. That the CoC further requested the resolution applicant that, if the resolution plan is submitted jointly then the declaration and affidavit need to the submitted by each resolution plan applicant as mentioned in the EOI published dated 11th February 2019.

14. Subsequently in the thirteenth meeting of the Committee of Creditors convened on 16th July 2019, the resolution professional apprised the Committee of Creditors that vide email dated 2nd July 2019 the resolution applicant has intimated that the revised resolution plan submitted on 11th June 2019 is their final resolution plan. One Mr. Amrit Agarwal, representative of the resolution applicant confirmed during the meeting that the resolution plan submitted on 11th June 2019 is the final resolution plan.

15. It is contended that after due discussions and deliberations, *the resolution plan was rejected by the Committee of Creditors with 100% voting share.*

16. Pursuant to the rejection of the said resolution plan, the resolution professional convened fourteenth meeting of the Committee of Creditors on 27th August 2019 to discuss the way forward. The resolution professional apprised the



members of the Committee of Creditors that in view of the resolution plan rejected by the Committee of Creditors by 100% via e-voting; the EMD submitted by the resolution applicant has been returned back along with their resolution plan. The sole financial creditor of the Committee of Creditors was of the opinion that the Liquidation of the corporate debtor is the most viable solution for the Corporate Debtor as best efforts were made by the Applicant for invitation of Resolution Plan and timelines were extended to give more opportunity to the PRAs. Further, no legally compliant plan has been received and the only plan received from Jatalia Global Ventures Private Limited was not financially viable plan and no other resolution applicant has shown any interest in the submission of the resolution plan. Therefore, the members of the Committee of Creditors observed that it is in the best interest of all stakeholders to liquidate the Corporate Debtor.

- 17.** The applicant resolution professional has given his consent to act as liquidator of Corporate Debtor, which was also duly approved by Committee of Creditors with 100% voting share.



18. Respondent No. 2 one of the suspended directors of the corporate debtor only has raised objection mainly with the contention that the offer made by the resolution applicant was more than the liquidation value and therefore should have been accepted instead of liquidating the corporate debtor.

19. In this regard the minutes of the Committee of Creditors shows that the sole financial creditor and member of Committee of Creditors did not accept the condition of transferring its charge on the property of corporate debtor. Despite affording opportunity the said condition was not removed. We do not find any infirmity in the reasoned decision of the Committee of Creditors. In the absence of any approved/viable resolution plan, the Adjudicating Authority has no option but to pass order of liquidation on completion of the insolvency resolution period. Be that as it may even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

20. It is also pertinent to note that the word “may” used in Section 30(4) of the Code is indeed a discretion given to Committee of Creditors either to reject or accept the



resolution plan with 66% voting share, despite the plan in all respects is correct. Commercial decision of CoC is not open to judicial review. The Resolution Professional has filed the present application for liquidation of the Corporate Debtor as the statutory period of corporate insolvency period has lapsed and no Resolution Plan has been approved by the Committee of Creditors.

- 21.** It is pertinent to refer to the statutory provisions provided in Section 33 (2) of the Code which envisages that: *“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 liquidated 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).”*

- 22.** Therefore, upon failure of resolution process there being no approved resolution plan by Committee of Creditors, liquidation has to follow as recommended by the Committee of Creditors. Adherence to statutory requirement has to be



in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.

23. In the factual background and in the absence of any approved resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the decision of the Committee of Creditors with 100 % voting share, *for liquidation of the corporate debtor under Section 33 of the Code.*

24. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Case Cold Roll Forming Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

a. Mr. Sanjay Gupta with Registration No. IBBI/ IPA-003 / IP-N00047 / 2017-18 / 10354, is appointed as Liquidator in terms of Section 34(1) of the Code.

b. Mr. Sanjay Gupta, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of



Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

- c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f. Liquidator is directed to act in terms of the decision of Hon'ble Appellate Tribunal passed in *Company Appeal (AT) (Ins.) No. 224 of 2018*



in the matter of Y. Shivram Prasad v. S. Dhanapal decided on 27.02.2019 *inter alia* to ensure that the corporate debtor remains a going concern as far as possible.

- g.** The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- h.** The liquidator shall also follow any pending application for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.



- j.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- k.** C.A. 1783 (PB) /2019 filed in IB 473(PB)/2018 is disposed of in the aforesaid terms.

Sdlr

11111000 05.11.2019

(M.M. KUMAR)
PRESIDENT

Sdlr

(S. K. MOHAPATRA)
MEMBER (T)