

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

**C.A. 2333 (PB) /2019
IN
Company Petition No. (IB) – 1493 (PB) /2018**

In the matter of:

Mr. Vijender Sharma

Applicant/Resolution Professional

AND

In the matter of:

M/s Sumeru Processors Private Limited

Corporate Debtor

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

Judgment delivered on: 03.12.2019

Coram:

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

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

For the RP:

Mr. Sourabh Kalia, Advocate.

Mr. Vijender Sharma, RP.



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Sumeru Processors Private Limited.
2. The facts in brief are that one of the financial creditors, M/s. Enkay (India) Rubber Company Private Limited, had filed an application under Section 7 of the Code bearing number IB-1493(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor, M/s Sumeru Processors Private Limited. The said application was admitted by this Tribunal on 15.04.2019 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Sumeru Processors Private Limited. In the said admission order dated 15.04.2019 Mr. Vijender Sharma was appointed as the Interim Resolution Professional in respect of the Corporate Debtor.



3. In compliance of Regulation 6 of Chapter III of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016, a public announcement was published in Business Standard (English and Hindi language) newspapers dated 18.04.2019 inviting claims on or before 29th April, 2019 for further needful as per the provisions of the Insolvency and Bankruptcy Code, 2016. In the said public announcement, the last date of closure of Corporate Insolvency Resolution period was mentioned as 11.10.2019 (i.e. Expiry of 180 days).
4. Subsequently the Resolution Professional during Corporate Insolvency Resolution period has invited prospective resolution applicant in accordance with Section 25(2)(h) of the Code to submit the resolution plan(s).
5. It has been stated in the application that no resolution plan however was received against the aforesaid invitation.
6. It is further submitted that in view of the provisions of Section 12 of the Code initial 180 days of the Corporate Insolvency Resolution period of the Corporate Debtor has expired on 11.10.2019 and no resolution plan has been



received for the consideration of the Committee of Creditors. Therefore, in the 6th meeting of Committee of Creditors convened on 28.09.2019 it was resolved with voting share of 68.55% to liquidate the corporate debtor as per Section 33 of the Code. The Committee of Creditors also authorized the Resolution Professional to submit the application for liquidation.

7. It has also been stated in the application that two Committee of Creditors members having voting right of 53.92% share recommended to appoint the Insolvency Professional, Mr. Rajiv Malik having registration no. IBBI/IPA-002/IP-N00391/2018-19/12115 to act as the liquidator.
8. The relevant provisions of sub-section 2 of Section 33 of the Code envisages that:

“Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates that Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share 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).

Explanation – For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”

9. In the present case none of the members of the Committee of Creditors in its 6th meeting held on 28.09.2019 recommended for extension of the initial CIRP period, which has since expired. There is also no dispute that no resolution plan has been received for consideration of the Committee of Creditors. That apart Committee of Creditors with the required majority approved for liquidation of the Corporate Debtor with 68.55% vote share. Commercial decision of Committee of Creditors is not open to judicial review.



10. Therefore, upon failure of resolution process there being no approved resolution plan and on the recommendation of the Committee of Creditors, Liquidation has to follow. 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.

11. In the factual background and in the absence of any approved resolution plan, there is no other alternative left but to order in conformity with the decision of the Committee of Creditors with 68.55 % voting share, *for liquidation of the corporate debtor under Section 33 (2) of the Code.*

12. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Sumeru Processors Private 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 Rajiv Malik with Registration No. IBBI/ IPA-002 / IP-N00391 / 2018-19 / 12115, is



appointed as Liquidator in terms of Section 34(1) of the Code.

- b.** Mr Rajiv Malik, 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.** 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.
- g.** The liquidator shall also follow up the pending applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h.** 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.
- i.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.



j. C.A. 2333 (PB) /2019 filed in IB
1493(PB)/2018 is disposed of in the aforesaid
terms.

— Sd —

03.12.2019

(M.M. KUMAR)
PRESIDENT

— Sd —

(S. K. MOHAPATRA)
MEMBER (T)