

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI
C.A. 1086(PB) /2018
IN
Company Petition No. 422/2016**

In the matter of:

Mr. Satyendra Prasad Khorania ...

Applicant/Resolution Professional

AND

In the matter of:

Metaphor Exports Private Limited ...

Corporate Debtor

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

Judgment delivered on: 06.03.2019

Coram:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR Hon'ble President

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

For the Petitioner:

Mr. Ankit Jain, PCS

Mr. Amol Vyas, Advocate

For Central Bank of India :

Mr. Kartik Rathi Advocate



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33 and 34 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Metaphor Exports Private Limited.
2. The facts in brief are that one of the the financial creditors, Bank of Baroda had filed an application bearing no. CP-422/2016 under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 19.01.2018 and Mr. Satyendra Prasad Khorania was appointed as Interim Resolution Professional (IRP).
3. It is submitted that in compliance of section 15 of the Code, Information Memorandum was issued on 17.03.2018 and resolution plan was invited on 29.03.2018. However, no resolution plan was received till second meeting of CoC.



4. Thereafter in pursuance of sub- regulation (5) of regulation 36 A of CIRP Regulations, 2016, the Resolution Professional revised updated Information Memorandum on 28.05.2018 and invited resolution plans afresh from the prospective resolution applicant of the corporate debtor. The last date of submission of resolution plan was fixed on 27.06.2018.
5. It is stated in the application that in the meeting of committee of creditors held on 17.07.2018 the applicant resolution professional informed the members of the committee of creditors that three applicants enquire the matter in detail and two applicants proposed to provide resolution plan and out of which one applicant M/s Fortin Holding Pvt. Ltd. submitted the plan on 16.07.2018. However as the resolution plan did not contain all the required information, the CoC decided to call for the modified resolution plan.
6. It is further submitted that since the CIRP period was getting expired on 18.07.2018, the members of COC decided to apply for extension of CIRP period under Section 12 of



IBC, 2016 read with regulation 40 of CIRP Regulations, 2016. Subsequently, on an application filed on behalf of resolution professional this Bench vide its order dated 30.07.2018 extended the CIRP period by 90 days beyond the initial 180 days of CIRP period till 16.10.2018.

7. It is contended that in the fourth meeting of committee of creditors held on 04.10.2018 the applicant took note of further claims received from the Creditors including Financial Creditors. In the said meeting the resolution professional informed that the resolution plan provided by M/s Fortin Holdings Pvt. Ltd. cannot be considered as the name of the applicant company (Fortin Holdings Pvt. Ltd.) has been struck off from the registers of company by the ROC and therefore the said company is not eligible to provide resolution plan. It was decided in the meeting that the resolution professional will again issue invitation for submission of resolution plan in Form G.



8. Despite several efforts it is stated that no resolution plan has been received within the maximum period permitted for completion of CIRP under Section 12.
9. Accordingly, in the last (fifth) meeting of committee of creditors of corporate debtor Metaphor Exports Pvt. Ltd. held on 11.10.2018 at Bank of Baroda Tower, 16, Parliament Street, Connaught Place, New Delhi-110001, the Chairman informed that no resolution plan has been received and therefore there is no option but to seek liquidation of corporate debtor.
10. The resolution proposed in the meeting of CoC dated 11.10.2018 for liquidation of the corporate debtor was supported by one out of seven members i.e. Bank of Baroda with 6.1 % voting share. Punjab National Bank, the other member having 26.67% voting share, who participated in the voting dissented against the proposal. The remaining five members of the CoC did not cast their vote.
11. Subsequently, upon notice from the Tribunal, Central Bank of India, Corporation Bank, IFCI Factors Limited and Bibby Financial Services (India) Private Limited holding



57.09 % voting share submitted during hearing on 09.01.2019 that they are prepared to vote for the liquidation of the Corporate Debtor. Accordingly, including Bank of Baroda total members of CoC having only 63.19% voting share, agreed for liquidation of the corporate debtor.

12. Even though the requirement of 66 % of voting share as provided under sub-section (2) of Section 33 of the Code has not been fulfilled; initiation of liquidation can be ordered under sub-section (1)(a) of Section 33 of the Code which envisages 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 subsection (6) of section 30;

(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.” (emphasis given)

13. There is no dispute that in the present case the maximum period permitted for completion of the corporate insolvency resolution process under section 12 has already



expired in October, 2018 and no resolution plan has been received till date. Therefore, on failure to achieve resolution within the statutory period of CIRP provided under the Code, no other option is left but to initiate liquidation proceeding against the corporate debtor.

14. It is relevant to mention here that Hon'ble NCLAT in the matter of Sanjay Kumar Ruia Vs Catholic Syrian Bank Ltd. & Anr. , Company Appeal (AT) (Insolvency) No. 560 of 2018 vide its order dated 03.01.2019 has held as follows:

“11. We, therefore, hold that the Adjudicating Authority has no jurisdiction to proceed with the ‘Corporate Insolvency Resolution Process’ beyond the period of 270 days having not empowered under the provisions of the ‘I&B Code’.

16..... In absence of any ‘Resolution Plan’, the Adjudicating Authority is bound to pass order under Section 33 by



*initiating liquidation proceeding against the
'Corporate Debtor'."*

15. In the factual background and in the absence of any resolution plan and for want of time beyond statutory CIRP period; there is no other alternative but to order for liquidation of the corporate debtor under Section 33 (1) of the Code.

16. As a sequel to the aforesaid discussion the application is allowed by ordering liquidation of the corporate debtor, namely 'Forgings 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. Satyendra Prasad Khorania, resolution professional holding registration no. IBBI/IPA- 002/ IP-N00002/ 2016-17/10002, who has given consent for appointment as liquidator in its written communication dated 20.10.2018, is appointed as Liquidator in terms of Section 34(1) of the Code;



- b. Mr. Satyendra Prasad Khorania, liquidator 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. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;



- f. 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.
- g. 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.
- h. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

Sd/-
(M. M. KUMAR)
PRESIDENT

07.03.201

Sd/-
(S.K. MOHAPATRA)
MEMBER (TECHNICAL)