

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

C.A. 293 (PB) /2019

IN

Company Petition No. (IB)-597(PB)/2017

In the matter of:

Mr. Kanwal Goyal

Applicant/Resolution Professional

AND

In the matter of:

M/s. Sonear Industries Limited

Corporate Debtor

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

Judgment delivered on: 10.04.2019

Coram:

CHIEF JUSTICE (RTD.) M.M.KUMAR

Hon'ble President

S. K. MOHAPATRA

Hon'ble Member (Technical)

For the RP: Mr. Akshay Goel, Ms. Shivani Kadam & Mr.
Kinshuk Chatterjee, Advs.

For the Respondent: Mr. Abhilash Attri, Adv. For Mr. Jitender
Kejriwal, Ex-Director.

Mr. Abhishek Anand & Mr. Deva Vrat
Anand, Advs. For R-1.



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33 (2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s. Sonear Industries 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-597(PB)/2017 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 16.05.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. Sonear Industries Limited and Mr. Mr. Kanwal Goyal was appointed as Interim resolution Professional (IRP).
3. Pursuant to the CIRP order and in terms of Section 15 of the Code read with Regulation 6 (1) of the Insolvency and Bankruptcy (Insolvency Resolution for Corporate Persons) Regulations, 2016 ("CIRP Regulations"); the Resolution



Professional published a public announcement in the Business Standard and Rashtriya Sahara (Delhi NCR Edition) on 20.05. 2018.

4. Thereafter the CoC was constituted by the Resolution Professional on the basis of the claim received from the sole creditor, Oriental Bank of Commerce, with a total admitted claim amount of INR 204,19,86,516/- (Rupees two hundred and four crores nineteen lakhs eighty-six thousand five hundred and sixteen only). It was also noted that the Financial Creditor has first charge on the entire current assets as well as fixed assets of the Corporate Debtor along with a pledge of 9,94,550 shares held by Mr. Jitendra Kejriwal, the Managing Director of the Corporate Debtor.
5. It is contended that the Interim resolution Professional initiated necessary steps under Section 15, 17 and 18 of the Code and held the first meeting of the Committee of Creditors (CoC) on 12.06.2018. In the first meeting of the Committee of Creditors (CoC), the IRP was appointed as Resolution Professional (RP) to conduct Corporate Insolvency Resolution Process in respect of the Corporate Debtor.



6. Since one hundred and eighty (180) days period of the CIR process was scheduled to expire on 12th November, 2018, an application was filed before this Tribunal seeking extension of the CIR Process. Accordingly, vide order dated 20.11.2018 the time-period of the CIR Process was extended by another ninety (90) days under Section 12 (2) of the Code.
7. The advertisement inviting expressions of interest (“EOI”) in accordance with the provisions of Section 25(2)(h) of the Code was published by the Resolution Professional on 25th July, 2018 inviting EoIs for the submission of resolution plans for the Corporate Debtor. In pursuance to the same, 3 prospective Resolution Applicants expressed their interest, namely Giriraj Coated Fab Pvt. Ltd. (“first prospective applicant”) and Nile Realtors LLP & Vardan Developers Pvt. Limited as joint applicants (“second prospective applicants”) and prudent ARC (“third prospective applicant”).
8. In the fourth meeting of CoC held on 27.09.2018, the CoC was appraised that all the three prospective resolution applicants have submitted the prescribed EMD of INR 10



lakhs, however, only the first and the second prospective applicants have submitted their resolution plans. It was noted that the prospective applicants have submitted their bids for the assets of the Corporate Debtor as well as a land, which was owned by the Managing Director of the Corporate Debtor and was leased to the Corporate Debtor. It was clarified that only the assets of the Corporate Debtor will be sold by the RP during the CIRP and hence, the prospective resolution applicants were asked to revise their bids accordingly.

9. After several negotiations in the fifth meeting of CoC, Nile Realtors LLP and Vardan Developers Pvt. Ltd. joint applicants were declared as the H1 bidders offering a bid amount of INR 3,01,00,000/- for the assets of the corporate debtor, but the matter was deferred for final decision.
10. In the sixth meeting of CoC dated December 24, 2018 in relation to the resolution plan of the H1 Bidder CoC observed as follows:

“1. The Resolution Applicant are not offering any Resolution Plan only for the assets owned by the Corporate Debtor i.e. Industrial Building, Plant &



Machinery and other assets related to manufacturing of laminates and owned by the Corporate Debtor.

2. The land is not owned by Corporate Debtor and lease of the land in favour of Corporate Debtor is also expired on 31.05.2015.

3. The Committee of Creditors is having no power to transfer land which is not owned by the Corporate Debtor but owned by any other person under Insolvency and Bankruptcy Code, 2016. The land can only be sold by the lender under SARFAESI Act.

4. Out of two bidders, M/s Nile Realors LLP and Vardan Developers Private Limited was declared as H1 in CoC meeting held on 25.10.2018. The CoC members also interacted with H1 bidder for further negotiation as directed by IBA vide their Resolution dated 29.01.2018. However, the bid was not revised upwards by H1 bidder.

5. It may also be imperative to mention that the liquidation value of the assets owned by the Corporate Debtor without land is INR 5,24,00,000/-



(INR five crore twenty-four lakhs only), whereas amount offered against assets owned by the Corporate Debtor by H1 Bidder is Rs. 3,01,00,000/- (Rupees three crores one lakhs only)”.

11. The Committee of Creditors further observed that the Resolution Plan of the H1 Bidder does not meet with the requirements of Section 30(2) of the Code.
12. In light of the above observations, the sole member of the CoC rejected the Resolution Plan of the H1 Bidder. Accordingly, the following resolution was passed by the CoC in its 7th meeting held on 31st January, 2019.

“Resolved that in the absence of any acceptable resolution plan in the Corporate Insolvency Resolution Process of Sonear Industries Limited, the Corporate Debtor be liquidated and an application be filed before the Adjudicating Authority under Section 33(2) of IBC, 2016”

13. It was also reserved in the CoC meeting that Mr. Sanjay Gupta, an Insolvency Professional having Registration No. (IBBI / IPA / 001 / IP-P00117 / 2017-18 / 10252) be appointed as liquidator in the matter of M/s. Sonear



Industries Limited. Mr. Sanjay Gupta has furnished his written consent to accept the appointment as liquidator.

14. In the factual background and in the absence of any approval of resolution plan and for want of time beyond statutory CIRP period; there is no other alternative but to order in conformity with the decision of the sole member of the CoC, for liquidation of the corporate debtor under Section 33 (2) of the Code.

15. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. Sonear Industries 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. As proposed by CoC, Mr. Sanjay Gupta holding registration no. IBBI/IPA/001/IP-P00117/2017-18/10252 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. This order is deemed to be a notice of discharge to the officers, employees and the workmen, if any, 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. In the light of forensic audit report as referred to by the Resolution Professional, the liquidator may identify and recover the assets of the corporate debtor, if any, lost in irregular transactions. 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 follow up the pending company applications, if any, for its disposal during the process of liquidation.
- 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. 293 (PB) /2019 filed in IB 597(PB)/ 2017 is disposed of in the aforesaid terms.

Sd/-
10.04.2019
(M.M.KUMAR)
PRESIDENT

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