

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

**CA No.34/2018
IN
CP (IB) NO. 16/Chd/Pb/2017**

**Under Section 33(1)(b) (i), (ii) and (iii) of the
Insolvency and Bankruptcy Code, 2016**

In the matter of :

Dunn Foods Private Limited,
Plot No.469, Industrial Area,
Phase-VIII-B,
Mohali (Punjab).

...Petitioner-Corporate Debtor.

Vs.

Punjab National Bank & Ors.
Large Corporate Branch,
Sector 17-B,
Chandigarh-160 017.

...Financial Creditor.

Date of Order: 06.02.2018

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)

For the applicant :
1. Mr. V.K. Mahajan, Advocate.
2. Mr. Nipan Bansal, Resolution Professional,
in person.

For the Financial Creditor. Mr. D.K. Gupta, Advocate

ORDER (Oral)

Mr. G.S. Sarin, Practising Company Secretary who represented the Corporate-Debtor Dunn Foods Pvt. Ltd. and filed petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the 'Code') is also present. The petition filed by the Corporate-Debtor under Section 10 of the Code, 2016 for initiating the insolvency resolution process was admitted on 02.05.2017 declaring moratorium in terms of Section 14 of

the Code and appointing Mr. Krishan Vrind Jain as the Interim Resolution Professional. Thereafter, on the basis of decision of the Committee of Creditors Punjab National Bank had filed application for replacement of the Interim Resolution Professional proposing the name of Mr. Nipan Bansal registered as Interim Resolution Professional with the Insolvency and Bankruptcy Board of India. Mr. Nipan Bansal was appointed as such vide order dated 26.09.2017.

2. CA No.34/2018 has been filed by the Resolution Professional for passing of the order of liquidation under Section 33(1) (b), (i), (ii) and (iii) of the Code.

3. This application is based on the decision of the Committee of Creditors taken in the meeting held on 16.01.2018 Annexure RP-1. Vide agenda item No.3 it was resolved that proceedings be taken up for liquidation of the Corporate-Debtor in the absence of any resolution plan having been received.

4. I have heard learned counsel for the applicant and the learned counsel for the Financial Creditor and perused the records. Admittedly the period of 180 days permitted under sub-section 1 of Section 12 of the Code for completion of the insolvency resolution process ended on 29.10.2017 and that period was extended for another 90 days vide order dated 27.10.2017. The total permitted period for completion of the insolvency resolution process thus ended on 27.01.2018. Following are the minutes of the 7th meeting of Committee of Creditors held on 16.1.2018:-

“Since, no resolution plan had been received till date by Nipan Bansal, Resolution Professional, barring one vague email from

Prudent ARC from Delhi (which had not submitted the requisite documents as advertised in EOI dated 15.12.2017), the committee members were of the view that since substantial time had elapsed from the deadline of submission of EOI which was 21.12.2017, and there seemed to be no resolution in sight, it was a foregone conclusion that there were no credible proposals of reviving the company, and hence it was decided unanimously to proceed with the liquidation of the corporate debtor and seek the permission of the Hon'ble NCLT Chandigarh as per provisions of Section 33(2) of the Insolvency and Bankruptcy Code to pass an order for initiation of Liquidation Proceedings of the corporate debtor.

It was also unanimously decided that Nipan Bansal, Resolution Professional, be appointed as liquidator for overseeing the liquidation process of the corporate debtor.

It was further decided that an application requesting Hon'ble NCLT Chandigarh's approval for liquidation of corporate debtor be filed through a legal counsel, the costs of which are to be borne by the Committee of Creditors.

Thus resolved that the approval of the Committee of Creditors be and is hereby accorded to proceed with the liquidation of the corporate debtor and seek the permission of the Hon'ble NCLT Chandigarh as per the provisions of Section 33(2) of the Insolvency & Bankruptcy Code to pass an order for Initiation of Liquidation Proceedings of the corporate debtor, as also appointing Nipan Bansal as liquidator for overseeing the liquidation process of the corporate debtor, and further that the costs of filing application for liquidation before the Hon'ble NCLT Chandigarh by the legal counsel be borne by the COC Members on proportionate share basis. ”

5. Considered the provisions of the Code after expiry of 180 days or 270 days in case of extension of 90 days is granted, the only recourse is to

initiate the liquidation process as provided in Chapter III of the Code. Section 33(1) of the Code reads as under:-

“ 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-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.”*

6. Accordingly this order is passed in accordance with Section 33 of the I & B Code, 2016 for liquidation of the Corporate Debtor for which public announcement be issued stating that the Corporate Debtor is in liquidation and to intimate the Registrar of Companies, Punjab and Chandigarh about this order.

7. Mr. Nipan Bansal, Resolution Professional would act as ‘Liquidator’ for the purpose of liquidation as he is not disqualified under any of the clauses of sub-section (4) of Section 34 of the Code. The ‘Liquidator’ shall publish public announcement in accordance with Regulation 12 of the IBBI(Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from today calling upon the stakeholders 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.

8. 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, or 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.”

9. It is further directed that as per Section 33(5) of the Insolvency and Bankruptcy Code, 2016,

(i) Subject to Section 52 of the Code, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted by or 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) However, in terms of sub-section (6) of Section 33 of the IB Code, 2016 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) The order for 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) 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) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the liquidator as may be required by him 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.

10. The Resolution Professional has submitted that as a 'Liquidator' he is to charge fee for conducting the liquidation process as may be specified by Insolvency and Bankruptcy Board of India.

11. The liquidator shall exercise the powers and perform the duties as prescribed under various provisions of the Code, Regulations and the applicable Rules. He shall be paid fee in accordance with the Regulation 4(3)

of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

12. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports every fortnight thereafter.

13. 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.

Copy of this order be supplied to the 'Liquidator' forthwith, and also to the learned counsel for the Financial Creditor.

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

February 06, 2018
arora