NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

No. C.P. (IB)-1170(MB)/2017
MA 44 of 2018

CORAM : Present : SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **20.03.2018**.

NAME OF THE PARTIES : Punjab National Bank
Vs.
Vindhya Vasini Industries Limited

SECTION OF THE COMPANIES ACT: I & B Code, 2016

**ORDER**

1. An Order was passed u/s 7 dated 29.08.2017 of the Insolvency Code in respect of a Petition submitted by the Financial Creditor Punjab National Bank against the Corporate Debtor M/s. Vindhya Vasini Industries Ltd. On examination of the records it is noticed that the Loan Facility granted originally by Punjab National Bank was for an amount of ₹1883.73 Lakhs and by Central Bank of India of ₹1046.00 Lakhs + Interest thereon. It has also been brought to the notice that earlier a Demand Notice u/s 13(2) under SARFAESI Act was served upon the Borrower informing the nature of Facility granted and rate of Interest on the Loan amount. At that time, the consortium of the secured Creditors consisted of only two Banks i.e. Punjab National Bank and Central Bank of India for Credit Facility totalling ₹41,38,06,010/-. The Borrower has also furnished the details of the Securities to safeguard the Debt. As per the said list there were few properties over which a charge was created by the Bank.

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2. Once the Insolvency Proceedings commenced against the Corporate Debtor an IRP was appointed and thereafter RP Mr. Sanjay Gupta took over the charge and called meeting of Committee of Creditors. He has intimated that public announcements have been made and published the advertisement in the newspapers. The Resolution Professional has intimated that no Resolution Plan was received. It has also been intimated that the Corporate Debtor had completely closed the business since 2013. No employee stated to be working for the Corporate Debtor. A Committee of Creditors was constituted on 20.10.2017 and meeting was held on 27.10.2017. An Expression of Interest was published on 23.11.2017 but no proposal received. Another meeting was convened on 05.12.2017 and the members of the Committee of Creditors unanimously decided to initiate the Liquidation Process. It was resolved that after the publication of Expression of Interest, there was no Resolution Plan received from any prospective Resolution Applicant, hence decision was taken to get the assets liquidated.

3. As per the provisions of Section 33(2) of The Code to initiate Liquidation Process, the Resolution Professional at any time during the Corporate Insolvency Resolution Process but before confirmation of Resolution Plan, intimates the AA of the decision of the Committee of Creditors to Liquidate the Corporate Debtor the Adjudicating Authority shall pass a Liquidation Order as prescribed u/s 33 of The Code. It is intimated that after due deliberations the Committee of Creditors passed a Resolution for Liquidation of the Company

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with 100% Voting Share in favour of the said Resolution.

4. Valuers were appointed and submitted their reports, in brief as under :-

" *As per your instruction, I am submitting the Valuation Report of the Property of 1) M/s Vindhya Vasini Industries Ltd. Director Smt. Saroj Singhania W/o Shri K.R. Singhania On Plot No. 502, 503, 504, 505, 506, 507 and 508 at Industrial Growth Centre, Urla, Distt. – Raipur (C.G.) as Rs. 4,68,15,000/- (**Rs. Four Crores Sixty Eight Lacs Fifteen Thousand only**)."*

" *As per your instruction, I am submitting the Valuation Report of the Property Belonging to Smt. Saroj Singhania W/o Shri Kapiraj Singhania On Kh.No. 98/3, 98/12, 98/32, 98/33, 98/34, 78/3, 101/7, 101/11(old) 101/47(new), PH. No.103 at Tatibandh Veer Sawarkar Nagar Ward No. 1(2), Distt. – Raipur(C.G.) Total Fair market value*

| | | |
|---|---|---|
| *Market Value of Property* | : | *Rs. 14.30 Crores* |
| *Realisable Value of Property* | : | *Rs. 12.90 Crores* |
| *Distress Value of Property* | : | *Rs. 12.90 Crores* |
| *Rate of Land (as per govt Guideline) @ 218/- per sft* " | : | *Rs. 6.56 Crores* |

5. As far as the Valuation of the property of the Corporate Debtor is concerned, there was no confusion for initiation of Liquidation Proceedings for IRP who is now to be termed as "Liquidator". However, a question was raised that whether the process of Liquidation can also be initiated against a property belonging to Smt. Saroj Singhania. On enquiry it was affirmed by the RP and the Bank Authorities that the property belonging to Smt. Saroj Singhania was also 'mortgaged' to the Bank under the same Loan Agreement on the basis of which

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the Financial Debt in question was sanctioned. It is, therefore, explained that since the property belonging to Smt. Singhania had already been mortgaged, therefore, to realize the Debt amount the said property is also to be liquidated. One more reason is that the total realizable value is about ₹4,68,15,000/- + ₹12,90,00,000/- totalling to ₹17,58,15,000/- if both the properties are liquidated. Otherwise, the realizable value of the Corporate Debtor is only ₹4,68,15,000/- against the Debt of ₹41,38,06,010/-. If the amount of ₹4,68,15,000/- is to be received then the Banks shall have a very high haircut by sacrificing about 89% of the Debt in question and the recovered amount shall be only 11% of the total Debt. Therefore, to avoid such high percentage of sacrifice, it is necessary to take a decision in favour of the Financial Creditor to initiate Liquidation Proceedings against a Guarantor as well who had mortgaged the property and on that Guarantee the Loan in question was granted. The Debt in question is intricately linked with the property mortgaged hence cannot be segregated in the process of Liquidation proceedings. Therefore, it is hereby authorized that the Liquidator shall take necessary steps to liquidate the asset of Smt. Saroj Singhania, for which a Valuation Report is already on record.

6. This decision is taken on the basis of one of the Sections as prescribed under the I&B Code i.e. Section 60(2) which prescribes that where a Corporate Insolvency Resolution Process or Liquidation Process of a Corporate Debtor is pending before NLCT, an Application relating to the Insolvency Resolution or

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Bankruptcy of a "Personal Guarantor" of such "Corporate Debtor" shall be filed before such NCLT. A clarification can also be inserted at this juncture that the Resolution Process is distinct from Liquidation Process. There may or may not be restrictions on the assets of a Guarantor in the event Resolution Process is commenced but right now the proceedings for Liquidation has been commenced. As a result, the assets of the Guarantor can be subjected to Liquidation by invoking the jurisdiction prescribed u/s 60(2) of The Code.

7. The Resolution Professional is hereby appointed as a "Liquidator" to proceed with the Liquidation Process as directed hereinabove. This Application is disposed of accordingly.

Sd/-

**M.K. SHRAWAT**
Member (Judicial)

Date : 20.03.2018
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