

**NATIONAL COMPANY LAW TRIBUNAL  
 “CHANDIGARH BENCH, CHANDIGARH”  
 (Exercising powers of Adjudicating Authority under  
 the Insolvency and Bankruptcy Code, 2016)**

**CA Nos. 526/2018 & 72/2019  
 IN  
 CP (IB) No. 128/Chd/Hry/2017  
 (Admitted Matter)**

**Under Section 33(1)(a) read with  
 Section 60(5)(c) & 60(5) of  
 Insolvency and Bankruptcy  
 Code, 2016.**

**In the matter of:**

Bank of India

...Petitioner-Financial Creditor

Vs.

OSIL Exports Ltd.

...Respondent-Corporate Debtor

**And in the matter of CA No. 526/2018:**

Mr. Kanwal Goyal  
 AAA Insolvency Professionals LLP  
 E-10A, Kailash Colony,  
 Greater Kailash Part I,  
 New Delhi-110048

...Applicant-Resolution Professional

Osil Exports Limited  
 80<sup>th</sup> Mile Stone, G.T. Road,  
 Jattipur, Panipat  
 Haryana – 132103

**And in the matter of CA No. 72/2019:**

Polygon Industries  
 Village Faridpur Road,  
 Near Toll Plaza, Panipat,  
 Haryana - 132 103

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 (Admitted Matter)

Through Mr. Amit Goel, Partner  
Email [polylon.ind@gmail.com](mailto:polylon.ind@gmail.com)

...Applicant

Vs.

Mr. Kanwal Goyal  
Resolution Professional of  
M/s Osil Exports Ltd.  
AAA Insolvency Professionals LLP,  
E10A, Kailash Colony, New Delhi,  
National Capital of Delhi – 110048  
Email: [aaa@aaainsolvency.com](mailto:aaa@aaainsolvency.com)

...Resolution Professional

**Order delivered on: 17.10.2019**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant- Resolution Professional	1). Mr. Balwinder S. Kalsi, Advocate : 2). Mr. Kanwal Goyal, Resolution Professional in person
For the operational creditor	: Ms. Swati Saluja, proxy counsel
For the Committee of Creditors	1). Mr. Harsh Garg Advocate : 2). Mr. Pulkit Goyal, Advocate

**Per: Pradeep R. Sethi, Member (Technical)**

## **ORDER**

### **CA No.526/2018**

The present application is filed by the Resolution Professional (**RP**) under Section 33(1)(a) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**Code**) for initiating the liquidation process of OSIL Export Limited (**corporate debtor**) on

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account of completion of 270 days of Corporate Insolvency Resolution Process (**CIRP**).

2. The petition filed by Bank of India under Section 7 of the Code for initiation of CIRP against the corporate debtor was admitted by order dated 31.01.2018 and moratorium was declared. Vide order dated 08.02.2018, Shri Kanwal Goyal was appointed as Interim Resolution Professional (**IRP**). The appointment of Shri Kanwal Goyal as Resolution Professional (**RP**) was made by the Committee of Creditors (**CoC**) in its 1<sup>st</sup> meeting held on 01.03.2018. Pursuant to application by the RP, extension of 90 days for completion of CIRP was granted by order dated 01.08.2018. The last date of CIRP is stated to be 27.10.2018.

3. It is submitted that an invitation for submission of resolution plan was published on 06.06.2018 and pursuant thereto, Shri Anil Arora and Smt. Simmi Arora (**Resolution Applicants**) submitted their interest and also submitted earnest money of ₹30 lacs. It is stated that the resolution plan was initially submitted for ₹35 crores alongwith undertaking under Section 29A of the Code on 02.08.2018. Revised resolution plan is stated to be submitted for ₹45 crores alongwith 10% interest payable in quarterly instalments on 29.09.2018 which was considered and not accepted by the CoC in its 7<sup>th</sup> meeting and the resolution applicants were asked to submit a revised financial bid on

09.10.2018 and accordingly, meeting was deferred to 09.10.2018. A revised plan is stated to be submitted on 11.10.2018 and another revised plan after discussion with the RP and CoC is stated to be submitted on 12.10.2018 and considered in the 7<sup>th</sup> meeting of the CoC and put up for e-voting beginning on 16.10.2018 3:00 PM till 17.10.2018 03:00 PM in which the CoC rejected the resolution plan submitted by the Resolution Applicants.

4. It is submitted that the extended period of CIRP of 270 days completed on 27.10.2018 and there was no resolution plan approved by the CoC till the last date of CIRP and therefore, the present application is being filed for liquidation under Section 33(1)(a) read with Section 60(5)(c) of the Code.

5. CA No. 550/2018 was filed by the Resolution Applicants against the decision of the CoC for rejection of the resolution plan and failing to record reasons as required under Regulation 39(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. CA No. 550/2018 was rejected and disposed on 27.08.2019 by detailed order and thereafter, the present application CA No. 526/2018 was taken up for hearing.

6. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records.

7. The provisions of Section 33(1) of the Code are 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 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.”*

8. In the present case, the CIRP period expired on 27.10.2018 and before that date, no resolution plan under Section 30(6) of the Code was received by the Adjudicating Authority (**AA**). Therefore, the conditions provided for under Section 33(1)(a) of the Code are satisfied and the liquidation order as referred to in sub clause (i) (ii) and (iii) of clause (b) of Section 33(1) of the Code is accordingly being passed in the case of the corporate debtor OSIL Exports Limited.

9. We may add here that Regulations 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (**CIRP Regulations 2016**) have been inserted by Notification No. IBBI/2019-20/GN/RAG/048 dated 25.07.2019. These Regulations relate to meeting of liquidation costs, assessment of sale as a going concern and

fee of the liquidator and require that the COC to make a best estimate of the amount required to meet liquidation cost, recommend that the Liquidator may explore sale of the corporate debtor as a going concern and fix the fee payable to the Liquidator. However, as per the Regulations 39B to 39D, these functions are to be performed by the CoC while approving a resolution plan under sub-section (4) of Section 30 or deciding to liquidate the corporate debtor under sub-section (2) of Section 33 of the Code. In the present case, the resolution plan was not approved by the CoC. Moreover, no decision of the CoC under Section 33(2) of the Code for liquidating the corporate debtor has been brought to our notice. Therefore, the compliance of Regulations 39B, 39C and 39D of the CIRP Regulations, 2016 is not being examined in the present case.

10. Section 34(1) of the Code states that where the AA passes an order of liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP shall, subject to submission of written consent by the RP to the AA in specified form, act as the Liquidator for the purposes of liquidation. The written consent of Shri Kanwal Goyal, RP to act as Liquidator is filed vide Annexure 21 of the application. Therefore, Shri Kanwal Goyal, Regn. No. IBBI/IPA-002/IP-N00007/2016-2017/10007, resident of # J-1, 2<sup>nd</sup> Floor, Kailash Colony,

Greater Kailash, New Delhi-110048, email [aaa@aaainsolvency.com](mailto:aaa@aaainsolvency.com) is appointed as the Liquidator.

11. In view of the satisfaction of the conditions provided for under Section 33(1) of the Code, the corporate debtor OSIL Exports Limited. is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:-

- (i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted 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) That 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) That this order of 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) That 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) That 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.

12. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders 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.

13. 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, of*

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*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.”*

14. 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 as per Rule 15 of the Liquidation Process Regulations 2016 every fortnightly thereafter.

15. 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.

16. Prayer has also been made in the application that the land and building owned by Shri Krishan Kumar Gupta and mortgaged with the corporate debtor and all the personal mortgaged assets of the guarantors be allowed to be liquidated alongwith the liquidation of the other assets of the corporate debtor. These matters do not have any direct connection with the main prayer for liquidation of the corporate debtor made in the application. Therefore, these matters are not being presently examined. The Liquidator will be at liberty to file appropriate application if so advised regarding the above prayers.

17. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Delhi & Haryana

forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

**CA No. 72/2019**

18. This application under Section 60(5) of the Code is filed by Polylon Industries for directing the RP to release the payment against the goods supplied by Polylon Industries during CIRP. It is submitted that after the initiation of the CIRP of the corporate debtor, Polylon Industries supplied various goods to the corporate debtor in terms of the purchase order placed by the RP from time to time. It is submitted that an amount of ₹3,31,74,769.60 alongwith interest @ 10% w.e.f. 27.07.2018 is due and payable to Polylon Industries by the RP on behalf of the corporate debtor.

19. Vide order in CA No. 526/2018 (supra), we have directed the initiation of the liquidation process in the case of the corporate debtor. The present application, therefore, becomes infructuous and is dismissed as such with liberty to Polylon Industries to file appropriate claim before the Liquidator in respect of the amount stated to be due in respect of goods supplied during the CIRP to the corporate debtor.

20. Accordingly, CA No. 72/2019 is disposed of.

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

October 17, 2019  
Yashpal

Pronounced in open court Sd/- 17.10.2019