

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

**MA 2929/2019 in CP(IB)579(MB)/2018**

(Under Section 33 of the IBC, 2016)

Ms. Sujata Chattopadhyay

...Applicant/  
Resolution Professional

In the matter of

Edelweiss Asset Reconstruction Co Ltd

...Financial Creditor

Vs

Birla Cotsyn (I) Ltd

... Corporate Debtor

Order delivered on 24.9.2019

**Coram:**

Hon'ble Member (Judicial) Shri V.P. Singh

Hon'ble Member (Technical) Shri Rajesh Sharma

For the Applicant: Ms. Sujata Chattopadhyay, RP and Mr. Ayush Agarwala,  
Advocate for RP

*Per: Hon'ble Member(J) Mr V P Singh*

**ORDER**

1. MA 2929/2019 has been filed under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, seeking liquidation of the Corporate Debtor. Applicant Resolutions Professional, Ms. Sujata Chattopadhyay has filed this application stating that Petition filed under Section 7 was admitted by order of this Bench dated on 20.11.2018 and the applicant was appointed as the Interim Resolution Professional.
2. It is stated in the application that under the order passed by this Tribunal, the IRP issued a public announcement vide notice dated 22.11.2018. In the first CoC meeting, the applicant informed the CoC that she had received claims amounting to Rs.574.98 crores from the Financial Creditors and claims amounting to Rs.5.03 crores from the

Operational Creditors. The Applicant, after that, constituted the Committee of Creditors and the first meeting of the COC was held on 20.12.2018, wherein the IRP was confirmed as RP.

3. It is further stated in the application that the two valuers were appointed as per Regulation 27 of the IBBI Regulations, 2016 namely M/s. Rakesh Narula & Co and M/s. Kanti Karamsey & Co to determine the fair and liquidation value of the Corporate Debtor by Regulation 35 of the IBBI Regulations, 2016.
4. It is contended by the applicant that the Expression of Interest vide Form G was prepared and published in the newspaper and also on the website of the IBBI. The last dated for receipt of the EOI was mentioned as 5<sup>th</sup> March 2018, and the last date for submission of the resolution plan was mentioned as 19<sup>th</sup> April 2019. Subsequently, the applicant received 11 EOIs from various prospective resolution applicants till 5<sup>th</sup> March 2019 who were interested in submitting resolution plans for the Corporate Debtor.
5. It is further stated in the application that by an Order dated 24<sup>th</sup> April 2019, this Tribunal granted an extension of 90 days for the completion of Corporate Insolvency Resolution Process (“**CIRP**”).
6. It is contended by the applicant the in the 10<sup>th</sup>CoC meeting held on 23<sup>rd</sup> July 2018 that no resolution plan was received and one of the prospective resolution applicants had requested for an extension of 3 days for submission of the resolution plan. Given the same, a resolution was passed for extension of last date for receiving the resolution plan.
7. It is further contended by the applicant that since the complaint was received of sharing the copy of the valuation report dated 15<sup>th</sup> May 2019 of M/s. Kanti Karamsey & Co Advisors LLP with one of the prospective resolution applicant, the applicant in consultation with CoC sought to appoint a new valuer to carry out fresh valuations and with the approval of CoC M/s. LSI Engineering and Consultants Ltd were appointed as Valuer to carry out the valuation.
8. The applicant contends that in the 12<sup>th</sup>CoC meeting held on 7<sup>th</sup> August, 2019, the applicant informed the members that only one resolution plan was received from Manjeet Cotton Pvt Ltd, i.e. the Resolution Applicant. The Resolution Plan submitted by the said Resolution

Applicant was opened in the presence of the members of the CoC during the said meeting. The applicant also informed the members that the Liquidation Value of the assets of the Corporate Debtor as ascertained by the two Registered valuers, i.e. M/s. Rakesh Narula & Co and M/s. LSI Engineering and Consultants Ltd were Rs.69.71 crores and Rs.75.70 crores respectively, with the average Liquidation value being Rs.72.75 crores.

9. The Resolution Applicant was asked to attend the CoC meeting to be held on 9<sup>th</sup> August 2019 to present the details of the plan and answer the queries raised by the CoC members. In the meeting held on 9<sup>th</sup> August 2019, the applicant confirmed that the resolution plan received from the Resolution Applicant was compliant under Section 30(2) of the Code. The members deliberated on the various features of the Resolution Plan as there was a wide gap between the liquidation value and value provided under the Resolution Plan. The resolution plan was discussed at length, and the members requested the Resolution Applicant to modify the Resolution Plan by substantially improving the commercial offers and terms and submit a revised resolution plan by 12<sup>th</sup> August 2019.
10. It is stated in the application that in the 14<sup>th</sup>CoC meeting held on 13<sup>th</sup> August 2019, the applicant informed the members that no revised plan was received from the Resolution Applicant. It was informed by the Resolution Applicant to the RP vide an email dated 13<sup>th</sup> August 2019 that they were unable to increase their offer beyond Rs.30 crores. The Coc was of the strong view that the offer price in the Resolution Plan was much below the liquidation value given the fact that the Corporate Debtor was running unit till May 2019. The Resolution Plan was after that put to the vote in the meeting held on 13<sup>th</sup> August 2019, and the resolution for approval of the resolution plan was rejected with 98.53% vote share. Copy of the minutes of the meeting held on 13<sup>th</sup> August 2019 along with the voting report is annexed with the application as Annexure U.
11. It is further stated in the application that in the 15<sup>th</sup>CoC meeting held on 16<sup>th</sup> August 2019, the applicant informed the members that in the light of the fact that only one resolution plan was received and consequently has been rejected and since the CIRP was ending on 19<sup>th</sup> August 2019, the Corporate Debtor might be liquidated under the

provisions of the Code. The Applicant has also expressed her unwillingness to continue as a Liquidator. Since no resolution plan was approved, it was decided in the said meeting for liquidation of the corporate Debtor, and also a resolution was passed to liquidate the Corporate Debtor and appoint Mr Anil Goel as the Liquidator of the Corporate Debtor. The resolution for liquidation of the Corporate Debtor was approved with vote share of 91.24%. Copy of the minutes of the meeting held on 16<sup>th</sup> August 2019 along with the voting report is annexed with the application as Annexure W.

12. It is further observed from the Minutes that by the resolution dated 16<sup>th</sup> August 2019, the COC also directed the Resolution Professional to file liquidation application before this tribunal. Accordingly, the Applicant filed the present Application seeking orders under Section 33 of the Code for liquidation of the Corporate Debtor and consequently for the appointment of Mr. Anil Goel as the Liquidator of the Corporate Debtor
13. In the above circumstances, where the 270 days of the CIRP period has already expired on 19<sup>th</sup> August 2019, and no resolution plan has been approved for the Corporate Debtor, the Applicant has filed this application for the liquidation of the Corporate Debtor in terms of Section 33(1) of the Code. Given the provisions of Section 33 of the Code, this application deserves to be allowed.

**ORDER**

14. MA 2929/2019 is allowed, and we at this moment pass the order of liquidation Section 33 of IBC as follows:
  - a. That the Corporate Debtor is liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
  - b. As to the appointment of Liquidator, Mr. Anil Goel, at this moment appointed to act as a Liquidator for the liquidation of Corporate Debtor company with all powers as envisaged in the Code.
  - c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners

of the Corporate Debtor shall cease to affect and shall be vested in the Liquidator.

- d. That the personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
  - e. That the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate/assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
  - f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on the corporate debtor behalf, it may initiate such proceedings with prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
  - g. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workers of the Corporate Debtor except to the extent of the business of the Corporate Debtor continuing during the liquidation process by the Liquidator.
15. Moratorium declared vide Order dated 20.11.2018 in CP No.: 579/2018 ceased to exist.
16. The registry is directed to communicate this order to the Liquidator immediately even by way of e-mail.
17. MA 2929/2019 is disposed of accordingly.

Sd/-  
**RAJESH SHARMA**  
Member (Technical)

Sd/-  
**V. P. SINGH**  
Member (Judicial)