

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III, MUMBAI BENCH**

**M. A. No. 3634/2019
In
C. P. No. 3504/I&B/2018**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of
Ashapura Perfoclay Ltd.
... Operational Creditor
V/s.
Gajanan Oil Pvt. Ltd.
... Corporate Debtor

M.A. No. 3634/2019

Mr. Anuj Bajpai
... Applicant/
Resolution Professional

Order delivered on: 12.02.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Applicant: Mrs. Khushoo Shah Rajani, Advocate, i/b. AKR
Advisors LLP

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (Gajanan Oil Pvt. Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *"To consider the present application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for Liquidation of the Corporate Debtor;*
- b. *To appoint the resolution Professional as Liquidator of the Corporate Debtor under Section 34(1) of the Code;*



- c. To direct the registry to communicate this order to the registrar of the Companies, Mumbai and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi;
 - d. To consider declaring under Section 31(3)(a) of the Code that order of Moratorium passed under 14 of the I&B Code, 2016 shall cease to have effects and fresh moratorium under Section 33(5) shall commence;
 - e. To Consider that this order is deemed to be a notice of discharge to the officer, employees and the workmen of the Corporate Debtor as per Section 33(7) of I&B Code, 2016;
 - f. To consider that no suit, prosecution or other legal proceeding shall lie against the Insolvency Professional for anything done or intended to be done in good faith under Section 233 of the Code."
2. The Adjudicating Authority vide its order dated 06.05.2019 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Gajanan Oil Pvt. Ltd. wherein Mr. Naren Sheth, was appointed as Interim Resolution Professional (IRP). Thereafter in the 1st meeting of the Committee of Creditors (CoC) held on 10.06.2019 Mr. Anuj Bajpai, was appointed as Resolution Professional (RP) and the same was approved by this Bench by an order dated 25.06.2019.
 3. The RP submits that the public announcement was made on 12.05.2019, one in "Free Press Journal" in English and in Marathi, fixing 23.05.2019 as the last date for submitting the claim.
 4. The CoC in its meeting 4th meeting held on 07.09.2019 decided to appointed a Valuer. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation.
 5. It is further submitted that an advertisement was issued, inviting Expression of Interest (EoI) in Form G on 05.08.2019 in "Business Standard" in English all edition and "Lokmat" in Marathi, thereby fixing 06.09.2019 as last dte for submission of expression of interest and also published in "Hitvada" Nagpur edition and second extension on



09.09.2019 thereby fixing 21.09.2019, as last date for submission of Expression of Interest by the Prospective Resolution Applicants.

6. The Resolution Professional submits that 2 (Two) Expression of Interest was received by him from Prospective Resolution Applicants ("PRAs"). The PRAs was given opportunity to submit the resolution plan. RP in the 5th meeting of CoC held on 24.10.2019, issued a final list of 2 (Two) eligible PRAs to the CoC. The names of eligible PRAs as follows:
 - i. Rahautiya Group- Narmada Solvex Pvt. Ltd.
 - ii. Radiant World Group.
7. The CoC in the 6th CoC meeting held on 01.11.2019, the RP reminded the CoC members that 2 (Two) PRAs had paid ₹10 lacs each, as refundable deposit and had participated in Expression of Interest. One of the Resolution applicant had sent email to RP requesting for extension of time for submission of Resolution Plan. However, none of the PRAs visited plant of the Corporate Debtor nor conducted any due diligence to submit resolution plan.
8. The Resolution Professional submits that in the 6th CoC meeting held on 01.11.2019, the CoC having 100% voting rights passed a resolution for liquidating the company in view of the fact that the CIRP period expired on 02.11.2019 and no Resolution Plan was received. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).
9. The Applicant/ Resolution Professional Mr. Anuj Bajpai, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.
10. Upon hearing the submissions of the Applicant and on perusal of the Application and the documents enclosed therein, it is found, the RP has complied with the procedure laid down under, Regulations made thereunder. The valuation report filed by the valuer has not been disputed by the CoC. On verification of the papers/ documents placed before this Bench, we are of the considered view that this is a fit case to



pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered;

ORDER

- a. The Miscellaneous Application is hereby allowed.
- b. That the Mr. Anuj Bajpai, Registration No. IBBI/IPA-001/IP-P00311/2017-18/10575, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as mentioned in the 6th CoC meeting held on 01.11.2019 have decided the fees of the Liquidator is as under:-

"b. after the Receipt of the Order of Liquidation: The fees shall be payable as per the table mentioned below:

Period	Monthly (Rs. Lacs/month) *	Incentive (% Realization)
First 6 months	2.9	0.75%
Next 6 Months	2.15	0.50%
Next 12 Months	To be discussed thereafter	

**not adjustable against incentive"*

- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.
- f. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the



Liquidator to send this order to the ROC under which this Company has been registered.

- g. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. that on having liquidation process initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.
- j. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)



Certified True Copy
Copy Issued "free of cost"
On 17.02.2020

Assistant Registrar
National Company Law Tribunal Mumbai Bench