

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

**CA Nos. 396 of 2018, 454 of 2018 and 460 of 2018
In
CP (IB) No.15/Chd/CHD/2017**

In the matter of:-

Punjab National Bank ...Petitioner-Financial Creditor

Versus

M/s James Hotel Ltd. Respondent-Corporate Debtor

And in the matter of:- **(CA No.454 of 2018)**

Asset Reconstruction Company (India) Limited ...Applicant

Versus

M/s James Hotel Ltd. Respondent-Corporate Debtor

And in the matter of:- **(CA No.396 of 2018)**

Navneet Gupta, Resolution Professional ...Applicant

Versus

Registrar of Companies, Chandigarh ...Respondent

Order delivered on 17.10.2018

Present: Mr. Yogesh Goel, Advocate, for the Resolution Professional
Mr. Navneet Gupta, Resolution Professional in person
Mr. M.S. Pachouri, Registrar of Companies, Punjab, Chandigarh and
Himachal Pradesh (CA No.396/2018)
Mr. V.K. Sachdeva, Advocate with Ms. Poonam Verma, Advocate, for
ARCIL (CA No.454/2018)

Per: R.P.Nagrath, Member (Judicial):-

CA No.460/2018

ORDER (Oral)

The Resolution Professional has filed this application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (for short to be referred

hereinafter as the '**Code**') for liquidation of the corporate debtor- M/s James Hotel Limited.

2. We have heard learned counsel for the Resolution Professional and also perused the record.

3. The petition under Section 7 of the Code was admitted by this Tribunal on 27.04.2017, declaring moratorium in terms of Section 14(1) of the Code and the Interim Resolution Professional was appointed, vide order dated 08.05.2017 with certain directions. The period of 180 days, as initially prescribed by sub-section (1) of Section 12 of the Code, expired on 23.10.2017. Thereafter, the Resolution Professional filed an application, being CA No. 165 of 2017, seeking extension of time for completion of Insolvency Resolution Process, which was allowed by order dated 11.10.2017. In exercise of powers under sub-section (3) of Section 12 of the Code, the duration of completion of the Insolvency Resolution Process was extended by another 90 days. Therefore, there was a total period of 270 days available to the Resolution Professional to complete the Insolvency Resolution Process, which ended on 21.01.2018. In the meanwhile, the promoters/directors of the company filed CWP No.29553 of 2017, before the Hon'ble Punjab and Haryana High Court, challenging the vires of the Ordinance and the Hon'ble High Court, while issuing notice of motion by order dated 21.12.2017, directed this Tribunal not to pass the final order.

4. CA No.37 of 2018 was filed by the Resolution Professional, seeking eviction of the promoters directors of the corporate debtor, who were in occupation of the hotel premises. While issuing notice of the application to the

promoters directors on 08.02.2018, it was directed as an interim measure that the Resolution Professional shall continue to function as such. On the said date, CA No.13 of 2018 was also fixed. CA No.13 of 2018 was decided on 03.04.2018 by a detailed order. It was stated in the said application that the Committee of Creditors have given its consent to the Resolution Professional to continue to discharge the duties as Resolution Professional as the passing of the final order has been stayed by the Hon'ble High Court in CWP No.29553 of 2017. The Resolution Professional thus, made a prayer for permission to continue to do his duties. Vide order dated 03.04.2018, the Resolution Professional was directed to continue with the Resolution Process till further orders. Subsequent to that, certain applications were filed and disposed of by this Tribunal.

5. Punjab National Bank and Anr filed Civil Appeal No.9973 of 2018 against Ajmer Singh Bhullar and Others, before the Hon'ble Supreme Court of India, which was decided by the Apex Court on 25.09.2018. Copy of order of the Hon'ble Supreme Court is at Annexure A-14. The Hon'ble Supreme Court had taken note of the order dated 21.12.2017 in the Writ Petition filed before the Hon'ble Punjab and Haryana High Court, challenging the constitutional validity of some of the provisions of the Code and that the High Court directed that the National Company Law Tribunal, Chandigarh, may continue with the proceedings, but should not pass the final order and ultimately, the adjournments have been taken from time to time. The Hon'ble Supreme Court also observed that period of 270 days mentioned under the Code has now come to an end. It was further observed by the Hon'ble Supreme Court that the learned counsel for the Resolution Professional had informed that as many as
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six Resolution Plans were in fact considered and rejected and the Committee of Creditors has now opined that under Section 30 of the Code, the matter should proceed for liquidation. The Hon'ble Supreme Court, therefore, vacated the impugned interim order passed by the Hon'ble High Court and directed that the proceedings should logically culminate in a winding up of a corporate debtor and allowed the appeal of the Bank to the aforesaid extent.

6. The learned counsel for the Resolution Professional has also handed over the order passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi, in Company Appeal (AT) (Insolvency) No.504 of 2018, filed by Haravtar Singh Arora and Anr against the Resolution Professional and Ors. The appeal was dismissed by the Hon'ble National Company Law Appellate Tribunal, New Delhi, by taking note of the orders dated 25.09.2018 passed in the Civil Appeal No.9973 of 2018 with Civil Appeal No.9952 of 2018, vacating the interim order.

7. In view of the aforesaid observations, the Hon'ble Appellate Tribunal observed that even extended period for conclusion of Corporate Insolvency Process has expired and the appellants were allowed to withdraw the appeal. It was ultimately directed that the Resolution Professional shall take necessary steps for placing the matter before the Adjudicating Authority in terms of provisions of Section 33 of the Code. That is how the Resolution Professional is before this Tribunal.

8. The learned counsel for the Resolution Professional has also handed over a copy of the minutes of meetings of 14th Meeting of the Committee of Creditors, held on 03.05.2018 and the Committee took note of

the fact that no viable Resolution Plan was received in respect of the corporate debtor. The committee unanimously recommended for the liquidation of the company with authority to the Resolution Professional to file necessary reports, plans and documents with the National Company Law Tribunal.

9. We are also of the considered view that after expiry of period of 270 days, as permissible under the Code for completion of Insolvency Resolution Process and there is no report from the Resolution Professional with regard to the acceptance of any Resolution plan, there is no alternative, but to pass the liquidation order in view of the order of interim stay granted by the Hon'ble Punjab and Haryana High Court, having been vacated.

10. Section 33(2) of the Code says that where the Resolution Professional, at any time during the CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Code.

11. Under sub-section (1) of Section 34 of the Code, where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33 the Resolution Professional appointed for the corporate debtor, shall subject to the submission of written consent furnished by the Resolution Professional to the Adjudicating Authority in specified form, act as a liquidator for the purposes of liquidation unless he is replaced by the Adjudicating Authority in terms of sub-section (4) of Section 34, which is not

applicable to the facts of the present case. The written consent 'Form AA' has been furnished by the Resolution Professional which is at Annexure A-16 of this application. He has furnished all the required particulars.

12. In view of the above, we order the liquidation of the corporate debtor M/s James Hotel Limited and appoint Mr. Navneet Gupta, Resolution Professional as the Liquidator for the purpose of liquidation of the corporate debtor, in terms of Section 33(2) of the Code. His appointment will take effect from the date of receipt of copy of this order.

13. It is further observed that all the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process) Regulations, 2016 shall be strictly complied with. 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.

14. 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.

15. 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 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.”*

16. 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.

17. 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 learned counsel for the Liquidator as well as the Registrar of Companies, Punjab, Chandigarh and Himachal Pradesh, immediately. Registry shall also send copy of this order to the Liquidator at his e-mail address.

CA No.454 of 2018

The learned counsel for the applicant submits that in view of the liquidation order passed in CA No.460 of 2018, the instant application has been rendered infructuous and may be disposed of accordingly. The instant application i.e. CA No.454 of 2018 stands disposed of, as rendered infructuous.

CA No.396 of 2018

The Registrar of Companies, Chandigarh submits that he will consider the request of the Company for extension of time in holding the Annual General Meeting for the year 2017-18 upto 31.12.2018. Having heard the learned counsel for the Resolution Professional and the Registrar of Companies, Chandigarh and keeping in view the stay order issued by the Hon'ble Punjab and Haryana High Court and the Hon'ble Supreme Court and various Misc. Applications filed during the pendency of this case, we extend the period of holding the Annual General Meeting upto 31.12.2018.

In view of the above the instant application, being CA No.396 of 2018, stands disposed of.

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

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

October 17, 2018
Mohit Kumar