

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

C.A. 1833 (PB) /2019

IN

Company Petition No. (IB) – 528 (PB) /2019

In the matter of:

Mr. Subhash Kumar Kundra

Applicant/Resolution Professional

AND

In the matter of:

Taurus Agile Technology Corporation (P) Limited

Corporate Debtor

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016
for liquidation of the corporate debtor*

Judgment delivered on: 26.09.2019

Coram:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the Petitioner / RP:

Ms. Prachi Johri, Advocate



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 33 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Taurus Agile Technology Corporation (P) Limited.
2. The facts in brief are that the financial creditor, M/s M/s Edelweiss Asset Reconstruction Company Limited had filed an application under Section 7 of the Code bearing Company petition number IB-528(PB)/2019 for initiation of Corporate Insolvency Resolution Process against the corporate debtor M/s Taurus Agile Technology Corporation (P) Limited. The said application was admitted on 16.04.2019 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Taurus Agile Technology Corporation (P) Limited and Mr. Shubash Kumar Kundra was appointed as the Interim Resolution Professional vide corrected order dated 01.05.2019.



3. In terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Applicant made a public announcement in FORM A in the Financial Express (English) and in the Jansatta (Hindi) in New Delhi & Chandigarh Editions. In terms of Regulation 6 (2) (c) of the CIRP Regulations the last date for submission of proof of claim was specified as 02.05.2019.
4. Thereafter, in terms of Section 18 (1)(a) of the Code, the applicant collated claims submitted by the creditors pursuant to the Public Announcement and after determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors comprising of only one financial creditor i.e. Edelweiss Asset Reconstruction Company Limited.
5. In the first meeting of the Committee of Creditors held on 13.05.2019, it was resolved that the Interim Resolution Professional shall continue to function as the Resolution Professional of the Corporate Debtor.



6. In the second meeting of Committee of Creditors held on 22.05.2019, in terms of Regulation 27 of the CIRP Regulations, the Resolution Professional appointed two registered valuers for each category namely for Plant and Machinery, for Land & Building and for Financial Assets, to determine the Liquidation & Fair value in accordance with Regulation 35 of the CIRP Regulations.
7. The Resolution Professional in order to preserve and protect the value of the assets of the Corporate Debtor, appointed Jags Security Agency at the factory to safeguard the assets of the Corporate Debtor.
8. With the approval of Committee of Creditors and in terms of Section 25(2) (h) of the Code, the Resolution Professional invited prospective lenders, investors and other persons to submit Expression of Interest to put forward the resolution plan for the Corporate Debtor. The Form G was published on 23.05.2019 in Financial Express and Jansatta (English) in New Delhi Edition and Ajit Punjabi newspaper (Punjabi) and on 24.05.2019 in Financial Express (English) Chandigarh Edition.



9. In the third meeting of the Committee of Creditors, it was intimated to the participants that pursuant to the publication of advertisement inviting Expression of Interest and even after meeting few prospective resolution applicants, no Expression of Interest was received. The Resolution Professional also communicated with prospective resolution applicants but did not receive any Expression of Interest. Only two e-mails were received from Ashoka Capital Pvt. Ltd. a sister concern of Devonshire Capital Ltd. and Samvardhana Motherson Sumi Systems Pvt. Ltd. for the submission of Expression of Interest.
10. In view of the above the Resolution Professional requested Committee of Creditors to consider the extension of timelines for submission of Expression of Interest in order to explore all legally permissible avenues to resolve the insolvency of the Corporate Debtor in the interest of all stakeholders. The Committee of Creditors after deliberation, extended the timeline to submit the Expression of Interest and approved to release the revised Form G keeping 22.06.2019 as the last date for submission of Expression of Interest.



- 11.** It is submitted that Resolution Professional, accordingly, issued a fresh publication of Form G dated 12.06.2019 with extended timeline to submit Expression of Interest stipulating 22.06.2019 as the last date for submission of resolution plans.
- 12.** The fourth meeting of the Committee of Creditors was convened on 10.07.2019 wherein it was decided not to appoint the Transaction Auditor for conducting Transaction Audit of the Corporate Debtor on the ground that the Corporate Debtor was non-operative for the last about 4 years and there is hardly any transaction. It is stated that the plant did not have the electricity and water connection as well.
- 13.** In the fourth meeting of the Committee of Creditors, the Resolution Professional apprised the Committee of Creditors that no Expression of Interest had been received despite rigorous follow-ups with potential prospective resolution applicants/investors. The Applicant mentioned that Hindustan Aeronautical Ltd., Bharat Forge Ltd., Motherson Sumi Systems Pvt. Ltd. and Ashoka Capital including other prospective resolution applicants were



approached to solicit Expression of Interest and the Applicant took steps to intimate them of the extended timeline but despite serious effort no Expression of Interest was received.

14. After deliberation, members of the Committee of Creditors having 100% voting share was of the view that the Corporate Debtor has not done any business for last 3-4 years. The plant of the Corporate Debtor is a high technology unit having specialized machines and there are very few parties who may be interested in such high technology unit and whosoever those parties were in the industry, had already been approached several times. It was also noted that the Corporate Debtor had been put in the auction process by Debt Recovery Tribunal several times but did not receive satisfactory bid.

15. In view of the above, the sole member of the Committee of Creditors having 100% voting share decided to liquidate the Corporate Debtor due to non-receipt of any Expression of Interest to submit resolution plan even after extending the deadline and after considering that waiting for the potential Resolution Applicant would only result into



further deterioration of the assets of the Corporate Debtor. It is submitted that the Resolution Professional and the Committee of Creditors had deliberated and considered the position of facts and circumstances and the Committee of Creditors has decided in its commercial wisdom to liquidate the Corporate Debtor.

16. It was also decided to authorise resolution professional to file an application for liquidation of the Corporate Debtor. Subsequently Committee of Creditors also recommended to appoint the RP as liquidator, who has given consent in requisite Form AA to act as liquidator of the Corporate Debtor.

17. It is pertinent to refer to the statutory provisions provided in sub-section (2) of Section 33 of the Code which mandates that *“where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order”*.



- 18.** In the present case the sole member of Committee of Creditors, with 100% voting share has decided to liquidate the Corporate Debtor due to non-receipt of any resolution plan. It is appropriate to mention here that the Committee of Creditors is a decision-making expert body and is the competent authority to take commercial decision in the matter.
- 19.** Therefore, in the absence of any resolution plan and as per the decision of Committee of Creditors with 100 % vote share; Liquidation has to follow in terms of sub-section (2) of Section 33 of the Code. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.
- 20.** In the factual background and in the absence of any resolution plan and as per the decision of the Committee of Creditors with 100% voting share; there is no other alternative left but to order *for liquidation of the corporate debtor in terms of Section 33 (2) of the Insolvency and Bankruptcy Code, 2016.*



21. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Taurus Agile Technology Corporation (P) Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

- a.** Sh. Subhash Kumar Kundra with Registration No. IBBI/ IPA-002 / IP-N00399 / 2017-18 / 11174, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b.** Sh. Subhash Kumar Kundra, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy



Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

- e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f.** The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- g.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

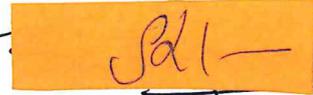


- h.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- i.** CA 1833 (PB) /2019 filed in IB 528 (PB)/2019 is disposed of in the aforesaid terms.



(M.M. KUMAR)
PRESIDENT

26.07.20



(S. K. MOHAPATRA)
MEMBER (T)