

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

**C.A. 1058 (PB) /2018  
IN  
Company Petition No. (IB)-272(PB)/2017**

In the matter of:

Mr. Arvind Garg

Applicant/Resolution Professional

AND

In the matter of:

Moser Baer Solar Limited

Corporate Debtor

*Under Section 33(1)(a) of the Insolvency and Bankruptcy Code,  
2016 for liquidation of the corporate debtor*

*Judgment delivered on: 30.05.2019*

**Coram:**

**CHIEF JUSTICE (RTD.) M.M.KUMAR  
Hon'ble President**

**S. K. MOHAPATRA  
HON'BLE MEMBER (TECHNICAL)**

For the Applicant: Mr. K. Datta, Mr. Abhishek Anand,  
Mr. Anant A. Pavgi, Mr. Tushar Tyagi,  
Advocates.

**ORDER**

**S. K. Mohapatra, Member**

1. Resolution Professional of the corporate debtor M/s. Moser Baer Solar Limited has filed the present application with the following relief:

*“ Order of liquidation of the corporate debtor under Section 33 (1) of the Code i.e. the automatic consequence upon completion of 270 days on non-receipt of resolution plan be kept pending, subject to the outcome of the Writ Petition already filed on 01.10.2018 by the Applicant seeking disbursal of subsidy from the Ministry of Electronics and IT before the Hon’ble High Court of Delhi.”*

2. The facts in brief for disposal of the application are that IB-272(PB)/2017 filed under Section 7 of the Code, was admitted vide order dated 14.11.2017 and Corporate Insolvency Resolution Process was triggered against the corporate debtor M/s. Moser Baer Solar Limited. Ms. Ritu



Rastogi was appointed as Interim Resolution Professional in respect of the corporate debtor.

3. Thereafter, 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 Interim Resolution Professional made a publication dated 15.11.2017 in 'Form A' both in Financial Express (English) and in Jansatta (Hindi).
4. The Interim Resolution Professional further appointed two valuers i.e. M/s Ernst & Young LLP and M/s RBSA Valuation Advisors LLP, to ascertain the liquidation value in terms of Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The liquidation value of the assets of the Corporate Debtor based on average of two valuation reports obtained from the valuers is INR 72.425 crores.
5. In the first meeting of Committee of Creditors convened on 15.12.2017 the Interim Resolution Professional was appointed as the Resolution Professional to conduct



Corporate Insolvency Resolution Process in respect of the corporate debtor. However, in the fifth meeting of the Committee of Creditors held on 05.03.2018 Committee of Creditors by 100% majority resolved to replace the Resolution Professional with another Resolution professional being the Applicant in terms of the provisions of the Code. Pursuant to the above, an application under Section 27(3) of the Code for replacement of the Resolution Professional was moved and allowed vide order dated 19.03.2018 appointing the present applicant Resolution Professional in place of the earlier Resolution Professional.

6. It is also pertinent to note that on the application of the Resolution Professional Corporate Insolvency Resolution Process period was extended by 90 days on 23.04.2018 and additionally on an subsequent application filed by Resolution Professional, Corporate Insolvency Resolution Process period was also excluded from 01.02.2018 to 19.03.2018 and 09.08.2018 to 14.08.2018 from the statutory 270 days of Corporate Insolvency Resolution Process period vide order dated 14.08.2018.



7. It has been submitted in the application that despite several advertisement inviting Expression of Interest, the Resolution Professional had not received any resolution plan in respect of the Corporate Debtor.
8. Despite the fact that the statutory Corporate Insolvency Resolution Process period of 270 days have expired and no resolution plan in respect of the Corporate Debtor has been received; Committee of Creditors have refused to arm the Resolution Professional with the permission to file the application under Section 33(1) of the Code for liquidation. The reason given by the Committee of Creditors is that the proceedings in a writ petition before the Hon'ble High Court of Delhi for realization of a sum of Rs. 270 crores by the corporate debtor are being prosecuted by the resolution professional on its behalf and it would be worthwhile to wait the outcome of that proceedings. It has also been stated that the learned Single Judge of the High Court in his judgement dated 25.02.2019 has rejected the claim made on behalf of the corporate debtor and in Later Patent Appeal, the Division Bench has remanded the case back to the learned



Single Judge vide its order dated 08.05.2019 for placing the additional material on record by the Corporate Debtor.

9. During final hearing on 22.05.2019 we made it clear that once the period of 270 days has expired in the month of October, 2018, there is no escape from the end result that liquidation has to follow. Therefore, in pursuance to the provisions of Section 33(1)(a) of the Code, 2016, we are not left with any other solution except for ordering of liquidation of the corporate debtor.

10. Similar view was expressed by Hon'ble National Company Law Appellate Tribunal in the matter of Vijay Kumar Modi & Anr. Vs. Singhania International Ltd. & Anr. passed in Company Appeal No. CA (AT) (Ins) 230-231/2018, that:

*"In absence of any Resolution Plan and in absence of any recommendation of the CoCs to extend the period of resolution process, the Adjudicating Authority rightly passed order for initiating liquidation proceeding which is in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016."*



11. Similar view was taken by Hon'ble National Company Law Appellate Tribunal in the matter of Sanjay Kumar Ruia Vs Catholic Syrian Bank Ltd. & Anr. passed in Company Appeal No CA (AT) (Ins) 560 of 2018, wherein it was observed that:

*"In absence of any 'resolution plan' the Adjudicating Authority, is bound to pass order under Section 33 by initiating liquidation proceeding against the corporate debtor."*

In the said case it was further made clear that:

*"Adjudicating Authority has no jurisdiction to proceed with the CIRP beyond the period of 270 days having not empowered under the provisions of the Code."*

12. In matter of Haravtar Singh Arora Vs Punjab National Bank & Ors. Company Appeal No. CA (AT) (Ins) 749/2018 the Hon'ble Appellate Tribunal has also observed that:

*"In the absence of approved resolution plan, the Adjudicating Authority had no option but to pass order of liquidation on completion of the period of 270 days."*



13. Even the statutory provisions as envisages in Section 33 (1) (a) of the Code mandates that *“where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter.”* Therefore, upon failure of resolution process there being no resolution plan and on completion of the statutory period of 270 days; Liquidation has to follow. 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 consequence.

14. In the factual background and in the absence of any resolution plan and for want of time beyond statutory CIRP period; there is no other alternative but to order for liquidation of the corporate debtor under Section 33 (1) (a) of the Code.





15. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Moser Baer Solar 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. Mr. Arvind Garg resolution professional holding registration no. IBBI/IPA-003/IP-N00029/2017-18/10189, is appointed as Liquidator in terms of Section 34(1) of the Code;
- b. Mr. Arvind Garg 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. All endeavor shall be made by the liquidator to ensure that the business of Corporate Debtor is continued during the liquidation process as per Section 33 of the Insolvency and Bankruptcy Code, 2016;

f. 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.

g. 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.

h. The liquidator shall follow up the pending suit/applications for its disposal during the process of liquidation including initiation of



steps for recovery of subsidy in favour of the Corporate Debtor.

- i. 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.
- j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- k. C.A - 1058 (PB) /2018 filed in IB - 272 (PB)/ 2017 is disposed of in the aforesaid terms.

At the time of pronouncement of the order, Mr. K. Datta, learned counsel for the Resolution Professional has pointed out that the learned Single Judge has heard the review petition and disposed it which involves the reliefs of subsidy to the corporate debtor namely M/s. Moser Baer Solar Limited. We make it clear that the passing of liquidation



order shall not result in refusal to disburse this amount to the corporate debtor and separate order with regard to its disbursement shall be made as and when the application by the liquidator is filed. Learned counsel for the liquidator also permitted to peruse the matter at all forums namely High Court of Delhi and Government Authorities.



**(M.M.KUMAR)**  
**PRESIDENT**



**(S.K. MOHAPATRA)**  
**MEMBER (TECHNICAL)**