

## ICICI Bank Limited Vs SR Foils And Tissue Limited

**Court:** National Company Law Tribunal New Delhi Bench

**Date of Decision:** March 4, 2020

**Acts Referred:** Insolvency And Bankruptcy Code, 2016 " Section 33(2), 33(6), 53  
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 " Regulation 4

**Hon'ble Judges:** B.S.V. Prakash Kumar, J; Hemant Kumar Sarangi, Member (Technical)

**Bench:** Division Bench

**Advocate:** Abhishek Anand, Viren Sharma, P. Nagesh, Tania Sharma, S. Mishra, Tushar Tyagi

**Final Decision:** Dismissed

### Judgement

B.S.V. Prakash Kumar, J

1. Heard and dictated in open court.

IA-1034(PB)/2020:-

It is an application moved by RP under Section 33(2) of the Code for liquidation of the corporate debtor based on the resolution passed by the CoC

with 84.22 % voting share in its meeting held on 03.05.2019.

2. On perusal of the application, it appears that CP was admitted on 07.08.2017, by appointing Mr. Anil Kohli as IRP in furtherance it, the IRP issued

public announcement on 10.08.2017 inviting claims of the creditors, in pursuance thereof, after receipt claims, they were collated, and the aggregated

value of the claim has come to 704.47 crores. Thereafter, upon constitution of the CoC on 28.08.2017, the IRP was confirmed as RP. Then the RP

appointed two valuers for valuing the liquidation of the company, on receipt of the two valuation reports from them, taking the average of the value

given by two valuers, the liquidation value of the company is determined as Rs. 30.03 crores.

3. Subsequent thereto, time has gone in to determination of undervalue transaction, soon after disposal of this application, the RP has given several

Invitations of Expression of Interest on 23.10.2017, 29.11.2017, 06.04.2018 & 28.03.2019. Despite four invitations of EOI given, it appears that only

one person i.e. objector in the application came forward with an EOI but whereas as per submission of RP, the objector failed to place the EMD along

with EOI on 28.03.2019.

4. As against this application the objector i.e. the prospective resolution applicant has stated that every time whenever EMD was placed before this

RP that was appropriated by the RP towards the differential amount, to which the RP simultaneously replied saying that is not appropriation of any

EMD amount, those monies, as per the request of this very objector, who adjusted against the differential amount payable by this applicant thereto,

now this objector cannot attribute even action of appropriation of the EMD against the differential amount at the volition of the RP.

5. Now the arguments of this objector, is in case this objector is permitted to file his EOI an another round of invitation, he would be in a position to

place the resolution plan with a value more than the liquidation value determined by the RP.

6. Though this company petition has been admitted on 07.08.2017, till date neither resolution plan has come for approval before this Bench, nor has this

bench decided the liquidation application pending before this Bench despite soon after two and half years passed by now. This objector has come

before this Bench asking for another round of invitation of EOI is not acceptable because the CIRP period has already been over on 03.06.2019,

therefore, we are of the view that this company petition is fit for passing the liquidation order because it is the CoC that has taken a decision that the

liquidation is the only course left to it to proceed, whereby, we hereby ordered for liquidation of the company with the directions as follows:-

a) This Bench hereby orders the Corporate Debtor to be 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 with which this company has been registered.

b) The Resolution Professional viz. Mr. Anil Kohli is hereby appointed to act as Liquidator for the purpose of liquidation of the corporate debtor,

therefore, all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to

have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the

liquidation as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as 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 the Insolvency

and Bankruptcy Board of India (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.

c) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor without prior

approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.

d) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to extent

of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The Registry is hereby directed to immediately communicate this order to the Liquidator, the Corporate Debtor and the IBBI & concern ROC by way

of E-Mail.

Accordingly, this application stands disposed of.

In view of the order passed in IA-1034(PB)/2020, IA No. 1698 & 1706(PB)/2020 are dismissed as misconceived.  
CA-2517(PB)/2019:-List on

14.04.2020.