
(2022) 05 NCLT CK 0024

In the National Company Law Tribunal

Case No : ?IA Nos. 294/2021 & 35/2022 In CP (IB) No. 167/Chd/Hry/2019

?Ajay Kumar Jain

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 09-05-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 14, 19, 21(1), 30(6), 33, 33(2), 33(5), 33(6), 33(7), 52, 56, 60(5)
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 — Regulation 4(2), 12, 13, 15

Citation : (2022) 05 NCLT CK 0024

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Sourit Arora, Arvind Rajotia

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. Both the IA No. 294/2021 and IA No.35/2022 are taken up together for discussion being interrelated and interconnected.

IA No. 294/2021

That the present Application is being filed by Mr. Ajay Kumar Jain, Resolution Professional (RP) of Maruti Kesri Nandan Agrofoods Pvt. Ltd (Corporate Debtor) under section 33(2) of Insolvency and Bankruptcy Code, 2016 ('IBC'), in pursuance to the decision of the Committee of Creditor (CoC) for liquidation of the corporate debtor.

2. It is submitted that the CIRP of the corporate debtor commenced from 6.02.2020 in pursuance to the order of even date passed by this Tribunal.

3. It is further submitted that in pursuance to the resolution passed by the CoC

in its fifth meeting, the Resolution Professional had filed an application vide I.A. No. 918/2020 u/s 12(2) of the IBC before this Tribunal on 11.12.2020 for extension of CIRP period by 90 days. The said application was heard on 01.02.2021 by the this Bench of NCLT. After hearing on the said application, this Bench allowed the application and granted the extension of time by 90 days from the expiry of 11.12.2020. Accordingly, the extended period of CIRP came to an end on 11.03.2021.

4. The Resolution Professional convened the 7th CoC meeting on 10.03.2021 for which notice and agenda were circulated to the participants on 05.03.2021. In Agenda item No. 8, CoC had to decide the next course of action with respect to the corporate debtor in view of the last date of the CIRP being 11.03.2021.

5. It is averred in the aforesaid 7th CoC meeting, the RP apprised the CoC in Agenda Item No. 8 that the last date of the extended period of CIRP will be expired after 11.03.2021, therefore, CoC needs to decide about further course of action. RP also apprised the CoC that the original CIRP period of 180 days expired on 11. 12.2020 (which include the exclusion period of 129 days of lockdown) and after getting extension of 90 days from the Hon'ble NCLT, the extended period of CIRP will be ended after 11.03.2021. Resolution Professional further apprised that CoC may further get the extension of 60 days u/s 12(3) from the Hon'ble NCLT in view of the pendency of the litigation/application before this Bench.

6. It is submitted that RP also apprised the CoC member for publication of Form – G for inviting Expression of Interest (EoI) in view of the availability of one asset of the corporate debtor and valuation report thereof also.

7. It is further submitted that in the aforesaid meeting, the CoC member i.e. Punjab National Bank as a Sole CoC member having 100% voting rights, discussed the matter and observed that since the registered office of the corporate debtor is in locked and sealed condition for last many years by Dena Bank and Canara Bank (non lenders) and as on date there is no assets of the corporate debtor available, except one industrial plot at RICCO, Alwar (Rajasthan), so seeking further extension of 60 days for CIRP period will not serve the purpose.

8. The CoC member further observed that there is no guarantee that the records and other assets of the corporate debtor would be made available to the RP within next 60 days due to non-cooperation by the suspended directors and the pendency of the applications before the Adjudicating Authority against them, and also pendency of the criminal case before the special court by the IBBI against the suspended directors, so further extension of CIRP period will not be viable for the CoC member.

9. In view of the above, CoC formed opinion for passing the resolution for liquidation. However, it decided to defer the decision till 6.00 pm on the aforesaid date of meeting (10.3.2021) for further discussion with its Zonal Office. In the

deferred meeting of the CoC. which was held at 6.00 pm on the same day i.e. 10.03.2021, the sole member CoC namely, Punjab National Bank with 100 % voting right was represented by Mr. Vijay Kumar Singhal, Chief Manager, Circle Sastra Head, Punjab National Bank, Alwar. Mr. Vijay Kumar Singhal, Chief Manager apprised the Chairman/RP that his Zonal Office has decided to liquidate the corporate debtor. CoC member Mr. Singhal (PNB) also apprised the Resolution Profesional that his Zonal Office has not yet decided about the name and fees of the Liquidator.

10. After discussion, the sole member of the CoC namely, Punjab National Bank with 100% voting right passed the following resolution in agenda item No. 8 for liquidation of the Corporate Debtor:

"RESOLVED THAT the corporate debtor namely, Maruti Kesri Nandan Agrofoods Private Limited be liquidated under the provisions of Insolvency and Bankruptcy Code, 2016.

FURTHER RESOLVED THAT Mr. Ajay Kumar Jain, Resolution Professional be and is hereby authorized to take necessary steps and intimate the decision of the Committee of Creditors under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 to liquidate the corporate debtor."

A copy of minutes with attendance sheet with voting rights are attached and marked as Annexure-5.

11. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and relevant provision is reproduced below:-

"Section 33(2): Initiation of liquidation

(1)

(2) 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 percent, of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. - For the purpose of this sub-section, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

12. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. before the expiry of the Insolvency Resolution Process period;
- ii. Maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12 or the fast track Corporate Insolvency Resolution Process under Section 56 as the case may be; and
- iii. If does not receive a resolution plan under sub-section (6) of Section 30.

13. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

14. The Liquidator's Fee shall be structured in the manner mentioned herein below:

a. In case the security interest is relinquished to Liquidation Estate-the Liquidator's Fees shall be 50% of rates of Liquidator's Fees provided under Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.

b. In case the Security Interest is not relinquished to Liquidation Estate (In such case, there will be no Liquidation Estate available to be liquidated by the Liquidator) the Liquidator shall be entitled to the same monthly fees as paid to the Resolution Professional during the CIRP (i.e. Rs. 50,000/-) from the date of Liquidation Commencement date to the date of Dissolution of the Corporate Debtor.

GST and out of pocket expenses shall be addition to the above.

15. It may be noted that in the present application vide para No. 22 Mr. A.K. Jain has expressed his unwillingness to act as liquidator. Moreover, no name has been proposed by CoC. Therefore, it is expedient to appoint a new liquidator to carry on the process of liquidation.

16. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. M/s Maruti Kesri Nandan Agrofoods Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code.

17. Accordingly, by exercising our power under Section 33(2) pass the following order:-

- i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- ii. Since the Resolution Professional has shown his unwillingness to act as Liquidator of CD. Neither CoC has proposed or placed consent of any other Insolvency Professional. Therefore we appoint the Insolvency professional from the list provided by IBBI.
- iii. Mr. Amit Kumar Goyal bearing Registration No. IBBI/IPA-003/IP-N00317/2020-21/13342, Mobile No. 9815451777, e-mail: akgoval47@yahoo.com is hereby appointed as liquidator;

- iv. Mr. A.K. Jain, The Resolution Professional shall handover the entire records and the assets of the company which have been taken over by him in the course of the corporate insolvency resolution process to the liquidator forthwith.
- v. Mr. Amit Kumar Goyal, Shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations
- vi. Mr. Amit Kumar Goyal, is directed to file his written consent alongwith affidavit within 7 days, stating therein that no disciplinary proceeding have been initiated against him by the Board or the insolvency professional agency
- vii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- viii. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- ix. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- x. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- xi. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;
- xii. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.
- xiii. On initiation of the liquidation process but 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, as provided in Section 33(5) of the Code read with its proviso.

xiv. 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;

xv. 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;

xvi. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

xvii. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi and Haryana for updating the Master Data. After updating the Master Data, RoC shall send compliance report to the Registrar, NCLT within a period of 30 days;

xviii. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

xix. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

18. Thus, IA No. 294/2021 stands disposed of.

IA No. 35/2022

1. The present application is filed by Mr. Ajay Kumar Jain, Resolution Professional of Corporate Debtor read with Section 60(5) of IBC for payment of fee to the Resolving Professionals pertaining to lockdown period from 25.03.2020 to 31.07.2020, which is over and above 9 months of CIRP as per the revised bill dated 05.03.2021 for Rs. 1,50,000/- and direction to sole CoC members to pay Rs. 20,000/- towards legal cost of this application to RP.

2. It is submitted that the RP was appointed as an IRP by this adjudicating authority in pursuance to the order dated 06.02.2020. The sole member Committee of Creditors (CoC) i.e. Punjab National Bank having hundred percent voting right in its first meeting held on 06.03.2020 passed a resolution under agenda item No.11 for appointment of Mr. Ajay Kumar Jain/applicant from Interim Resolution Professional to Resolution Professional.

3. It is further submitted by the applicant that in the aforesaid first CoC meeting, the sole CoC member i.e. PNB after discussion with the IRP and Zonal Office also fixed the fee of IRP/RP as Rs. 3,00,000/- keeping in mind CIRP period as 6 months during discussion (Average fee @ Rs.50,000/- per month).

4. It is contended on behalf of the applicant that the RP performed various work of CIRP since 06.02.2020 which have been elaborated in the 1st to 9th Progress

Report dated 16.03.2021 an which have been filed with this Bench from time to time.

5. It is averred that by the applicant in its written submission vide diary No.01523/2 dated 11.03.22 in all dates of hearing Resolution Professional used to appear with the counsel and have been spending whole days. During this one-year Resolution Professional has been responsible for compliance of the CIRP work and doing the necessary compliance work of CIRP and using the office and infrastructure for the CD work as Resolution Professional has no other assignment of CIRP. Accordingly, Resolution Professional also prays under the residual prayer No. d at page 12 of IA No. 35/2022 to allow the Resolution Professional's fee @ Rs. 35,000 per month for the period from 11.03.2021 (post liquidation resolution) till the disposal of IA No. 294/2021. Keeping in view the time, energy, resources as devoted by the RP during this one year (post liquidation resolution) and the responsibilities of the Resolution Professional carried during the said period, the said fee is very reasonable, even the counsel's fee has also not been paid by the CoC for the pendency period and Resolution Professional incurring from his pocket.

6. The respondent in its reply vide Diary No. 01523/01 Dated 31.01.2022 submitted that on the first CoC meeting dated 06.03.2020, the applicant was appointed as Resolution Professional. It is submitted that vide agenda item No.10 the fees of the applicant/Resolution Professional was fixed as Rs. Three Lakh for CIRP period, which was duly accepted by the applicant/Resolution Professional. The relevant extract of the agenda item No. 10 is reproduced hereunder:-

Resolved that a fixed sum of Rs. 3,00,000/- (Rs. Three lac only) be and is hereby approved towards fees of Mr. Ajay Kumar Jain, Interim Resolution Professional (IRP)/ Resolution Professional (RP) of Maruti Kesri Nandan Agrofoods Private Limited for the period of corporate insolvency resolution process (CIRP).

7. It is submitted by the respondent that once the applicant/Resolution Professional accepted the fees of Rs. 3 Lac for CIRP period thus no issue arises for Resoltuion Professional's fees for extended period/lock down period of CIRP.

8. In view of the submissions made by the learned counsel for the applicant-Resolution Professional and the respondent- CoC. As well as perusal of the record available, we are of the considered view that CIRP fees has already been approved by the CoC in its first meeting dated 06.03.2020 as per Agenda item No.10 and expenses incurred by the Resolution Professional during the period from 29.01.2021 to 05.03.2021 have also been ratified by the CoC in its seventh meeting as per Agenda item No. 10 and the pending matter in issue is with respect to professional fee of the Resolution Professional for the lockdown period from 25.03.2020 to 31.07.2020 and for the period from 11. 03.2021(post liquidation resolution) till the disposal IA No.294/2021.

9. In the light of above facts and circumstances, we holds that the fee of the resolution professional must be commensurate to and be reasonable

compensation of the amount of work involved, including all other expenses such as counsel fees and out of pocket expenses considering the continuous involvement of the Resolution Professional and post liquidation resolution litigation carried on for the purpose of better management of assets of Corporate debtor. The CoC is directed to pay the CIRP fees and expenses from the period of 11.03.2021 till 09.05.2022 after considering the bills for the expenses carried out and the miscellaneous cost incurred by the Resolution professional. The same to be paid within three weeks of submissions of the abovementioned bills.

10. Thus, IA No. 35/2022 is allowed accordingly, and stands disposed of.