

(2019) 08 NCLT CK 0033

In the National Company Law Appellate Tribunal

Case No : Company Application No. 1151(PB) Of 2019 In Company Petition No. IB-461(PB) Of 2017

BDR Builders And Developers Pvt. Ltd. And Ors.

APPELLANT

Vs

Shilpi Cable Private Limited

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 14, 33, 33(1)(a), 33(2), 33(5), 34(4)(c), 35(l), 60(5)

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1)

Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 12, 13

Citation : (2019) 08 NCLT CK 0033

Hon'ble Judges : M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Varun Gupta

Final Decision : Disposed Of

Judgement

M.M. Kumar, CJ

1. This is an application filed by the Resolution Professional under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for exclusion of certain time period from the Corporate Insolvency Resolution Process and further extending the time period of the process.

2. The facts in brief are that the financial creditor, BDR Builders and Developers Pvt. Ltd. had filed a petition bearing no. IB 461(PB)/2017 under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 14.03.2018 and Mr. Sudhir Kalra was appointed as Interim resolution Professional (IRP).

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 said Interim Resolution Professional made a public announcement in FORM-A on 17.03.2018.

4. Thereafter the IRP was appointed as Resolution Professional (RP) and as per the Evaluation Matrix approved by the committee of creditors, the resolution professional had invited the prospective resolution applicants to submit resolution plan, by publishing Expression of interest. Pursuant to the publication, the Resolution Professional did not receive any Expression of interest or any resolution plan by the stipulated last date.

5. Subsequently, in the fourth meeting of CoC held on 01.08.2018 the CoC at agenda item No. 4 resolved as under:

"RESOLVED THAT pursuant to Section 33 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016, the consent of the members be and is hereby accorded to liquidate M/s. Shilpi Cables Private Limited (the Corporate Debtor)."

The above resolution was passed unanimously and in accordance with the same an application bearing no. CA-656(PB)/2019 was filed by the RP under Section 33(2) of the Code. The Adjudicating Authority found the application to be incomplete and passed the following order on 10.04.2019:

ORDER

CA-656(PB)/2019

The application is wholly incomplete and lacks in material particulars. Such an application under Section 33(2) of the Code cannot be entertained. Accordingly, the same is dismissed with liberty to file a fresh one by furnishing detailed particulars as per the requirement of law.

The application stands dismissed.

6. Subsequent to the above order the instant application was filed on 12.06.2019 under Section 60(5) of the Code seeking exclusion of certain time period and extending the time of the CIR process beyond 180 days. When the application came up for hearing on 14.06.2019, the Bench pointed out that the number of days sought to be excluded have not been mentioned and the application was directed to be returned through the Registry. In compliance of the order dated 14.06.2019, the RP filed an affidavit on 04.07.2019. Para 4 of the said affidavit mentions 278 days to be excluded for the purpose of calculating maximum period for CIR process.

7. It is pertinent to mention that the applicant is seeking exclusion of time spent in deciding CA-768(PB)/2018. The said application was disposed of vide order dated 25.01.2019 and the instant application has only been filed on 12.06.2019. The statutory period of 180 days came to an end on 20.09.2018. It has been

emphasised time and again by the various judgments of the Hon'ble Supreme Court, the Appellate Tribunal and the Adjudicating Authority- NCLT that time is the essence of the Code. The Code has laudable objectives. Its preamble states: "An Act to consolidate and amend the law relating to re-organisation and insolvency resolution of corporate persons.....in a time bound manner for maximisation of value of assets..... to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.....". These objectives can be achieved only if the insolvency resolution and other transactions under the Code are accomplished in a time bound manner. In fact, the 'time bound' feature of the Code distinguishes it from the erstwhile legislations in the matter. The Code permits 180 days for completion of corporate insolvency resolution process (CIRP). It permits one time extension up to 90 days by the NCLT in deserving cases. However, insolvency resolutions of all corporate persons may not entail the same level of complexity and some could be resolved earlier.

8. The facts noted in the preceding paras show that a period of more than 270 days has already expired on 20.12.2018. The CoC has already passed a resolution on 01.08.2018 for liquidation of the Corporate Debtor. Accordingly, we invoke the provisions of Section 33(1)(a) and pass an order liquidating the Corporate Debtor in the manner as laid down in Chapter III of the IBC. The Liquidator may proceed with the liquidation process in the manner as laid down in the Code.

9. The Resolution Professional has not submitted its written consent to be appointed as Liquidator in the present case and therefore as per Section 34(4)(c) of the Code we appoint Mr. Sukhdev Madnani as a Liquidator.

10. As a result the instant application for extension/exclusion of time is dismissed and we order liquidation of the corporate debtor, namely Shilpi Cable Private 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. Sukhdev Madnani, Insolvency Professional holding registration no. IBBI/ IPA-001/IP-P01499/2018-19/12392 is appointed as Liquidator in terms of Section 34(4)(c) of the Code;

b. Mr. Sukhdev Madnani 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 a

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 terms of the provisions of Section-35(I) of the Code read with relevant Rules & Regulations.

g. The liquidator shall also follow up the pending company applications and file its response for disposal of pending CAs during the process of liquidation.

h. 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.

i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

j. C.A. 1151(PB)/2019 filed in IB 461(PB)/2017 is disposed of in the aforesaid terms.