(2021) 11 NCLT CK 0003

In the National Company Law Tribunal

Case No : IA No. 154 Of 2021 in CP No. 278/IBC/NCLT/MB/2017

Damini Shipping Pvt. Ltd APPELLANT

Vs

Ispat Energy Limited RESPONDENT

Date of Decision : 01-11-2021

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 9, 54

Citation : (2021) 11 NCLT CK 0003

Hon'ble Judges : Ashok Kumar Borah, (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Jinal Shah

Final Decision : Alllowed

Judgement

Shyam Babu Gautam, Member Technical

1. This is an Application by the Liquidator of Ispat Energy Limited (hereinafter referred to as the Corporate Debtor) under Sections 54 of the Insolvency & Bankruptcy Code, 2016 (the Code) seeking dissolution of the Corporate Debtor.

2. The Company Petition over numbered under Section 9 of the Code seeking Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was admitted by this Tribunal by order dated 25.04.2018, where in the Applicant was appointed as the Interim Resolution Professional (IRP).

3. The IRP published the public announcement for submitting the claim in the Free Press Journal (English) and Navshakti (Marathi) on 04.05.2018. The IRP intimated the last date for submission of claims on 16.05.2018. The IRP received claims from JSW Steel Limited, The Indure Private Limited (TIPL) and Damani Shipping Pvt. Ltd (DSPL).

A summary of the aforesaid claims received and accepted by the IRP are produced herein below :-

Sr. No .

Name of the Creditor

Category of Creditor

Amount claimed

Amount Admitted

Amount Rejected

Security Interest

1 .

JSW Steel Ltd.

Financial

42,05,61,500

42,05,61,500

NIL

NIL

2.

The Indure Pvt. Ltd.

Operational

117,65,81,106

117,65,81,106

NIL

NIL

3 .

Damani Shipping Pvt. Ltd.

Operational

50,24,512

50,24,512

NIL

NIL

Total

160,21,67,118

160,21,67,118

NIL

4. The IRP constituted the Committee of Creditors (CoC) on 05.06.2018. The first meeting of the CoC was fisrt scheduled on

16.06.2018. Later on the first meeting of the CoC was rescheduled on 26.06.2018 and the IRP was appointed as the Resolution Professional (RP). In the said meeting, M/s Rakesh Narula & Co. and Kanti Karamsey & Co. Advisors LLP were appointed as the registered valuers of the Corporate Debtor.

5. The second CoC meeting was held on 12.07.2018. in the said meeting CoC with 100% voting agreed to liquidate the Corporate Debtor. The Applicant submits that the Financial documents of the Corporate Debtor as on 25.04.2018 were placed before the CoC. The members of the CoC deliberated and observed the following :-

a) The net worth of the Corporate Debtor as per the provisional balance sheet as on 25.04.2018 stood at a negative loss of Rs. 34,61,52,410/- (Rupees Thirty Four Crores Sixty One lakh Fifty Two Thousand Four Hundred and Ten).

b) The Corporate Debtor did not possess any substantial assets and did not have any active business operations in existence since the sole purpose of incorporating the Corporate Debtor was for the commissioning of the power plants which never took off and was subsequently scrapped. The Directors of the Company informed the RP that there were no operations in the Company since last 4-5 years and all the employees had resigned.

c) A provision for contingent liability being claims against the Corporate Debtor relating to suppliers claims amounted to Rs. 132.71 Crores. The claims of the Income tax Department amounted to Rs. 142 Crores.

d) The Corporate Debtor had failed to file their Annual Returns for the Financial Year 2016-17, 2017-18.

e) As preparing the Information Memorandum and issuing Expression of Interest by way of public advertisements would incur cost to the debt-ridden Company, the CoC members decided to liquidate the Corporate Debtor.

6. The valuation report prepared by the registered valuers stated that the fair value and liquidation value of the Corporate Debtor as on 25.04.2018 was Rs. 1,77,058 (Rupees One Lakh Seventy-Seven Thousand and Fifty-Eight Only).

7. The Applicant had received a letter dated 31.08.2018 from TIPL informing that they wished to withdraw their claims filed in Form-B with the RP. Hence, TIPL had no claims against the Corporate Debtor. Further all proceedings filed by TIPL against the Corporate Debtor before the Hon'ble Bombay High Court, were withdrawn. In the third CoC meeting held on 04.09.2018 the said withdrawal was confirmed and also further the IA No. 702 of 2018 filed by TIPL pending before this Tribunal was also withdrawn.

8. Thereafter, pursuant to the third CoC meeting, the summary of the revised claims accepted by the RP are produced herein below :-

Name of the Creditor

Category of Creditor

Amount claimed

Amount Admitted

Amount Rejected

Security Interest

1 .

JSW Steel Ltd.

Financial

42,05,61,500

42,05,61,500

NIL

NIL

2.

Damani Shipping Pvt. Ltd.

Operational

50,24,512

50,24,512

NIL

NIL

Total

42,55,86,012

42,55,86,012

NIL

9. In the Third CoC meeting, the RP proposed to ratify the liquidation resolution passed in the second CoC meeting. In the light of above IA No. 1217 of 2019 was filed for liquidation of the Corporate Debtor. On 14.11.2018, an Order for liquidation was allowed and the Applicant was directed to act as the liquidator.

10. Thereafter, public announcement in two newspapers, namely Free Press

Journal (English) and Navshakti (Marathi) Newspapers were published for invitation of claim on 23.11.2018. The last date for submission of claims by the stakeholders was 19.12.2018.

11. The Applicant states that the Corporate Debtor does not have any immovable property. The only movable property was in the form of cash lying with the Hon'ble High Court of Bombay and other Bank accounts.

12. The Applicants submits that the Corporate Debtor along with the Indure Private Limited presented the draft Minutes of the Order before the Hon'ble Bombay High Court in Commercial Appeal Nos. 14 and 15 of 2016 and 117 of 2017. The Hon'ble Bombay High Court was pleased to pass an Order dated 04.12.2018 disposing the matters in terms of the minutes of the order. The said minutes of the order stated that an amount of Rs. 39,00,000/- plus interest was lying with the Learned Prothonotary and Senior Master towards possible MVAT liability and was handed over to the Liquidator in respect of the Appellant.

13. Thereafter, during the withdrawal of the said amount, a further amount of Rs. 12,00,000/- with interest was lying in the account of the Learned Prothonotary and Senior Master, Bombay High Court, which was deposited by the parties in the Arbitration Petition No. 1121 of 2013.

14. Subsequently the Liquidator moved to the Hon'ble High Court of Bombay for necessary orders for withdrawal of the amount of Rs. 12,00,000/- with interest. Accordingly, vide order dated 21.01.2019 passed by the Hon'ble High Court of Bombay, the Learned Prothonotary and Senior Master, was directed to pass appropriate orders on receiving the Application for withdrawal of Rs. 12,00,000/-. Pursuant to the aforesaid order, the Liquidator attempted to withdraw the amount of Rs. 12,00,000/- with interest. The said amount could not be withdrawn due to discrepancy in the amounts lying with the office of the Learned Prothonotary and Senior Master, Hon'ble High Court of Bombay.

15. Thereafter, vide order dated 17.09.2019, the Learned Prothonotary and Senior Master, Hon'ble High Court of Bombay passed an Order granting the certified copies of the ledger account maintained by the Learned Prothonotary and Senior Master. Upon procuring the said certified copies of the ledger accounts, the Liquidator learned that an amount of Rs. 12,56,746/- was lying with the Learned Prothonotary and Senior Master, Hon'ble High Court of Bombay. Thereafter the liquidator took steps to release the funds so the liquidation process could be completed.

16. The liquidator again filed an Application in the Hon'ble High Court of Bombay, for seeking withdrawal of the said amount. However, before the liquidator could submit the Application for withdrawal, a lockdown in the State of Maharashtra was declared and the same lockdown was extended by the Government from time to time. In view of the above, the liquidator was unable to physically submit the withdrawal Application.

17. Thereafter, in October, 2020 after the partial resumption of the physical working of the Hon'ble High Court of Bombay, the liquidator was able to submit Application for withdrawal and on 28.10.2020, the Hon'ble High Court of Bombay, passed an Order releasing the an amount of Rs. 12,56,746/- in favour of the liquidator.

18. Further due to procedural exigencies and inordinate delay in withdrawal of Rs. 12,56,746/-, the liquidator was unable to liquidate the assets of the Corporate Debtor Company.

19. Further, the liquidator completed the process of liquidation within the prescribed timeline of 2 years form the date of the Order of liquidation. The final report of the liquidator and the compliance certificate in form H for the dissolution of the Corporate Debtor is also on record and forming part of the Application.

FINDINGS

20. On examining the submissions made by the Counsel appearing for the Applicant this Bench directed the Liquidator to file an Affidavit to the question posed by this Bench as to the distribution of the amount released by the Learned Prothonotary and Senior Master, Hon'ble High Court of Bombay an amount of Rs. 39,00,000/- plus interest aggregating to Rs. 45,51,020/- released to the liquidators current account on 29.01.2019 and an amount of Rs. 12,56,746/- further aggregated to Rs. 16,55,953.46/- released to the liquidators current account on or around 28.10.2020 to which the liquidator filed an Additional Affidavit stating the costs incurred for the CIRP of the Corporate Debtor Company and partly towards the costs incurred for liquidation of the Corporate Debtor Company. The details of which are as under :-

Distribution of Rs. 45,51,020/- :-

Date

Particulars

Whether approved by the CoC

Amount (Rs.)

01.03.2019

Paid the Bank Charges for Cheque Book

NA

118

16.03.2019

Paid to Bulls Eye Communications, the Advertising Agency, for publication of Public Notices during the CIRP

period.

Approved by the COC during the first meeting of CoC held on 26.06.2018

50,084

18.03.2019

Paid to Kanti Karamsey & Co. Advisors LLP for the valuation services availed by the RP during

the CIRP

Approved by the COC during the first meeting of CoC held on 26.06.2018

1,51,200

19.03.2019

Paid to Rakesh Narula & CO. for the valuation services availed by the RP during

the CIRP

Approved by the COC during the first meeting of CoC held on

26.06.2018

1,62,000

26.03.2019

Paid to Juris Corp, Advocates

and Solicitors for

Approved by the COC

during the first

23,59,215

the legal services availed by the RP during the CIRP

period.

meeting of CoC held on 26.06.2018

26.03.2019

Paid to self, in my capacity as the IRP and RP during the CIRP

Approved by the COC during the second meeting of the COC held on

12.07.2018

12,51,000

06.04.2019

Paid towards the TDS payment

NA

4,07,363

Paid to M/s P C Ghadiali and Co. LLP, Chartered Accountants, towards the Audit fees for 2017-18 during the Liquidation

period.

NA

29,500

10.11.2020

Paid towards the TDS payment

NA

28,326

12.11.2020

Paid to R T D and Associates, Chartered Accounts, for accounting related services availed by the Liquidator during the Liquidation

period.

NA

23,600

13.11.2020

Paid to M/s P C Ghadiali and Co. LLP, Chartered Accountants, towards the Audit fees for 2018-19 during the Liquidation

period.

NA

25,750

16.11.2020

Paid towards TDS payment

NA

3,750

11.12.2020

M/s P C Ghadiali and Co. LLP, Chartered Accountants, for auditing the ledger entries of the Liquidator during the Liquidation

period

NA

5,525

14.12.2020

Paid to Juris Corp, Advocates and Solicitors for the legal services availed by the RP during the CIRP

period.

Approved by the CoC during first meeting

held on

26.06.2018

53,589

Total

45,51,020

Distribution of Rs. 16,55,953.46/-

Date

Particulars

Whether approved by

the COC

Amount (Rs.)

14.12.2020

Paid to Juris Corp, Advocates and Solicitors for the legal

services availed by the RP

during the

CIRP period.

Approved by the CoC during first meeting held on

26.06.2018

1,00,198.73

14.12.2020

Paid to Juris Corp, Advocates and Solicitors for the legal

services availed by the

Liquidator during the Liquidation

period.

NA

6,65,680.88

14.12.2020

Paid to self, in my capacity as the RP during the CIRP

Approved by the COC during the second meeting of the COC held on

12.07.2018

1,95,729.08

Paid towards out of pocket expenses

incurred during

NA

9,413

the Liquidation

period.

14.12.2020

Paid to self, in my capacity as the Liquidator during the Liquidation

period.

NA

6,84,500.21

16.12.2020

Paid towards TDS payment

NA

431.56

Total

16,55,953.46

21. It is further seen that from the documents annexed to the Application, it appears that the affairs of the Corporate Debtor have been wound up and its assets have been completely liquidated. We are satisfied from the documents on record that the liquidation is not with intent to defraud any person. The bank account for the purpose of liquidation has been closed. The above facts and circumstances indicate that due process of liquidation, as per extant provisions and in the manner indicated in the Code and Regulations, have been followed by the Liquidator to liquidate the assets of Company and the realized amounts have also been distributed among the respective claimants. The liquidation process has been duly completed as per the provisions of the Code. Thus, it would be just and equitable to this Bench to Order Dissolution of the Corporate Debtor. No party is going to be adversely affected thereby. In view of the above the Corporate Debtor deserves to be dissolved. Hence ordered.

ORDER

The Application be and the same is allowed as follows.

i. Ispat Energy Limited, the Corporate Debtor, is hereby dissolved with immediate effect.

ii. The Registry is directed to forward a certified copy of this order to the concerned Registrar of Companies, within a period of seven days for necessary action.

iii. The Liquidator is discharged.

iv. CP No. 278/IBC/NCLT/MB/MAH/2017 stands closed and file is consigned to Record.