(2022) 02 NCLT CK 0101

In the National Company Law Tribunal

Case No : I.A. (IB) No. 94/KB/2022 in C.P (IB) No. 571/KB/2017

?Edelwiess Asset Reconstruction Co. Ltd APPELLANT

Vs

Shree Coke Manufacturing Co. Ltd RESPONDENT

Date of Decision : 28-02-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 43, 45, 45(1), 50, 53, 54(2)
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 — Regulation 15, 34(4), 35, 45(1), 45(3)

Citation : (2022) 02 NCLT CK 0101

Hon'ble Judges : Rajasekhar V.K., Member J;Balraj Joshi, Member, T

Bench : Division Bench

Advocate : Anil Agarwal,

Final Decision : Disposed Of

Judgement

Rajasekhar V.K., Member (Judicial)

1. This court convened via video conferencing.

2. This is an application filed under section 54(2) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Process Regulations')by the Liquidator of Shree Coke Manufacturing Company Private Limited [CIN: U23101WB2010PTC153439] ('Corporate Debtor') praying for dissolution of the Corporate Debtor.

3. The Adjudicating Authority vide order dated 22 December, 2017 Pages 64 – 77 of the I.A., admitted the Corporate Debtor under Corporate Insolvency Resolution Process ('CIRP') appointing Mr. Anil Agarwal as Interim Resolution Professional. Subsequently, his appointment was confirmed as Resolution Professional. Since no prospective Resolution Applicant could be found, the sole member of Committee of Creditors ('CoC') passed an agenda to liquidate the Corporate Debtor. Subsequently, on 20 July, 2018 an order for liquidation was passed by

this Adjudicating Authority and Mr. Anil Agarwal was appointed as the Liquidator. Pages 84 – 91 of the I.A.

4. Public announcement of commencement of liquidation was made in Form 'B' in 'Financial Express'(English) and 'Ekdin'(Bengali) on 25 July, 2019 inviting proof of claims from the stakeholders of the Corporate Debtor in the specified forms and Form 'B' was also uploaded on the IBBI website.

5. The Liquidator has opened a new bank account in the name of Corporate Debtor i.e., Shree Coke Manufacturing Company Private Limited Liquidation Account [Account number: - 50462168614] as per regulation 41 of the Liquidation Process Regulations, with Allahabad Bank, Main Branch, Kolkata.

6. As per regulation 35 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator had appointed registered valuers, namely, Engineers and Valuers Collaborated and Moonmoon Gupta. The average liquidated value arrived at by the valuers was Rs.5.73 crores. Pages 95 – 118 of the I.A. Transaction Auditors were also appointed by the Liquidator vide letter dated 07 January, 2020 Pages 119 – 120 of the I.A. to conduct forensic audit under section 43,45 and 50 of the Code for two years preceding the CIRP commencement date.

7. Pursuant to the publication in Form-B, the Liquidator had received two claims, one from the financial stakeholder i.e., Edelweiss Asset Reconstruction Company Limited on 20 August, 2018 and another from Income Tax Department on 28 September, 2018.

8. Further, the Liquidator had also received a claim form one operational creditor, Wellman Carbo Metalicks India Limited, on 17 September, 2019. Since the claim was filed after a lapse of one year, the Liquidator rejected the claim. In response to such rejection, the Operational Creditor had filed an application before this Adjudicating Authority. On 15 October, 2019 the Adjudicating Authority directed the Liquidator to consider the claim. Subsequently, the claim by Wellman Carbo Metalicks India Limited was verified and admitted. The list of modified stakeholders as on 15 October, 2019 is at pages 178 – 181 of the application.

9. The publications for sale of assets through e-auction were published by the Liquidator on 25 September, 2018 and 11 January, 2019. On receiving no response by the prospective buyers, the Liquidator published the notice again on 11 February, 2019 in 'Financial Express' (English) and 'Ekdin' (Bengali). Pages 182 – 189 of the I.A. Pursuant to the sale notice published on 11 February, 2019, the Liquidator received communication from the interested buyers.

10. The Liquidator had appointed Auction Tiger to conduct the e-auction for the sale of the assets of the Corporate Debtor on 01 March, 2019. Mr. Sanjay Singh Rathod, was declared as the H1 bidder and the bidding was closed for Rs.5.99 Crores. Thereafter, the Liquidator issued the letter of acceptance of offer dated 06 March, 2019 to Mr. Sanjay Singh Rathod. Upon receipt of total sale price of Rs.5.99 Crores, a certificate of Sale dated 26 March, 2019 was executed between

the Liquidator and Mr. Sanjay Singh Rathod. Pages 190 – 199 of the I.A

11. It is further submitted that the Liquidator has distributed the entire amount in accordance with section 53 of the Code. The distribution of liquidation proceeds was as follows:

SI. No.

Particulars

Amount Paid

(a)

Insolvency and Liquidation Expenses

Rs.27,30,071/-

(b)

Debts owed to a Secured Creditor in the event

such   Secured   Creditor   has   relinquished

security in the manner set out in section 52

Rs.5,71,69,929/-

Total

Rs.5,99,00,000/-

12. In compliance of regulation 15 of the Liquidation Process Regulations, the Liquidator has filed nine progress reports for each quarter since the order of commencement of Liquidation Process. The Preliminary Report as per regulation 13 of the Liquidation Process Regulations and Asset Memorandum as per regulation 34(4) of the Liquidation Process Regulations was filed on 03 October, 2018. The final report disclosing all the material facts and information with respect to the liquidation process of the Corporate Debtor is at page 36 to 288 of the I.A.

13. As per mandatory requirement under regulation 45(3) of the Liquidation Process Regulations, the Liquidator has prepared a compliance certificate under prescribed ‘Form H’ and the same is annexed as Annexure – ‘E’ to the application. Pages 295 – 302 of the I.A

14. The affairs of the Corporate Debtor were completely liquidated after realising the assets and distributing the amount to the stakeholders after complying with the provision of section 53 of the Code in the order of priority as mandated under the Code. Details of realization and distribution have been specifically mentioned in Form-H and Final Report. The Account of Liquidation in terms of regulation 45(1) of the Liquidation Process Regulations and details thereof have been attached in the Final Report.

15. Further, as decided by the Liquidator in Second Consultation Meeting dated 23rdDecember, 2020, the investments in equity instruments which are shown in the books of account of the Corporate Debtor, in the companies, namely, Tirupati Fuels Private Limited and Balaji Coke Industry Private Limited amounting to Rs.1,00,02,000/- (Rupees One Crore Two Thousand only) shall also be handed over to Shree Coke Manufacturing Company Private Limited Pages 256 of the I.A.

16. Upon hearing the Liquidator and on perusal of the documents annexed to the application, it appears that affairs of the Corporate Debtor have been completely wound up and its assets have been completely liquidated. The bank statements as on 20.10.2021 reflects that there is no balance in the bank account.

17. In view of the above facts and circumstances, there is no impediment to the Corporate Debtor being dissolved, and it is ordered accordingly.

18. The Liquidator is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

19. The Liquidator shall stand discharged from his responsibilities, subject to procedural compliances.

20. I.A. (IB) No. 94/KB/2022 and CP (IB) No. 571/KB/2017 shall stand disposed of in accordance with the above directions.

21. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.

22. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

23. File be consigned to the record

