
(2022) 10 NCLT CK 0001

In the National Company Law Tribunal

Case No : IA No. 1089/MB IV/2021 In CP (IB) No.3269/MB IV/2019

Equilink Capital Management Services Limited

APPELLANT

Vs

Kotak Urja Private Limited

RESPONDENT

Date of Decision : 03-10-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 12(3), 30(6), 33(1), 33(1)(a), 33(2), 34(1), 34(4), 52
Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016 — Regulation 4(2)(b), 6(3), 39D

Citation : (2022) 10 NCLT CK 0001

Hon'ble Judges : Kishore Vemulapalli, Member, (J); Manoj Kumar Dubey, Member (T)

Bench : Division Bench

Advocate : Shaila Taware, Devarajan Raman, Pulkit Sharma, Harsh Kesharia

Final Decision : Allowed

Judgement

Kishore Vemulapalli, Member (Judicial)

1. The above application is filed by Mr. Devarajan Raman Applicant/ Resolution Professional, seeking liquidation of Kotak Urja Private Limited, (hereinafter referred as Corporate Debtor) under Section 33(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code").

2. The brief facts of the Application are as follows:

a) That this Tribunal vide an order dated 18.11.2019 in Company Petition No. 3269/MB/C-IV/2019 admitted the petition under Section 9 of the Code, filed by Equilink Capital Management Services Limited (hereinafter referred to as the "Operational Creditor") and Corporate Insolvency Resolution Process (CIRP) was initiated against Kotak Urja Private Limited, (hereinafter called as the "Corporate Debtor"). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order.

b) The Applicant Submits that, the IRP had made Public announcements through Form G dated 03.08.2020 in two Local newspapers namely Freepress Journal and Business Standard (English Newspaper) and Navshakti (Regional language) inviting the claims from the Creditors of the Corporate Debtor as per the Regulation 6(3) of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016. List of Creditors were filed with this Tribunal on 09.12.2019. report constituting CoC filed on 11.12.2019.

c) The EOI issued on 31.01.2020 had elicited interest from 3 prospective Resolution Applicants before the breakout of the pandemic and the prospective Resolution Applicants have since then deferred their plans.

d) The 7th CoC meeting was held on 04.01.2021 and it was resolved to appoint Mr. Devarajan Raman as RP and adjourned for the other item on the approval of liquidation and approval of CIRP expenses as SBI requested time to take internal approvals.

e) Thereafter, the adjourned meeting was held on 17.03.2021 and it was resolved to liquidate the Corporate Debtor. However, the Resolution of appointment of Applicant, despite having consented to act as Liquidator as per section 34(1) of the Code was not approved with CoC members having vote share of 88.65% voting against the Resolution.

f) The CoC proposed Mr. M. Suresh Kumar for appointment as Liquidator of the Corporate Debtor on terms and conditions as approved by SBI. The Resolution was put to vote and approved with a vote share of 88.65%.

g) The CIRP has ended as per the proviso to section 12(3) of the Code on 21st December, 2020, and the Corporate Debtor has to be liquidated as per the provision of section 33 (2) of the Code r/w Regulation No.39D of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016.

h) In the 7th meeting held on 04.01.2021 the COC members unanimously agreed and decided to go for Liquidation. The Resolution is as under:

"Resolved that as per Section 33 (1) (a) of the Insolvency & Bankruptcy Code, 2016, as no Resolutions Plans have been received under section 30 (6), within the maximum period permitted for completion of CIRP, the liquidation of the Corporate Debtor being inevitable, be and is hereby approved Resolved further that Mr. Devarajan Raman, Resolution Professional has consented to act as Liquidator as per Section 34(1) of the Code and has not incurred any disqualification under section 34(4) is hereby recommended for appointment as Liquidator.

Resolved Further that the Resolution Professional be and is hereby authorised to file the Liquidation Application before the Hon'ble NCLT, Mumbai and to attend to matters incidental or connected thereto Resolved further that an amount of Rs.60,000/- is approved as fees payable to the Lawyer for drafting, pleading and

obtaining the order of liquidation from the Adjudicating Authority.”

The provision of section 33(2) of IBC,2016 states that: -

(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 1[approved by not less than sixty-six per cent. 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.]

The resolution was passed with 88.64% majority of the COC members which is more than the requisite percentage that is 66% of the voting as prescribed u/s 33(2) of IBC.

i) The Applicant submits that, the 7th Adjourned COC meeting held on 17.03.2021 has decided unanimously and resolved to propose Mr. M. Suresh Kumar, Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P00110/2017-18/10217 as Liquidator to conduct Liquidation process of Kotak Urja Private Limited without giving reason for change of RP as Liquidator and accordingly following resolution was passed:

“Resolution 4

Resolved that Mr. M. Suresh Kumar, Insolvency Resolution Professional with Registration No. IBBI/IPA-001/IP-P00110/2017-18/10217 be and is hereby approved for appointment as Liquidator of the Corporate Debtor Kotakurja Private Limited on terms and conditions as approved by State Bank of India.”

The said resolution was passed with 88.64% majority of the COC Members.

ORDER

3. IA No. 1089/MB-IV/2021 filed by Mr. Devarajan Raman, Applicant for the Liquidation of Kotak Urja Private Limited is Allowed.

4. Mr. Amir Arsiwala, Ld. Counsel appeared on behalf CoC and stated that the CoC has resolved for change of RP as the Liquidator in the matter with 88.64% voting. This Bench is of view that there are no specific provisions for the change of RP as the Liquidator nor the CoC has given any reason for change of RP as Liquidator in the matter. Hence, the resolution for change of RP as Liquidator cannot be considered by this Bench and the prayer of the CoC for change of RP as Liquidator is hereby rejected.

5. In view of the above observations, Mr. Devarajan Raman, Resolution

Professional having Registration No. IBBI/IPA-002/IP-N00323/2017-18/10928 is appointed as the Liquidator to conduct Liquidation process of Kotak Urja Private Limited as provided under Section 34(1) of the Code.

6. That the Liquidator would be entitled to the fees as provided in Regulation 4(2) (b) of the IBBI (Liquidation Process Regulations), 2016 to conduct the liquidation proceedings.

7. The Liquidator appointed in this case to initiate Liquidation Process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

8. The Liquidator appointed under section 34(1) of the Code, will have all 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 with the Liquidator.

9. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

10. That the personnel of the Corporate Debtor are directed to extend all Co-operation to the Liquidator as required by him in managing the Liquidation Process of the Corporate Debtor.

11. That on having Liquidation Process initiated, 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.

12. This Liquidation Order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the Liquidation Process by the Liquidator. With the above directions, the IA No. 1089/MB-IV/2021 filed under section 33(1) by the Applicant is hereby Allowed and Disposed of.