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(2023) 09 NCLT CK 0040

In the National Company Law Tribunal

Case No : IA 49/MB-V/2023 in CP(IB) 3147/MB-V/2019

Eroma Petrochemicals Private Limited Vs Sanjay Insecticides Private Limited ?

Date of Decision : 27-09-2023

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 9, 33, 52, 53, 54

Citation : (2023) 09 NCLT CK 0040

Hon'ble Judges : Reeta Kohli, Member (J);Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Manoj Mishra, Abhishek Pagare

Final Decision : Disposed Of

Judgement

Reeta Kohli, Member (Judicial)

1. It is an Application filed by Rakesh Kumar Relan, the Liquidator seeking an Order under Section 54 for granting "Dissolution" of Sanjay Insecticides Private Limited, the Corporate Debtor.

2. The Operational Creditor filed a Petition under Section 9 of the Code against the Corporate Debtor for initiation of CIRP against the Corporate Debtor. The Adjudicating Authority vide its order dated 14.11.2019 directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

3. Brief submissions of the Applicant:

a) The Applicant states that since the Corporate Debtor were shut down from the last four years with no operation revenue/employees/whereabouts of the suspended directors, the CoC resolved to apply for Liquidation. Therefore, an Application under Section 33 of the Code was filed seeking to initiate Liquidation against the Corporate Debtor.

b) The Applicant submits that Liquidation under Section 33 of the code commenced by this Tribunal vide Order dated 26.02.2021 in IA 1202 of 2020, virtue of which Mr. Rakesh Kumar Relan i.e. the Applicant was appointed as the

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Liquidator of the Corporate Debtor.

c) The Applicant submits that Pursuant to the Liquidation Order dated 26.02.2021, the Applicant made a public announcement under Form B on 16.03.2021 in English Newspaper, Indian Express and Marathi Newspaper, Loksatta, inviting claims from the Stakeholders.

d) That the Liquidator intimated about the commencement of Liquidation and his appointment as Liquidator of the Corporate Debtor to the Registrar of Companies (Mumbai) on 26.03.2021, Regional office of Maharashtra (Employee State Insurance Corporation) and the Suspended Directors on 26.03.2021.

e) The Applicant submits that on 30.03.2021, the Applicant vide a Letter (which returned undelivered) and an Email addressed to the Suspended Directors of the Corporate Debtor requested for the handover of all available documents and information to the Applicant.

f) The Applicant submits that in the meanwhile, the Applicant received a Claim of Rs.48,56,207/- (Rupees Forty-Eight Lac Fifty-Six Thousand Two Hundred and Seven Only) from an Operational Creditor, i.e., Eroma Petrochemicals and a claim of Rs. 8,56,33,455/- (Rupees Eight Crores Fifty-Six Lacs Thirty- Three Thousand Four Hundred and Fifty-Five Only) from a Financial Creditor, i.e., State Bank of India. These claims were accepted by the Liquidator in compliance with Regulation 30 of IBBI (Liquidation Process) Regulations, 2016. Thus, the Stakeholders Consultation Committee ("SCC") was constituted on 11.05.2021 with the following members:

Class of Stakeholders

Number of Representative

Name of Stakeholders

Admitted claim amount in Rs.

Secured Financial Creditors who have relinquished their security interests under Section 52

1

State Bank of India

8,56,33,455/-

Operational Creditors other than Workmen, Employees and Governments

1

Eroma Petrochemicals Private Limited

48,56,207/-

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g) The Applicant submits that in accordance with Regulation 31 of IBBI (Liquidation Process) Regulations, 2016, the Applicant submitted the List of Stakeholders on 24.05.2021 before this Tribunal and in compliance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Applicant filed the Preliminary Report and thereafter, the Asset Memorandum before this Tribunal on 24.05.2021.

h) The Applicant submits that in accordance with Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016, the Applicant opened a bank account having A/c No. 40207609271 in the name of Sanjay Insecticides Pvt Ltd in Liquidation on 03.06.2021.

i) The Applicant submits that it has come to the knowledge of the Applicant that the Corporate Debtor is in possession of an immovable property situated at Gut No. 206, Village Panshendra within GrampachayLimit, Panshendra Tq & Dist Jalan and some Plant & Machinery. In compliance with Regulation 35 of IBBI (Liquidation Process) Regulations, 2016, on 01.05.2021, the Applicant appointed valuers for carrying out the valuation of Land & Building, Plant & Machinery including furniture and fixtures at Gut No. 206, Village Panshendra within Grampanchayat Limit, Panshendra Tq & Dist Jalan.

j) The Applicant submits that since there was no reliable information pertaining to trade receivables, loan and advances issued, bank balances and security deposits other than the latest audited balance sheet as on 31.03.2016, which concluded that these were time barred debts, the Applicant could not appoint any financial valuers. Further, due to the non- availability of income tax login credentials, no opinion could be reliably drawn on the TDS receivables balances. However, no information/ documents were provided by the Suspended Directors, despite the multiple reminder mails on 11.09.2021, 14.09.2021, 17.09.2021, 18.09.2021 and 22.09.2021. Thus, the Applicant preferred to file an Application bearing IA No. 2258/ 2022 u/s 19(2) of the Code against the Suspended Directors, which is presently pending and sub- judice till date.

k) The Applicant submits that the department of Goods and Service Tax, Jalnar submitted its claim of Rs.1,25,83,548/- (Rupees One Crore Twenty-Five Lacs Eighty- Three Thousand Five Hundred and Forty-Eight Only) to the Applicant.

l) The Applicant submits that thereafter the Applicant had filed an Application bearing IA No. 1973/ 2021 seeking exclusion from 01.04.2021 to 30.06.2021. This Tribunal vide order dated 15.11.2021, allowed the exclusion of account of Lockdown.

m) The Applicant submits that in the meanwhile, the Applicant published the 1" E-Auction Notice on 30.07.2021 in India Express and Loksatta (Maharashtra Edition) proposing the sale of the Physical Assets of the Corporate Debtor including the Land & Building and the Plant & Machinery. Thereafter, the E-Auction was held on 11.08.2021, wherein M/s RK Babu Trading Private Limited ("the Winning Bidder") emerged as the successful bidder. On 10.09.2021 i.e.,

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within 30 days from the date of the E-auction, the winning Bidder deposited the entire sale consideration of Rs.2,24,86,546/- (inclusive of GST of Rs.2,86,546/-).

n) The Applicant submits that in accordance with the Notification No. IBBI/2022-23/GN/REG094, dated 16th September, 2022 thereby amending the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. And the amended Regulation 31A wherein SCC shall comprise of all the creditors and as per Regulation 31A (2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim. Accordingly, the constitution of SCC shall be as follows:

Sr.

No.

Name of SCC Member

Category

Voting Share

1.

State Bank of India

Financial Creditor

94.63%

2.

Eroma Petrochemical

Private Limited

Operational

Creditor

5.37%

o) The Applicant submits that the Applicant has got a total collection of Rs.2,49,42,546/- (Rs. Two Crores Forty-Nine Lacs Forty-Two Thousand Five Hundred and Forty -Six Only), which comprises of an infusion of Rs. 3,86,000/- (Rs. Three Lacs and Eighty-Six Thousand Only) as contribution towards Liquidation Cost, the EMD Amount of Rs.20,70,000/- (Rs. Twenty Lacs and Seventy Thousand Only), proceeds of Rs.2,22,00,000/- (Rs. Two Crores and Twenty-Two Lacs Only) received from sale of fixed assets and amount of Rs.2,86,546/- (Rs. Two Lacs Eighty-Six Thousand Five Hundred and Forty-Six Only) paid towards GST on sale of fixed assets.

p) The Applicant submits that the Applicant has distributed the funds as per the requirement of the Code. Entire funds of Rs.2,49,42,546/-has been distributed

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amongst the stakeholders in accordance with Section 53 of the code:

Sr.

no.

Particulars of Payment (for the

period from 03.06.2021 till 30.12.2022)

Amount in Rs.

Repayment of CIRP Cost

6,43,706/-

1.

Repayment to SBI towards CIRP cost

4,88,756/-

2.

Repayment to Eroma towards CIRP cost

1,54,950/-

Liquidation cost

26,32,515/-

3.

Liquidation fee

15,95,934/-

4.

Publication Expenses

25,956/-

5.

Legal expenses

2,11,400/-

6.

Security Expenses

1,81,562/-

7.

Valuation

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1,41,678/-

8.

Interest on repayment of Liquidation cost

1,393/-

9.

TDS paid

26,187/-

10.

GST payment

3,09,586/-

11.

E-Auction charges

4,320/-

12.

Auditor Fee

36,499/-

13.

Expenses by Liquidator

16,400/-

14.

ROC filing fee

1,600/-

Distribution of the stakeholders

1,92,09,527/-

15.

State Bank of India

1,92,09,527/-

Other Payments

24,56,797.91

16.

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Repayment of contribution towards

Liquidation cost

3,86,000/-

17.

Bank charges

797.91

18.

Refund of EMD

20,70,000/-

Total Paid

2,49,42,545.91

Closing balance

0.09

q) The Applicant submits that since there is no balance and all the payment were cleared in the Bank Account, the Applicant has sent a request letter vide email dated 30.12.2022 for the closure of the Bank Account. Further, after completion of distribution, the Applicant sent a notice to the stakeholders by email on 28.12.2022 and convened the 3rd SCC meeting of the Corporate Debtor on 30.12.2022 wherein the SCC with 94.63% voting share assented to dissolution of the Corporate Debtor. The said resolution is as under:

"RESOLVED THAT the members of Stakeholders Consultation Committee be and hereby consents to file an application for dissolution of Sanjay Insecticides Private Limited under Regulation 45 (3) (b).

RESOLIVED FURTHER THAT Liquidator be and is hereby Authorised to file necessary application before Hon'ble NCLT and do such acts and deeds incidental to give effect to this resolution."

r) The Applicant states that the Applicant has obtained the certificate from Chartered Accountant certifying the receipt and payment of the amount during the period 03.06.2021 to 30.12.2022. The Applicant further states that the Applicant has till date filed eight progress reports with this Tribunal.

s) The Applicant submits that there are several applications still pending and sub judice before this Tribunal. Due to pendency and non-disposal of those Applications, the Liquidator had filed an IA 1449 of 2022 seeking exclusion of 196 days and another IA having Diary No. 2701938/07617/2022 seeking extension of 180 days which are presently pending before this Tribunal. The Applicant submits that since, the Applicant is proceeding with dissolution of the

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Corporate Debtor, the Applicant prays before this Tribunal that it may be pleased to allow the withdrawal of IA 2258 of 2021, IA 2702 of 2021 and IA 1553 of 2022 by rendering them infructuous. The Applicant further prays that the Tribunal may be pleased to allow IA 1449 of 2022 and the other IA having diary no. 2701938/07617/2022.

4. As per the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, vide Regulation No.14, it is prescribed as under:

"14. Any time after the preparation of Preliminary Report, if it appears to the liquidator that –

(a) The realizable properties of the corporate debtor are insufficient to cover the cost of liquidation process; and

(b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution."

5. In the light of the above an Application is moved for the "Dissolution of the Corporate Debtor".

6. For the purpose of pronouncement of Dissolution of a Corporate Debtor Section 54 of The Insolvency and Bankruptcy Code, 2016 reads as under:

"54. (1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under subsection (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

7. Thus, this is a fit case of a Corporate Debtor to be dissolved as prescribed under Section 54 of the Insolvency and Bankruptcy Code, 2016. Ordered accordingly. The Corporate Debtor stands 'Dissolved' from the date of this Order.

8. Since the Debtor Company stands Dissolved vide this order and no proceedings are now pending, therefore the Registry is directed that the case file be consigned to records.

9. Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law.

10. Accordingly, IA No. 49 of 2023 is hereby allowed and disposed of and CP IB No. 3147 of 2019 is hereby closed.

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