

(2023) 11 NCLT CK 0018

In the National Company Law Tribunal

Case No : IA. No. 1213/2022 In CP(IB)No. 4186/MB/C-II/2018

**Ganges Ink and Resins Private Limited Vs Sapphire Space Infracon
Private Limited ?**

Date of Decision : 30-11-2023

Acts Referred:

Citation : (2023) 11 NCLT CK 0018

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Aniruth Purusothaman

Final Decision : Allowed

Judgement

1. It is an application filed u/s 33 & 34 of the Insolvency & Bankruptcy Code, 2016 (Code) by Mr. Harish Kant Kaushik, Resolution Professional (RP) of Sapphire Space Infracon Private Limited seeking liquidation order based on the resolution passed by the CoC in its 8th meeting held on 02.08.2022

2. On perusal of this application, it appears that CP No. (IB)-4186 (MB)/2018 was admitted by this Tribunal on 06.04.2021 and the Mr. Ramesh Chand Kumawat was appointed as Interim Resolution Professional (IRP). The Applicant issued a public announcement inviting proof of claims and the same was published on the website of the IBBI on 08.04.2021 and in the newspapers Free Press Journal and Navakal on 08.04.2021.

3. In the 1st CoC meeting held on 05.05.2021, the IRP expressed his unwillingness to continue as Resolution Professional (RP). The same was put to vote and the CoC with 100% voting proposed to replace the IRP. In the 2nd CoC meeting held on 22.06.2021 the members of the CoC voted for the Applicant herein to be appointed as the Resolution Professional and vide Order dated 05.08.2021 passed by this Tribunal the IRP was replaced with the Applicant herein to function as the RP of the Corporate Debtor.

4. In the 3rd CoC meeting held on 16.09.2021, the Applicant apprised the members of the CoC that the last day of the CIRP was getting expired on

03.10.2021 and hence an extension of 90 days would be necessary along with an exclusion from the date of approval of the Resolution for replacement of the IRP i.e. 12.05.2021 till the appointment of the Applicant as the RP i.e. on 05.08.2021.

5. The members of the CoC by a voting of 100% approved the resolution authorizing the Applicant to file an Application for extension of 90 days and exclusion 12.05.2021 and 05.08.2021.

6. The members of the CoC in its 4th CoC meeting held on 24.09.2021 approved the agenda on 30.09.2021 for inviting Expression of Interest (EoI) from potential Resolution Applicants for Resolution Plan. Pursuant thereto the Applicant published Form G on 01.10.2021 and invited EoI and received two EoIs from eligible Prospective Resolution Applicants (PRAs) before the last date of 22.10.2021. Further, Information Memorandum was prepared by the Applicant pursuant to Regulation 36(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016.

7. The Applicant issued the Request for Resolution Plan dated 01.11.2021 as per the timelines in Form G and the last date for submission of the Resolution Plans was 01.12.2021. Further, as requested by the Prospective Resolution Applicants (PRAs) in the 6th CoC meeting held on 06.12.2021 the time for the extension of last date of submission of the Resolution Plan was extended by 15 days from the date of approval of the CoC.

8. In the 7th CoC meeting held on 05.01.2022, the Applicant apprised the members of the CoC about an application filed for extension of CIRP by 90 days and exclusion of 86 days. Further, the last date for submission of the Resolution Plans was 25.12.2021 and no Resolution Plan was received by the Applicant till 05.01.2022.

9. In the 8th CoC meeting held on 14.03.2022 the Applicant apprised the members of the CoC that the extension of the CIRP was granted by the Tribunal vide order dated 11.02.2022 and the last date of CIRP was 28.03.2022.

10. The Applicant prepared Information Memorandum dated 07.10.2021 and shared the draft of Non-Disclosure undertaking with the members. The audited accounts upto the Financial Year 2021 had been provided by the suspended director to the Applicant. However, files/documents/details related to homebuyers and record of the Corporate Debtor were awaited from the erstwhile management of the Corporate Debtor. The Applicant time and again sought for co-operation from the erstwhile directors for relevant records and data of accounting and books of accounts of the Corporate Debtor. The Applicant after constant follow up with the suspended management, received the audited accounts for the Financial Years 2020 and 2021 only on 14.03.2022 during the course of the 8th CoC meeting. Due to lack of information and delay, the timeline of the process of valuation of assets of the Corporate Debtor was stalled.

11. Hence, in the 8th CoC meeting held on 14.03.2022, keeping the CIR process

and timelines in view, the members of the CoC resolved to liquidate the Corporate Debtor.

12. Further in order to meet the liquidation costs as per the provisions of 39(B) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the members of the CoC in order for meeting the differential expenses between the estimated value of liquid assets and estimated liquidation cost, provided the plan for an amount of Rs. 9,62,000/- in the event an order for liquidation is passed.

13. The relevant extracts of the resolution passed in 8th CoC meeting held on 014.03.2022 are as follows:

"RESOLVED THAT the consent of the members of Committee of Creditors be and is hereby accorded for Liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016.

RESOLVED FURTHER THAT Harish Kant Kaushik, be and is hereby authorize to make necessary application for Liquidation of the Corporate Debtor under section 33 of the Insolvency and Bankruptcy Code, 2016 in the matter of Sapphire Space Infracon Private Limited and to do all such act, deeds and things to give effect to the aforesaid resolution."

14. Further, the members of the CoC also approved and resolved to appoint the Resolution Professional as the Liquidator of the Corporate Debtor and passed the following resolution :

"RESOLVED THAT the consent of members be and is hereby accorded to appoint Mr. Harish Kant Kaushik having registration No.(IBBI/IPA-001/IP-P01469/2018-2019/12340) as the Liquidator of the Company and the Liquidator's fee will be as per Regulation 4(2)(b) of the of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

15. Looking at the application and averments made therein, we are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order the liquidation of the company within the following terms:

a. The Mr. Harish Kant Kaushik, holding Registration No. IBBI/IPA-001/IP-P01469/2018-2019/12340, is appointed as the Liquidator in terms of Section 34 of the Code;

b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the

Insolvency and Bankruptcy Code, 2016;

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 rules and regulations.

f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.

g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.

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, the Liquidator for taking necessary steps.

16. The IA-1213/2022 filed by the RP for Liquidation of the Corporate Debtor stands allowed accordingly in aforesaid terms.