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(2020) 06 NCLT CK 0054

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Interlocutory Application No. 2115, 1665 (PB) Of 2020 In Company Petition No. (IB) - 1499(PB) Of 2019

Girish Kumar Sahni APPELLANT

Vs

R.S. Ajit And Co. (Automotives) Private Limited RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 12, 14, 21, 30(4), 30(6), 33, 33(1)(a), 33(2), 33(5), 34(1), 35(1), 60(5)
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1), 17
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 12, 13, 39
Companies Act, 2013 — Section 230

Citation : (2020) 06 NCLT CK 0054

Hon'ble Judges : B.S.V. Prakash Kumar, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Vishaka Gupta, Rohit Sehgal, Gagan Chhabra, Bhavinder Singh Khurana, Anuj Khurana

Final Decision : Disposed Of

Judgement

Hemant Kumar Sarangi, Member (T)

1. The I.A. 2115 (PB)/2020 is an application filed by the Resolution Professional of the Corporate Debtor (Applicant) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking early hearing in the I.A. 1665 (PB)/2020 (Application for Liquidation) filed in the captioned matter, i.e., IB- 1499 (PB)/2019, on 27.02.2020 under section 33(2) of the Code for issuance of directions for liquidation of the corporate debtor, M/s. R.S. Ajit Singh and Co. (Automotives) Private Limited.

2. The facts in brief are that the Financial Creditor, Mr. Girish Singh Sahni, had

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filed an application under Section 7 of the Code bearing number IB-1499(PB)/2019 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 31.07.2019 initiating Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor and there in appointed Mr. Mohinder Singh, as the Interim Resolution Professional.

3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the Interim Resolution Professional made paper publication inviting claims from the creditors of the corporate debtor. Consequently, in compliance with Section 21 of the Code read with Regulation 17 of the CIRP Regulations, the Committee of Creditors (CoC) was constituted.

4. Thereafter, in the first CoC meeting held on 02.09.2019, conducted by the IRP, Mr. Rohit Sehgal, the applicant, was appointed as the Resolution Professional (RP) in the matter. The appointment of the RP was confirmed by the order of this Tribunal dated 25.09.2019.

5. The applicant states that, after taking the handover from the IRP on 14.10.2019, the applicant has, upon verification of more claims, re-constituted the CoC with 8 (eight) Financial Creditors and filed a report of reconstitution with this Tribunal on 12.10.2019.

6. In the third CoC meeting he presented the list of valuers for the valuation of three classes of assets i.e., Plant and Machinery, Land and Building and Securities and Financial Assets along with their fee. The members of the CoC ratified the appointment of M/s. AKG & Associates as the transactional auditor of the corporate debtor

7. Subsequently, in the third meeting of CoC held on 19.11.2019, pursuant to the ratification accorded in the second meeting of CoC, publication of invitation of EoI was done. Thereafter, the Invitation for Expression of interest was published by the applicant. The applicant received expression of interest from two (2) prospective resolution Applicants, namely, M/s. Prudent ARC and M/s. One Group. The RP informed the members that no documents have been received from the Prospective resolution Applicants since they were waiting to check their eligibility criteria for the submission of the Resolution plan. Hence, the RP extended the last date of submission of expression of interest from 20.11.2019 to 07.12.2019.

8. On 08.01.2020, the fourth CoC Meeting was conducted, wherein, the RP informed members that his team followed up with the PRA's after the receipt of EOI however, it seemed that they were to provide any Resolution Plans and indeed the RP did not receive any Resolution Plan by 06.01.2020 i.e., the last date of submission of the Resolution Plan

9. Meantime, since the statutory period of CIRP was coming to an end on

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27.01.2020, the applicant filed C.A. 697(PB)/2020 for extension of time. On the basis of the application this tribunal extended the CIRP period for further 90 days beyond 180 days from 27.01.2020 vide order dated 05.02.2020.

10. In the sixth meeting of the CoC, held on 20.02.2020, it was proposed by the Applicant for the liquidation of the Corporate Debtor as going concern under section 33(2) of the Code, 2016. It was resolved in the seventh meeting of CoC, that the Corporate Debtor shall be liquidated and application in this regard should be filed.

11. The CoC passed the Resolution for Liquidating the Corporate Debtor in accordance with section 33(2) of the Code with 98.42% of Vote share. The following resolution was passed:

"Resolution 1:

Resolved That R.S. Ajit Singh & Co. (Automotives) Private Limited, the Corporate Debtor be liquidated under section 33(2) of Insolvency and Bankruptcy Code, 2016."

The RP then asked his team to conduct the physical voting of this Resolution from the 96.61% Vote Share that was physically present in the meeting. Out of 96.61% voted Yes for the Resolution. Hence the Resolution has already got more than the required 66% Vote. The RP will however conduct E-Voting on this Resolution for those who were not present in the meeting.

12. Thereafter in the 6th meeting of CoC, held on 20.02.2020, it was decided that an application for liquidation of corporate debtor should be filed before the Tribunal. It is also submitted that the CoC in its 6th meeting has also deliberated regarding sale of corporate debtor as a going concern and also Compromise and Arrangement under Section 230 of the Companies Act, 2013. It was further stated in the application that the CoC also resolved that liquidation cost as well as fee of the liquidator will be decided as per Rule 39 of the Liquidation rules.

13. It is also pertinent to note that the word "may' used in Section 30(4) of the Code is indeed a discretion given to Committee of Creditors either to reject or accept the resolution plan with 66% voting share, despite the plan being in all respects correct. Commercial decision of CoC is not open to judicial review. The Resolution Professional has filed the present application for liquidation of the Corporate Debtor, as statutory period has elapsed from the date of initiation of CIRP and no Resolution Plan has been approved by the Committee of Creditors.

14. It is pertinent to refer to the statutory provisions provided in Section 33(1)(a) of the Code which mandates that "where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter."

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15. Therefore, upon failure of the resolution process, there being no approved resolution plan and on completion of the statutory CIRP period; liquidation has to follow. Adherence to statutory requirements has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.

16. In this factual background and in the absence of any approved resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order, in conformity with the decision of the Committee of Creditors, for liquidation of the corporate debtor under Section 33 of the Code.

17. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. R.S. Ajit Singh & Co. (Automotives) Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

a. In terms of the resolution passed by the CoC, this bench appoints Mr. Rohit Sehgal with Registration No. IBBI/IPA-001/IP-P00528/2017-18/10953, as Liquidator in terms of Section 34(1) of the Code.

b. Mr. Rohit Sehgal, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

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

e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

f. The liquidator shall follow up and 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 and continue to investigate the financial affairs of the corporate debtor to determine any-undervalued and preferential transactions etc. during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor 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,

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Resolution Professional and the Liquidator for taking necessary steps. A copy of the order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to Registrar, NCLT.

j. I.A. 2115(PB)/2020 & I.A. 1665(PB)/2020 filed in IB 1499(PB)/2019 is disposed of in the aforesaid terms.

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