(2019) 09 NCLT CK 0047

In the National Company Law Appellate Tribunal

Case No : Company Application No. 880(PB) Of 2019 In Company Petition No. (IB)-625 (PB) Of 2018

Harish Chander Arora — APPELLANT

Vs

Shreedhar Milk Foods Limited — RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 12, 14, 21, 29A, 30(6), 33(a), 33(1)(a), 33(2), 33(5), 34, 35(1)
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

Citation : (2019) 09 NCLT CK 0047

Hon'ble Judges : M.M. Kumar, CJ;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Tishampati Sen, Harsh Sinha, Riddhi Sancheti, Rudrarti Kaur, Nishi Chaudhary

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This is an application filed by the Resolution Professional under Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s. Shreedhar Milk Foods Limited.

2. The facts in brief are that the financial creditor, M/s. Pankhuri Investments and Securities Limited, had filed an application under Section 7 of the Code bearing number IB- 625(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 09.08.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. Shreedhar Milk Foods Limited and there in appointed

Mr. Manoj Sehgal, 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 of Section 21 of the Code read with Regulation 17 of the CIRP Regulations, Committee of Creditors was constituted.

4. The IRP appointed Forensic Auditor M/s. K.G Somani and Co., and Valuers M/s. M.V &Co and M/s. Raj Gupta & Co. in respect of the corporate debtor under the provisions of the Code.

5. In the second CoC meeting held on 29.09.2018 it was proposed to replace the IRP with new RP Mr. Harish Chander Arora with Regd. Number IBBI/IPA-003/IP-N00077/2017-18/10700. Consequently, vide order dated 04-10-2018, Mr. Harish Arora was approved to act as a Resolution Professional in the CIR process of the Corporate Debtor.

6. It has been stated in the application that CoC in its third meeting held on 23.10.2018 discussed and approved Evaluation Matrix and EOI for inviting resolution plans. Thereafter, the EOI was published in two newspapers namely Financial Express (English) and Jansatta (Hindi) and same was also published on the website of IBBI on 27.10.2018 with the last date of submission of EOI as 12.11.2018.

7. It is submitted that till the last date of EOI, i.e 12-11-2018, no EOI was received from any prospective resolution applicant. Accordingly, with the approval of CoC another EOI with extended date was published in two Newspapers namely Financial Express and Jansatta on 17.11.2018 and also uploaded on the website of IBBI with the last date for receipt of EOI as 01.12.2018.

8. Before the last date of submission of EOI, two expression of interest were received by the Resolution Professional, from M/s. Beatle Trading Pvt. Ltd and M/s. Leathroid Plastics Pvt. Ltd.

9. However, as the aforementioned two proposed resolution applicants could not submit their resolution plans in time, with the approval of CoC 3rd EOI was again published in two Newspapers namely Financial Express and Jansatta on 18.01.2019 and also uploaded on the website of IBBI with last the date for receipt of EOI as 02.02.2019. However, except the two EOIs already received, no additional EOI was received till the last date of receipt of EOI as per the revised date.

10. As the initial CIRP period of 180 days was expiring, an application was filed by the resolution professional for extension of CIRP period and upon such application filed by the Resolution Professional further time of 90 days was granted by this tribunal vide order dated 05.02.2019.

11. It has been submitted that two Resolution plans were received from M/s. Beatle Trading Pvt. Ltd and M/s. Leathroid Plastics Pvt. Ltd. In the 13th CoC meeting held on 04.04.2019 Resolution Plan of M/s. Leathroid Plastics Pvt. Ltd was declared as ineligible under Section 29A of the Code as their account in the Canara Bank has been classified as NPA. Consequently, it was decided in the 14th meeting that the account of M/s. Leathroid Plastics Pvt. Limited being NPA, it is not ineligible to submit resolution plan in terms of Section 29A of the Code.

12. As regards the other resolution plan, it is stated that the Resolution Plan of M/s. Beatle Trading Pvt. Limited was put up for voting in 14th CoC meeting held on 29.04.2019. In the 15th CoC meeting held on 02.05.2019, the E-voting result was placed, wherein CoC members with 91.01% voting share voted against the resolution plan. The reasons for rejection of the Resolution Plan as recorded in the 15th CoC meeting are as under:

i. If the resolution plan is approved, members will get only 7% share at the time of approval of resolution plan.

ii. The liquidation value of the assets is higher than the amount offered by the Resolution Applicant.

iii. The terms & Conditions specified in schedule "G" point no "L" of the Resolution Plan require for discharge of Guarantors of Corporate Debtors.

13. Since with 91.01.% voting shares the resolution plan was rejected, in the same 15th meeting of the CoC, it was resolved to file an application for liquidation of the corporate debtor.

14. It is pertinent to mentioned here that the name of Sh. Nishant Gaurav Gupta with Registration No IBBI/IPA- 002/IP-N00572/2017-18/11739, who gave consent to act as liquidator was recommended and approved by CoC members in the 15th CoC meeting held on 02.05.2019. Written consent of the proposed liquidator has been filed with the application.

15. In the present case majority members of CoC, with 91.01% voting share, has taken a reasoned and speaking commercial decision to reject the resolution plan and to go for liquidation of the corporate debtor.

16. It is appropriate to mention here that the CoC is a decision-making expert body and is the competent authority either to accept or reject the resolution plan. Adjudicating Authority has neither jurisdiction to question the actions of CoC nor has any discretion to examine as to whether the resolution plan is better or liquidation is better.

17. It is pertinent to refer to the statutory provisions provided in Section 33 (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. "

18. Therefore, upon failure of resolution process there being no approved resolution plan and on completion of the statutory CIRP period; Liquidation has to follow. Adherence to statutory requirement 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 consequence.

19. In the 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 majority decision of the Committee of Creditors for liquidation of the corporate debtor under Section 33(1) (a) of the Code.

20. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. Shreedhar Milk Foods 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. Sh. Nishant Gaurav Gupta with Registration No. IBBI/ IPA-002 / IP-N00572 / 2017-18 / 11739, is appointed as Liquidator in terms of Section 34 of the Code.

b. Sh. Nishant Gaurav Gupta, 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 the pending applications including CA 854 (PB)/2019 for its disposal 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 and the Liquidator for taking necessary steps.

j. C.A. 880 (PB) /2019 filed in IB 625 (PB)/2018 is disposed of in the aforesaid terms.

