courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 20/08/2026

(2019) 09 NCLT CK 0018

In the National Company Law Tribunal

Case No : Interlocutory Application No. 62 of 2019, Company Petition No. 05 GB Of 2018

Hrishikesh Dasgupta APPELLANT

Vs

Dena Bank ... Financial Creditor. RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 12(2), 14, 33, 33(2), 33(5), 33(7), 34(8), 34(1), 35(1)
Insolvency And Bankruptcy Board Of India (Application To Adjudicating Authority) Rules, 2016 — Rule 4

Citation : (2019) 09 NCLT CK 0018

Hon'ble Judges : Hari Venkata Subba Rao, J;Ashutosh Chandra, Member (Technical)

Bench : Division Bench

Advocate : Hrishikesh Dasgupta, Pranay Agarwal, Gaurav Khandelia, Rakesh Dubey

Final Decision : Disposed Of

Judgement

Ashutosh Chandra, J

1. A petition bearing CP (IB) No. 05/GB/2018 had been filed by Dena Bank (now Bank of Baroda), hereinafter referred to as the Financial Creditor (FC), under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code of 2016) read with rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 for initiating a Corporate Insolvency Resolution Process (CIRP) in the matter of Bluefern Ventures Pvt. Ltd., hereinafter referred to as the Corporate Debtor (CD), claiming the dues amounting to Rs. 37,68,62,983.00 (Rupees thirty seven crore sixty eight lac sixty two thousand nine hundred eighty three only) owed to the said FC by the CD.

2. The aforesaid petition was heard by this Tribunal on different dates and vide

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hrishikesh-dasgupta-appellant-hash-...

order dated 21.12.2018. a CIRP was initiated in the matter of M/s. Bluefern Ventures Pvt. Ltd., the CD. Thereafter, this Tribunal vide order dated 31.12.2018, appointed the applicant as the IRP. Subsequently, the IRP was appointed as the RP with 100% majority of the 1st COC meeting held on 28.01.2019 and was later confirmed as the RP by this Tribunal, vide order dated 01.03.2019.

3. It is stated that Form G inviting Expression of Interest (EOI) was published on 24.04.2019 in the newspapers Business Standard (all editions) and Hamro Prajashakti. The last date for receipt of EOI was fixed on 20.05.2019. By that date the applicant RP received only one EOI and the same was informed to the COC in its 5th meeting held on 14.05.2019. The COC directed the RP to take immediate steps in furtherance of submission of the Resolution Plan by the interested EOI applicant.

4. It is stated that since the CIRP could not be completed within 180 days already fixed and the same were ending on 19.06.2019, the RP filed an application, being IA No. 33 of 2019, before this Tribunal for extension of CIRP period by 90 days under Section 12(2) of the Code. This Tribunal, being satisfied that there was every possibility of identifying a Resolution Applicant and that the COC had unanimously decided to apply for extension of CIRP period, vide order dated 13.06.2019, extended the CIRP period by 90 days.

5. Despite the last date for submission of Resolution Plan being 26.06.2019, the EOI applicant failed to submit its Resolution Plan within the time frame. As such, upon request by the EOI Applicant, the COC gave extension of date for submission of Resolution Plan on multiple occasions. Further, it is stated that the 10th COC meeting was held on 13.08.2019 for the purpose of consideration of Resolution Plan as submitted by the Promoter of the CD. The COC discussed the matter in detail and opined that the plan submitted by the promoter of the CD was deficient on various grounds. The COC with 100% majority passed the following Resolutions:

"RESOLVED THAT in view of only Resolution Plan submitted by tho Promoter/ Director of the Corporate Debtor being deficient and not acceptable to the COC, the COC hereby recommends liquidation of Bluefern Ventures Pvt. Ltd. under Section 33(2) of the Insolvency and Bankruptcy Code, 2016".

RESOLVED FURTHER THAT RP is directed to submit appropriate application before the Hon'ble NCLT, Guwahati Bench, recommending liquidation of the Corporate Debtor."

6. It is submitted that the extended period of CIRP is expiring on 17-09-2019 and that the Resolution Plan, being deficient on various grounds, was not acceptable to the COC. Therefore, under the given circumstances the CD is liable to be liquidated.

7. The applicant has submitted that necessary orders may be passed in the matter and the Resolution Professional be appointed as the liquidator in terms of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hrishikesh-dasgupta-appellant-hash-…

Section 34(1) of the Code of 2016.

8. In the aforesaid facts and circumstances, this IA has been filed u/s 33 of the Code of 2016 wherein it is prayed that this Tribunal may be pleased to:

(a) Issue necessary orders for liquidation of Bluefern Ventures Pvt. Ltd., the Corporate Debtor.

(b) Issue necessary orders to appoint the existing Resolution Professional/ applicant herein, as the Liquidator in the instant matter.

(c) Issue directions on the liquidator in terms of Section 35(1) of Insolvency and Bankruptcy Code, 2016 so that the liquidator shall have the powers and duties listed out under section 35(1) of Insolvency and Bankruptcy Code, 2016.

(d) Pass such other Order/directions as this Hon'ble Bench may deem fit and necessary in the facts and circumstances of the case.

9. The RP and the OC have appeared before us and have taken us through the facts of the case and the material on record, as referred to in the foregoing paragraphs, which has been perused.

10. On a consideration of the above, we are of the view that in spite of protracted and best efforts made by the COC and the RP, they did not receive a satisfactory Resolution Plan from the only EOI received and which had to bo rejected due to various deficiencies, after due consideration. It is seen from the Minutes of the 10th meeting of the COC, held on 13.08.2019 that the evaluation matrix and the Resolution Plan, as submitted by the Resolution Applicant Sri Tshering Pinto Bhutia, Promoter of the CD was considered. On examination of the same the COC found various defects in the Plan, such as that the performance security/guarantee of Rs. 1.00 crore had not been provided along with the Resolution Plan; it proposed to scale down the dues to the secured financial creditors by 32.36%, which was not acceptable to the FCs; and it did not specify the sources of the funds with evidence to implement the plan in 48 months. On a consideration of the Plan and these defects, the COC resolved not to accept the Resolution Plan submitted by the Promoter/Director of the CD and recommended liquidation of the CD under section 33(2) of the Code of 2016.

11. It is therefore seen that the CIRP remained unresolved, even with just a few days left for even the extended period to get over. In such a situation, this Tribunal is left with no option but to accept the recommendations of the COC, as referred to above, for the liquidation of the CD. Hence, we proceed to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the Chapter III of Part II of the Code of 2016 and also to pass an order under section 33 of the Code of 2016, for the initiation of the process of liquidation of the Corporate Debtor, as under:

ORDER

(a) By this order, the Corporate Debtor, Bluefern Ventures Private Limited is

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hrishikesh-dasgupta-appellant-hash-…

liquidated.

(b) Mr. Hrishikesh Dasgupta (the existing Resolution Professional/applicant), an Insolvency Professional, having office at Bajrang Kunj, Room No. 412 & 413, 2B Grant Lane, 4" floor, Kolkata - 700 012 and having registration no. IBBI/IPA-003/IP-N00082 is appointed as the Liquidator in respect of the CD. His consent and Declaration of Eligibility are on record.

(c) Mr. Sri Hrishikesh Dasgupta shall exercise the powers and duties listed out under section 35(1) of the Code of 2016.

(d) Mr. Hrishikesh Dasgupta is directed to issue Public Announcement stating that the CD is in liquidation, in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.

(e) The Registry is directed to communicate this order to the Registrar of Companies, and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

(f) The Order of Moratorium passed under Section 14 of the Code of 2016 shall cease to have effect and a fresh moratorium under Section 33(5) shall commence.

(g) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the CD, in keeping with the provisions of Section 33(7) of the Code of 2016.

(h) Mr. Hrishikesh Dasgupta is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code of 2016.

(i) Upon proceeding with the liquidation the Liquidator shall file a preliminary report as per Regulation 5 read with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016 at the registry within 75 days from the date of commencement of liquidation, and continue to file progress reports as per Reg.15(1) of the IBBI (Liquidation Process) Regulations, 2016 within 15 days after the end of the quarter in which he is appointed.

(j) The fee payable to the Liquidator under section 34(8) of the Code of 2016, for conduct of the liquidation proceedings, shall be paid to the Liquidator from the proceeds of liquidation estate, as referred to u/s 34(9) of the Code of 2016 and as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.

(k) The Registry is hereby directed to communicate the order to the Liquidator, Financial Creditor, the Corporate Debtor and to all parties concerned immediately for information and further necessary action.

(l) Let certified copy of the order be issued to concerned parties, if applied for, and upon compliance with the requisite formalities.

12. With this order, CP (IB)/05/GB/2018 stands disposed off. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hrishikesh-dasgupta-appellant-hash-...