
(2020) 07 NCLT CK 0010

In the National Company Law Appellate Tribunal

Case No : Interlocutory Appeal No. 2009/2020 In IB-33(Nd)/2019

In Re: Chirag Shah, Hotline Cpt Ltd Vs

Date of Decision : 31-07-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 14, 29, 30(6), 33, 33(1)(i), 33(1)(ii), 33(1)(iii), 33(2), 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 4(2), 4(2)(b), 6(1), 27, 36

Citation : (2020) 07 NCLT CK 0010

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Shankar Luthra

Final Decision : Allowed

Judgement

Narender Kumar Bhola, Member (T)

1. This relates to I.A. No. 2009/2020 filed in IB- 33(ND)/2019 by Mr. Chirag Shah (hereinafter referred to as 'Resolution Professional') under Section 33(2) of the Insolvency and Bankruptcy Code, 2016. The prayer made in the Application is to pass an order of liquidation pertaining to the Corporate Debtor (CD) viz., M/s. Hotline CPT Limited.

2. Originally, petition bearing No. IB- 33(ND)/2019 filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor was admitted by this Authority vide Order dated 27.08.2019. The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor and the Applicant viz., Mr. Chirag Shah was appointed as Interim Resolution Professional (IRP).

3. It is averred that pursuant to the Order of this Authority dated 27.08.2019, the IRP had taken over the management of the Corporate Debtor and had issued the Newspaper Publication in Form A dated 31.08.2019 in one widely circulated newspaper in Hindi (Jansatta, NCR Region), one in English (Financial Express, All

Indian Edition) and the another in Vernacular language in Gwalior Region (Raj Express) where the factory of the Corporate Debtor is located as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors. After verification of the claims received, the IRP constituted the Committee of Creditors (CoC). In the 1st CoC Meeting held on 25.09.2019, the Applicant viz., Mr. Chirag Shah was appointed as Resolution Professional (RP).

4. RP had prepared Information memorandum under Section 29 of the Code, 2016 read with Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

5. It is noted that the RP has appointed registered valuers on 9.10.2019 pursuant to Regulation 27 of CIRP regulations.

6. The RP convened 3rd COC meeting on 22.11.2019 to consider the invitation of expression of Interest and publication of form G. Form G was published in Financial Express (English Edition) All India Edition and Jansatta (Hindi Newspaper) Delhi Edition on 28.11.2019.

7. On 19.12.2019 the 4th meeting of CoC was conducted wherein the parameters of evaluation matrix and RFRP was discussed

8. The RP received two Expression of Interest from prospective Resolution Applicants namely, East India Udyog Limited and Jitendra Nagwani. However, East India Udyog Limited withdrew their expression of interest on 06.01.2020 and therefore RP received only one resolution plan from Mr. Jitendra Nagwani proprietor of M/s. Varun Scrap Suppliers.

9. In the 5th COC meeting held on 10.01.2020, the brief tenets of the Resolution Plan were discussed, however, the members of COC were not convinced by the financial offer of the Resolution Applicant and thereafter negotiated with Resolution Applicant to revise the offer. Revised offer was received on 14.01.2020. On the following day i.e., 15.01.2020 Revised resolution plan was discussed in adjourned fifth meeting, however, the members of COC were not satisfied with the offer and members of CoC holding 90.17% voted against the resolution plan.

10. In the 6th CoC meeting held on 31.01.2020, members decided to re-publish the Form G keeping the eligibility criteria, evaluation matrix unaltered and the Form G was published on 3.02.2020 in Financial Express (English Newspaper) All India Edition and Jansatta (Hindi Newspaper) Delhi Edition. The RP received the letter from Mr. Jitendra Nagwani on 11.02.2020 to consider his initial Expression of Interest in this cycle of Form G.

11. On 23.02.2020 180 days of CIRP expired, which was extended by further 90 days by this bench vide order dated 25.02.2020.

12. The RP in the 7th CoC meeting held on 27.02.2020 informed the members of

COC that only one resolution plan is received from Mr. Jitendra Nagwani proprietor of M/s. Varun Scrap Suppliers and the financial offer provided is the same as was discussed in the adjourned 5th CoC meeting, in this the summary discussion as recorded in the minutes thereof is as under:

a. The members of CoC holding 90.17% voted against the plan submitted by Mr. Jitendra Nagwani proprietor of M/s. Varun Scrap Suppliers as the members of CoC were not convinced by the financial offer made by Resolution Applicant.

b. Efforts were made to bring the Resolution Applicants for the revival of business of Corporate Debtor but the RP received resolution plan from only one applicant which was not accepted by the members of CoC.

c. The value of the assets of the Corporate Debtor is diminishing due to outdated/old technology.

c. The Committee Members took the decisions as follows;-

(i) Resolved that the Corporate Debtor, Hotline CPT Limited be liquidated and Mr. Chirag Shah, RP be and is hereby authorised to file an application with the Adjudicating Authority in this regard.

(ii) Mr. Chirag Shah be appointed as the Liquidator of the Corporate Debtor Hotline CPT Limited on a consolidated remuneration as per regulation 4 (2) (b) of IBBI Regulation (liquidation Process), 2016, with a discount of 50% as per chart given in said regulation during the entire period of liquidation process.

13. Since only one Resolution Plan is received by the RP after publishing the Form G twice (i.e., 28.11.2019 & 3.02.2020) and the sole resolution plan was rejected by the members of CoC, and this authority has received no resolution plan under Sub-section (6) of Section 30 of the I&B Code, 2016, after expiration of 180 days on 23.02.2020 and further expiration of 90 days on 22.05.2020, extended by this Bench vide order dated 25.02.2020, the Corporate Debtor has to be ordered for liquidation.

14. In view of the facts and circumstances recorded by Resolution Professional in I.A. No. 2009/2020 filed in IB-33(ND)/2019 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows:-

I. This Authority hereby orders for liquidation of the Corporate Debtor (CD) viz., M/s. Hotline CPT Limited which shall be conducted in the manner as laid down in Chapter III of part II of the Insolvency & Bankruptcy Code, 2016;

II. This Authority hereby appoints Mr. Chirag Shah as Liquidator who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;

III. The moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016, shall cease to have effect from the date of the order of liquidation;

IV. Subject to Section 52 of the Insolvency & Bankruptcy Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

V. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

VI. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

(sic)

Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator viz., Mr. Chirag Shah, in addition to it, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Insolvency & Bankruptcy Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX. The Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate assets as specified under Regulation 4 (2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

X. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, Regional Director, Official Liquidator, Registered Office of the Corporate Debtor and the Liquidator viz. Mr. Chirag Shah, for information and compliance.

15. In terms of the above, I.A. No. 2009/2020 filed in IB-33(ND)/2020 by the Resolution Professional under Section 33(2) of the Insolvency & Bankruptcy Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Hotline CPT Limited is allowed.