(2019) 08 NCLT CK 0047

In the National Company Law Appellate Tribunal

Case No : Company Application No. 1406 (PB) Of 2019 In Company Petition No. (IB)-590(PB) Of 2018

In Re: Debashis Nanda And Ors. Vs

Date of Decision : 09-08-2019

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1), 17, 27, 35
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 12, 13
Insolvency And Bankruptcy Code, 2016 — Section 7, 13(3), 14, 21, 33, 33(2), 33(5), 34(1), 35(1)

Citation : (2019) 08 NCLT CK 0047

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

Bench : Division Bench

Advocate : S.K. Sharma, Brijesh Kr. Tamber, Vinay Singh Bist

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. Mohan Gems and Jewels Private Limited.

2. The facts in brief are that the financial creditor, M/s. Invent Assets Securitization & Reconstruction Private Limited had filed application under Section 7 of the Code bearing number IB-590 (PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 25.09.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. Mohan Gems and Jewels Private Limited and there in appointed Mr. Debashis Nanda as Interim Resolution Professional (IRP).

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. On receipt and verification of claims and in compliance of Section 21 of the Code read with Regulation 17 of the CIRP Regulations, CoC was constituted with four financial creditors namely Bank of India, Bank of Baroda, Corporation Bank and Invent Assets Securitization & Reconstruction Private Limited.

4. In the first meeting of Committee of Creditors convened on 23.10.2018 the Interim Resolution Professional was appointed as the Resolution Professional to conduct Corporate Insolvency Resolution Process in respect of the corporate debtor.

5. The Resolution Professional in accordance with Regulation 27 read with Regulation 35 appointed two registered valuers for conducting valuation of assets of the corporate debtor.

6. It is pertinent to mention here that this Bench vide order dated 29.03.2019 allowed the prayer for extension of CIRP by further 90 days under section 12(3) of the Code.

7. It has been submitted in the application that despite several advertisements inviting Expression of Interest on 20.12.2018 and subsequently on 18.04.2019 no resolution plan in respect of the Corporate Debtor was received by the Resolution Professional. Accordingly, in the 9th CoC meeting held on 20.06.2019 the CoC with 86.07 % voting share passed resolution for Liquidation of the corporate debtor under Section 33(2) of the Code. It is pertinent to mention here that the applicant RP has given his consent to act as Liquidator in requisite Form AA on 20.06.2019.

8. In the facts and upon failure of resolution process there being no resolution plan and also on expiry of the statutory Corporate Insolvency Resolution Period of 270 days; Liquidation as proposed by the CoC has to follow.

9. In the factual background and in the absence of any resolution plan there is no other alternative but to order in conformity with the majority decision of the Committee of Creditors, for liquidation of the corporate debtor under Section 33 of the Code.

10. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. Mohan Gems and Jewels 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. Mr. Debashis Nanda, having registration no. IBBI/IPA-003/IP-N00040/2017-18/10316 and e-mail id dnanda..cma@gmail.com is appointed as Liquidator in terms of Section 34(1) of the Code.

b. Mr. Debashis Nanda, 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. All endeavor shall be made by the liquidator to ensure that the business of Corporate Debtor is continued during the liquidation process as per Section 33 of the Insolvency and Bankruptcy Code, 2016;

f. 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.

g. 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.

h. The liquidator shall also follow up the pending suit/applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor.

i. 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.

j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

k. C.A. 1406 (PB)/2019 filed in IB 590 (PB)/2018 is disposed of in the aforesaid terms. 09.08.2019

