

(2020) 06 NCLT CK 0060

In the National Company Law Appellate Tribunal

Case No : Interlocutory Application No. 1815(PB) Of 2020 Filed In Company
Petition No. (IB)-1446(PB) Of 2018

In Re: Harish Chander Arora And Ors Vs

Date of Decision : 19-06-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 14, 29A, 30(2), 33(2), 33(5), 33(6), 34(1), 35(1), 53
Insolvency An Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 4, 12, 13
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 37, 38, 39

Citation : (2020) 06 NCLT CK 0060

Hon'ble Judges : Mohd. Sharief Tariq, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Hemant Kumar Sarangi, Member (T)

1. This is an Application filed by the Resolution Professional, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for initiation of Liquidation of the corporate debtor, M/s. Rathi Super Steels Ltd.

2. The facts in brief are, that one of the financial creditors, Dena Bank (now Bank of Baroda,) the lead bank of consortium of 11 banks, had filed an application under Section 7 of the Code, bearing number IB-1446(PB)/2018, for initiation of Corporate Insolvency Resolution Process (CIRP), against the corporate debtor, M/s. Rathi Super Steels Limited. The said application was admitted by this Tribunal on 12.06.2019, initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. Rathi Super Steels Ltd and Mr. Harish Chander Arora, was appointed as the Interim Resolution Professional (hereinafter referred as "IRP"), in respect of the corporate debtor.

3. Thereafter, the IRP made the public announcement on 20.06.2019, in two

newspapers, namely Financial Express (English) and Jansatta (Hindi) in Delhi NCR edition, for invitation of claims from the creditors of M/s. Rathi Super Steel Limited, with last date of receipt of claims as 04.07.2019.

4. On the basis of claims received, the IRP then constituted the Committee of Creditors (hereinafter referred as "CoC"), and in the first meeting of the CoC, the Interim Resolution Professional viz., Mr. Harish Chander Arora, Insolvency Professional having Registration No. IBBI/IPA-003/IP-N00077/2017-18/10700, was appointed as Resolution Professional.

5. The Resolution Professional has appointed Forensic Auditor M/s. Kansal Singla and Associates for conducting the Transaction Audit and Forensic Audit of corporate debtor for the last 7 years.

6. Subsequently, Resolution professional issued Expression of Interest (hereinafter referred as "EoI"), on Form G for invitation of Resolution Plans from the prospective resolution applicants (hereinafter referred as "PRA"), in two newspapers, namely Financial Express (English) and Jansatta (Hindi) on 10.08.2019. The Form G was also got published on the website of IBBI. Eolon Form G, the eligibility criteria of PRA, Evaluation Matrix and Request for Resolution Plan(hereinafter referred as "RFRP") was approved in the 2nd meeting of CoC held on 06.08.2019.

7. The Resolution Professional also issued an advertisement in two newspapers, namely Financial Express (English) and Jansatta (Hindi) on 26.07.219 for job work for using the facility of M/s. Rathi Super Steel Ltd, which has been lying closed since 17.02.2018.

8. In 2nd meeting of the CoC held on 06.08.2019 it was informed by the Resolution Professional that he had received a proposal from M/s. Ashok Garg & Associates, and this was discussed in detail by the CoC members. However, the said proposal was rejected by the CoC.

9. It is stated in the application that M/s. Ashok Garg & Associates, again revised their proposal for job work, which was presented in 3rd meeting of the CoC held on 14.08.2019 and it was decided that the proposal is neither viable nor is in the interest of the CoC members, as even the cost of the security agency and retained staff is not recoverable from the job work. Further, some members were of the view that there will be risk to the security of the Plant & Machinery, as the job work party will run only in one portion of the plant. The CoC members unanimously rejected the proposal for job work. They requested the job work party to participate in the EOI, which has already been published.

10. In 4th meeting of the CoC held on 02.09.2019, the Resolution Professional informed that by the last date of receipt of EOI, i.e. 30.08.2019, EOI was received from only two PRAs, namely M/s. Bansal Wire Industries Limited and M/s. Surbhika Steels Private Limited. The provisional list and final list of PRAs was published on the website.

11. In the 5th meeting of the CoCheld on 14.10.2019, the bid of one scrap dealer M/s. Om Prakash Tarsem Chand for sale of scrap of corporate debtor was approved at Rs. 23.50 per kg plus applicable taxes against various quotations received from various dealers.

12. As the PRAs failed to submit the Resolution Plans by the extended date, i.e., 07.11.2019 and again requested by email dated 07.11.2019, the matter was discussed in detail in the 6th meeting held on 08.11.2019. The CoC members were of view that existing PRAs are again and again requesting for extension of time for submission of Resolution Plans and in order to have wide participation to EOI, it was decided to issue fresh EOI on Form G for invitation of Resolution Plans from the PRAs and the same be published on Monday 11th November, 2019 in NCR Edition of Financial Express (English) and Jansatta (Hindi) with the last date for receipt of resolution plan as 26.11.2019. The eligibility criteria and the evaluation matrix parameters will remain unchanged. It was also decided that the current Resolution Applicants will be given time to submit their plans by the end of the said month.

13. On the last date of receipt of Resolution Plans, i.e. 06.01.2020, only one PRA viz., M/s.Surbhika Steel Private Ltd submitted the Resolution Plan. But the other two PRAs namely M/s. Bansal Wire Industries Ltd and M/s. Panchtatva Promoters Private Ltd did not submit the Resolution Plans.

14. The Resolution Plan of M/s. Surbhika Steel Pvt. Ltd was evaluated by process advisor M/s. Resurgent India Ltdas there were certain gaps in the Resolution Plan, the PRA M/s. Surbhika Steel Pvt. Ltd was requested to submit the information and documents.

15. The Resolution Plan submitted by M/s. Surbhika Steel Pvt. Ltd was discussed in the CoC meetings and the representative of PRA viz., Mr. Raj Kumar Daga, was called in the 11th CoC meeting held on 13.02.2020 for presentation of the Resolution Plan. To revise his offer, he requested for further time to again visit the factory by his technical team to reassess the position of plant and machinery. The representative of Prospective Resolution Applicant [M/s. Surbhika Steels Private Limited], Mr. Raj Kumar Daga was again called in the 12th COC meeting held on 21.02.2020 to discuss the Resolution Plan submitted by him. A detailed discussion took place and the representative of the PRA informed the CoC members that the cost involved in the startup of the plant is much higher (as has been advised by his technical team) than which was previously estimated by his team, as the operation of the plant is lying closed for a couple of years. Keeping in view of the higher amount required for start of operation of the plants (steel melting shop and two rolling mills) of the corporate debtor, Mr. Daga categorically denied improving his offer.

16. In the 12th CoC meeting held on 21.02.2020, after discussing the Resolution Plan with PRA, the CoC members discussed the Resolution Plan among themselves. The matter regarding the feasibility and viability of Resolution Plan

was also discussed. As the Resolution Plan submitted by M/s. Surbhika Steel Put. Ltd, complied with IBC guidelines under Section 29A, Section 30(2) of IBC-2016 and Regulation 37, 38 and 39 of Insolvency and Bankruptcy Board of India, Regulations for Corporate Persons, 2016, the CoC members decided to send the proposal /Resolution Plan to their higher authorities for their final decision. It was further decided that the Resolution Plan for approval of the CoC will be put up for E-voting. The CoC members discussed the issues in detail and were of the view that even though they are not inclined in favour of the Resolution Plan they need adequate time for taking decision on the Resolution Plan. After detailed deliberation on the matter and keeping in view of the fact that 270 days were going to expire on 08.03.2020, it was decided to put the Resolution Plan for e-voting on 02.03.2020 at 12 o'clock and the voting lines to remain opened for 48 hours starting from 02.03.2020 to 04.03.2020 (3 PM).

17. In the 13th CoC meeting held on 05.03.2020, the E- voting results on the Resolution Plan were conveyed to all the CoC members. It was informed by the resolution professional that 100% of the CoC members voted against the Resolution Plan, therefore in the CoC meeting held on 05.03.2020, the CoC resolved that an application be filed with this Authority for seeking liquidation of the corporate debtor.

18. The CoC of the corporate debtor viz., M/s. Rathi Super Steel Ltd has broadly mentioned the following reasons for not approving the Resolution Plan submitted by M/s. Surbhika Steel Private Ltd:

i. The liquidation value is much higher than the amount offered by the resolution applicant to the financial creditors.

ii. If the resolution plan is approved, they will get only 10.19% of the amount of claim filed by them and further the amount proposed in the resolution plan has been spread over a period of more than 7 years.

19. Therefore, upon failure of resolution process there being no approved Resolution Plan and on the recommendation of the CoC, this Authority deems it fit to initiate Liquidationprocess against the Corporate Debtor.

20. In the result thisIA filed under section 33(2) of the Code for initiation of Liquidation proceedings against the corporate Debtor is allowed by ordering liquidation of the corporate debtor, namely M/s. Rathi Super Steel Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 with the directions as follows:

a. Mr. Harish Chander Arora with Registration No. IBBI /IPA- 003 / IP-N00077 /2017-18 /10700, is appointed as Liquidator in terms of Section 34(1) of the Code. Therefore, all the powers of Board of Directors, key Managerial Personnel, and partners of the Corporate Debtor, shall cease to have effect and shall be vested with the Liquidator. The Personnel of the Corporate Debtor are herebydirected to extend all corporations to the Liquidator as may be required in

managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for the conduct of liquidation proceedings in the proportion to the value of the liquidation estate assets as specified under Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of the Code.

b. Mr. Harish Chander Arora, 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. During the subsistence of the Liquidation, no suit or other legal proceedings shall be initiated by or against the corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub section 6 of the Section 33 of the Code.

d. This Authority makes it clear that Para (c) herein above shall not apply to legal proceedings in relation to such transactions as notified by Central government in consultation with any financial sector regulator.

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

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

g. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have effect from the date of this order and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.

h. 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.

i. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with the provisions of Section 35(1) of the Code.

j. The Liquidator shall also follow up the pending applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

k. 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.

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

22. In terms of the above, C.A. 1815/(PB)/2020 filed in IB 1446(PB)/2018 is disposed of.

23. Order is pronounced.