
(2019) 08 NCLT CK 0040

In the National Company Law Appellate Tribunal

Case No : Company Application No. 1177 (PB) Of 2019 In Company Petition No. (IB)-441(PB) Of 2018

In Re: Sethurathnam Ravi 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, 35A, 36A(1)
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 12, 13
Insolvency And Bankruptcy Code, 2016 — Section 7, 12, 12(3), 14, 21, 25(2)(h), 29A, 30(6), 33, 33(1)(a), 33(2), 33(5), 34(1), 35(1)

Citation : (2019) 08 NCLT CK 0040

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

Bench : Division Bench

Advocate : H.S. Kohli, Pankaj Seth, Satish Chandra Sharma, Subhash Kumar

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. Advance Navotpad Surfactants Limited.

2. The facts in brief are that the financial creditor, Bank of India had filed an application under Section 7 of the Code bearing number IB-441 (PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 27.09.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. Advance Navotpad Surfactants Limited and there in appointed Mr. Sethurathnam Ravi 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. It is submitted that only one claim from Bank of India was received till the last date of filing of claims. In compliance of Section 21 of the Code read with Regulation 17 of the CIRP Regulations, CoC was constituted with Bank of India as the sole member of the CoC.

4. In the first meeting of Committee of Creditors convened on 29.10.2018 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. Further, D. K. Lodha & CO. was appointed as Forensic Auditor as required by Regulation 35A of the CIRP Regulations.

6. With approval of CoC the resolution Professional invited Expression of Interest in terms of Regulation 36A (1) through paper publication on 10.11.2018. In response to the publication one M/s. KMG Industrial Traders Private Limited submitted EOI on 25.12.2018. However, M/s. KMG Industrial Traders Private Limited subsequently withdrew from the process vide its email dated 05.03.2019.

7. It is pertinent to mention here that this Bench vide order dated 27.03.2019 allowed the prayer for extension of CIRP by further 90 days under Section 12(3) of the Code.

8. Resolution Professional again invited Expression of Interest (EOI) from Prospective Resolution Applicants by making paper publication in Financial Express (All India Edition), Jansatta (Delhi, Chandigarh and Lucknow Edition) and Seema Sandesh (Jaipur Edition) dated 27.03.2019 and through other modes. In response thereto, 'EoI' were received from following two prospective resolution applicants namely: (1) Ashok Mahindru, (suspended Director of CD); and (2) KLJ Resources Ltd.

9. It is submitted that Mr. Ashok Mahindru was asked to submit documents along-with EoI for verifying his eligibility under section 29A & 25(2)(h) of the Code. However, no response was received from Mr. Ashok Mahindru, (suspended Director of CD).

10. The other Resolution Applicant - KLJ Resources Ltd. represented by Mr. Hemant Nahata & Mr. Anil Khatri were present in the 7th meeting of CoC. Resolution Applicant proposed to make payment of Rs. 4.25 Crore to Sole Financial Creditor (Bank of India) and Rs. 0.12 cr. (Rupees Twelve Lakh Seventy-One Thousand One Hundred Sixty-Six) Crore to Operational creditors. The member of CoC stated that the financial bid proposed by the Resolution Applicant was low and was not acceptable to the competent authority. That the 'Resolution

Plan' submitted by Resolution Applicant-KLJ Resources Ltd was put to vote and the member of CoC in their commercial wisdom decided to reject the same.

11. As the maximum statutory period for completion of CIRP i.e. 270 days was to expire on 24th June, 2019, the CoC decided to initiate liquidation process. The following resolutions were passed in the 7th meeting of CoC, with 100% voting:

"RESOLVED THAT consent of the Members of the COC of the Corporate Debtor be and is hereby accorded to proceed for Liquidation of the Corporate Debtor i.e. Advance Navotpad Surfactants Limited under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, subject to the approval of the Adjudicating Authority."

"RESOLVED FURTHER THAT an application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, before the Adjudicating Authority for liquidation of the Corporate Debtor i.e. Advance Navotpad Surfactants Limited be filed by the Resolution Professional and he is hereby authorized to do all such deed(s)/act(s)/action(s) to give effect to it."

12. It is thus seen that the Resolution Plan submitted by KLJ Resources Ltd. was put to vote and the CoC members in their commercial wisdom decided to reject the same. The Resolution Professional had placed during hearing that the offer made by the sole resolution applicant was even lower than the liquidation value. Consequently in the 7th CoC meeting held on 19.06.2019 the CoC with 100% voting share passed resolution for Liquidation of the corporate debtor under Section 33(2) of the Code. CoC further resolved that the applicant Resolution Professional be appointed as the Liquidator. It is pertinent to mention here that the applicant Resolution Professional has given his consent to act as Liquidator on 19.06.2019 in terms of Section 34(1) of the Code.

13. As regards the OTS proposal, the CoC member took the stand that the OTS proposal by Mr. Ashok Mahindru is not acceptable to the competent authority. It is alleged that the suspended director himself was not present in the CoC meeting.

14. The objection of ex-directors and unsuccessful resolution applicant against the present application will not sustain, as in the absence any viable and feasible resolution plan and for want of time beyond the statutory CIRP period of 270 days, there is no option left but to order for liquidation of the corporate debtor under Section 33 of the Code in conformity with the decision of CoC.

15. It is pertinent to refer here the case of Palash Goswami vs. M/s. Alloys & Metals (India) & Anr. in Company Appeal (AT) (Insolvency) No. 589 of 2019 wherein Hon'ble NCLAT has held that:

"Admittedly, more than 270 days have crossed and in absence of any viable and feasible 'Resolution Plan', the Adjudicating Authority had no option, but to pass order under Section 33 of the I&B Code."

16. Even the statutory provisions as envisages in Section 33(1) (a) of the Code

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."

17. Therefore, upon failure of resolution process there being no resolution plan and on completion of the statutory period of 270 days; 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.

18. In the factual background and in the absence of any resolution plan and for want of time beyond statutory CIRP period; there is no other alternative but to order in conformity with the decision of the Committee of Creditors for liquidation of the corporate debtor under Section 33(1) (a) of the Code.

19. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. Advance Navotpad Surfactants 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. Sethurathnam Ravi, having registration no. IBBI/IPA-001/IP-P00372/2017-18/10629, is appointed as Liquidator in terms of Section 34(1) of the Code.

b. Mr. Sethurathnam Ravi, 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 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. 1177(PB)/2019 filed in IB 441(PB)/2018 is disposed of in the aforesaid terms.