

(2019) 08 NCLT CK 0024

In the National Company Law Tribunal

Case No : Company Application No. 546 Of 2019, Company Petition No. 160/
Chd/Pb Of 2018

Mahavir Traders

APPELLANT

Vs

Gian Chand & Sons Pvt. Ltd.

RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2015 — Section 33(2)
Insolvency And Bankruptcy Code, 2016 — Section 9, 19, 33, 33(1)(i)(b), 33(1)(ii)(b),
33(1)(iii)(b), 33(5), 34(1), 52
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 —
Rule 4
Liquidation Process Regulations, 2016 — Rule 15
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 —
Regulation 4(2)
Liquidation Process Regulations, 2016 — Regulation 12, 12(3), 13

Citation : (2019) 08 NCLT CK 0024

Hon'ble Judges : Ajay Kumar Vatsavayi, J;Pradeep R. Sethi, Member (Technical)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. On the date of hearing of 01.08.2019, the members of the Bar were abstaining from work.
2. CA No. 546 of 2019 is filed by the Resolution Professional (RP) of Gian Chand & Sons Pvt. Ltd. (Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code, 2015 seeking liquidation order of the Corporate Debtor.
3. CP (IB) No. 160/Chd/Pb/2018 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating the Corporate Insolvency Resolution Process (CIRP) by Mahavir Traders in the case of Gian Chand & Sons Private Limited (Corporate Debtor) was admitted vide order dated 30.10.2018. Moratorium was declared and Mr. Anjum Goyal, registered Resolution Professional was appointed as the Interim Resolution Professional (IRP).

Subsequently, application was filed for replacement of the IRP with Mr. Rajeev Bhambri. Vide order dated 12.12.2018, Shri Rajeev Bhambri was appointed as the Resolution Professional.

4. It is stated in the application that the CIRP period of 180 days expired on 29.04.2019 and further extension of the CIRP period for 90 days was allowed by the Tribunal vide order dated 31.05.2019. Extended period of CIRP is stated to have expired on 26.07.2019.

5. It is further stated that during the CIRP period invitation for Expression of Interest in Form G was published on 12.01.2019 and Shri Gulshan Rai, the Promoter/Director of the Corporate Debtor submitted the resolution plan. However, in the meeting of the Committee of Creditors (CoC) held on 08.04.2019, the resolution plan was rejected as the amount of the offer in the plan was too low. It is stated that another invitation for Expression of Interest in Form G was published on 12.04.2019 and a resolution plan was again received from Mr. Gulshan Rai, the Promoter/Director of the Corporate Debtor on 28.05.2019. It is submitted that the said resolution plan was discussed thoroughly by the CoC in its various meetings and finally in the meeting held on 19.07.2019, the resolution plan was again rejected mainly because the amount of offer in the plan was again too low and there was no substantial increase in the offer from the last offer.

6. It is stated that in the meeting of the CoC held on 19.07.2019, it was unanimously decided with 99.87% of the voting share to liquidate the Corporate Debtor because the CoC has already tried twice to seek a resolution plan, but no one came up except the Promoter/Director and his resolution plan was rejected both the times. In the meeting of CoC on 19.07.2019 it is stated that due to low capacity utilization and non-availability of working capital, the operations of the Corporate Debtor were incurring cash losses in the recent past and the manufacturing activities need not to be carried out during liquidation to avoid further losses and therefore, the Corporate Debtor would not be liquidated as a going concern. This matter may be considered further in the liquidation process.

7. It is stated that in the meeting of the CoC on 19.07.2019, the name of Shri Rajeev Bhambri, Resolution Professional was recommended for appointment as the Liquidator and he has submitted his consent for appointment as the Liquidator.

8. It has been prayed that the order be passed for liquidation of the Corporate Debtor and the appointment of Shri Rajeev Bhambri, Resolution Professional as the Liquidator be approved and the liquidation fee of the Liquidator as approved by the CoC in its meeting held on 19.07.2019 be also approved.

9. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

10. It has been pointed out in the application that despite invitation for

Expression of Interest in Form G published on two occasions i.e. on 12.01.2019 and 12.04.2019, the resolution plan was received only from Mr. Gulshan Rai, the Promoter/Director of the Corporate Debtor on both the occasions. However, the CoC considered the offer and found it to be too low and therefore, rejected the resolution plan. It has been stated in the application that all the operational activities have been stopped and the factory premises of the Corporate Debtor have already been locked.

11. In the meeting of the CoC held on 19.07.2019, the decision to liquidate the Corporate Debtor has been passed with 99.87% of the voting share.

12. The relevant provisions of Section 33(2) of the Code are as follows:-

"Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

13. In the present case, the application is filed by the Resolution Professional on 25.07.2019 during the CIRP process and before confirmation of the resolution plan. The decision of the CoC to liquidate the Corporate Debtor is approved by the CoC with 99.87% of the voting share and therefore, the requirement of approval of not less than 66% of the voting share is satisfied.

14. In view of the satisfaction of the conditions of Section 33(2) of the Code, the liquidation order as referred to in sub clauses (i), (ii) and (iii) of clause (b) of Section 33(1) of the Code is being passed.

15. Section 34(1) of the Code states that where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as Liquidator for the purpose of liquidation. Mr. Rajeev Bhambri, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00152/2017/18/10399 has filed his consent dated 23.07.2019 (Annexure A-2 of the application). Therefore, Mr. Rajeev Bhambri is appointed as the Liquidator.

16. Section 34(8) of the Code states that the Insolvency Professional proposed to be appointed as a Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate assets as may be specified by the Board. Rule 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for liquidator's fee. Regulation 4(2) thereof states that the Liquidator shall be entitled to such fee and in such manner as has been decided by the CoC before a liquidation order is passed under Section 33(1)(a) or 33(2) of the Code. Therefore, these provisions do not envisage any approval of the Adjudicating Authority for the liquidation fee as approved by the CoC.

17. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the corporate debtor Gian Chand & Sons Pvt. Ltd. is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:-

(i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority; (ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and (iii) That this order of liquidation under Section 33 of the Code 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; and (iv) That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator; and (v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

18. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

19. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

"(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;

(b) on the website, if any, of the corporate debtor; and

(c) on the website, if any, designated by the Board for this purpose."

20. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations, 2016 every fortnightly thereafter.

21. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

22. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

23. In result thereof, CA No. 546/2019 stands disposed of.

24. Pronounced in open Court.