(2021) 11 NCLT CK 0029

In the National Company Law Appellate Tribunal

Case No : IB 1647 (ND12019 IA 2716/2021

Mr. Kumud Mishra APPELLANT

Vs

M/s. Reverse Logistics Company Pvt. Ltd RESPONDENT

Date of Decision : 02-11-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 12, 14, 15, 30(6), 31, 33, 33(1), 33(1)(a), 33(5), 33(6), 33(7)
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016 — Regulation 6, 12, 13, 36A(1), 39B, 39D

Citation : (2021) 11 NCLT CK 0029

Hon'ble Judges : Abni Ranjan Kumar Sinha, Member (J);L.N. Gupta, Member (T)

Bench : Division Bench

Advocate : Pawan Sharma, Prashant Kashyap

Final Decision : Allowed

Judgement

Abni Ranjan Kumar Sinha, Member (Judicial)

1. By filing this IA, the Applicant/RP has prayed for the following reliefs:

(a) Pass an order requiring the Corporate Debtor i.e. M/s Reverse Logistics Company Private Limited to be liquidated in a manner as laid down in the Insolvency and Bankruptcy Code, 2016, and appoint Mr. Pawan Kumar Agrawal as the Liquidator.

(b) Issue public announcement stating the corporate debtor is in liquidation.

2. Heard the Learned Counsel appearing for the Applicant and perused the averments made in the application. The Learned Counsel for the RP submitted that vide order dated 16.09.2019, the CIRP was initiated against the Corporate Debtor and the IRP was appointed. He further submitted that after assuming the office, the IRP made public announcement on 29th September, 2019, in accordance with, Section 15 of the IBC, 2016, read with Regulation 6 of Chapter

III of the IBC, 2016. He further submitted that IRP has received claim from one Financial Creditor (innoven Capital India Pvt. Ltd On 5th Novmeber 2019 and constituted Committee of Creditor on 7th Novmber 2o019. In the first meeting of CoC held on 8th November, 2019 the IRP was confirmed as Resolution Professional and same was approved by the Adjudicating Authority vide its order dated 17th January, 2020

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3. He further submitted thereafter the Resolution Professional had received claim of one Operational Creditor and one ex-employee of the Corporate Debtor and prepared Information Memorandum, appointed Valuers, TRA Auditors and other professionals, prepared invitation for expression of interest and performed other activities. He further submitted that in the 2nd CoC Meeting dated 19th March, 2020, CoC has resolved to publish "Form-G" i.e. Invitation for Expression of Interest under Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and also to seek extension of CIRP period beyond 180 days.

5. He further submitted that the Form-G i.e. Invitation for expression of Interest dated 20th March, 2020 was published on 21st March 2020.

6. He further submitted that the extension of 90 days of CIRP was granted vide order dated 21st August, 2020.

7. He further submitted that the Resolution Professional has submitted the updated claim, insolvency resolution proceeding cost, liquidation value, TRA submissions, appointment of statutory auditors and other updated to the CoC. In absence of any resolution plan from previous expression of interest, CoC resolved for further expression of interest under regulation 36 A (1) of Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 by way of publication of "Form-G". The copy of the minutes of Third CoC meeting dated 21st September, 2020 and copy of expression of interest in "Form-G" dated 28th September, 2020 are annexed at Page 5/6 of the application.

8. That the Applicant / RP conducted the 4th meeting of CoC on 19.11.2020 as per ANNEXURE A-11, where CoC decided as under: -

I. That despite availing extension of 90 days of CIRP and the EOIs were invited, no resolution plan has been received. Therefore, the CD may be liquidated under Section 33 of the Code.

II. That CoC decided to propose the name of Mr. Pawan Kumar Agrawal, Insolvency Professional (IBBI Registration No. IBBI/IPA-001/IP-P00852/2017-18/11435) as Liquidator, who has given his written consent to act as liquidator. A copy of the written consent is annexed as ANNEXURE A-12.

III. That the CoC approved the estimated Liquidation Cost as per provision of

Regulation 39B of IBBI (CIRP Regulation), 2016.

IV. That the CoC approved the liquidator's fee in terms of provisions of Regulation 39D of IBBI (CIRP) Regulations.

RP has submitted that in view of the resolution passed in the meeting of committee of creditors, order of liquidation is required to be passed against the corporate debtor in the manner as prescribed under Section 33 of the Insolvency and Bankruptcy Code, 2016. (PARA 13 PAGE 6/7)

9. He further submitted that since there was no Resolution Plan received, therefore, the CoC in its 4th meeting held on 19th November, 2020 resolved to liquidate the Corporate debtor.

10. In the light of the submissions, we consider the prayer of the applicant.

11. Before considering the prayer, we would like to refer to the Resolution of the 4th meeting of the CoC held on 19th November, 2020, (at page 56 of Application). The scanned copy of the relevant resolution is reproduced below: -

12. On perusal of the Resolution of the 4th meeting of the CoC, we notice that on page 59 (V) of the main petition, it is specifically mentioned that after publication of Form-G, the Resolution Professional did not receive any EOI or Resolution Plan and therefore, the Resolution Professional has placed the matter before the CoC as item number-5 and the CoC, after the detailed deliberation agreed for liquidation proceedings and not propose for further extension of resolution period. It was also informed by the Resolution Professional that after the constitution of the CoC in the 3rd meeting, no further claim was received, therefore, Innoven Capital India Pvt. Ltd., the sole Creditor having 100 percent voting share, participated in the said meeting of the CoC. The CoC at item number 9 resolved that the application to be moved to Adjudication Authority to liquidate the Corporate Debtor under Section 33 sub-Section (1) of the Code and vide item number 10, the CoC has approved the appointment of existing Resolution Professional as liquidator of the Corporate Debtor and the Resolution Professional has also given his consent to act as a liquidator. It is further seen that the matter regarding exploring the sale of the Corporate Debtor as a going concern was considered by the CoC and Resolution Professional placed the facts that the Corporate Debtor is not running its business as a going concern and in view of this, there was no recommendation from the Committee that the liquidator may first explore sale of the Corporate Debtor as a going concern.

13. At this juncture, we would like to refer to Section 33 (1) of the IBC, 2016, the relevant portion of the Section 33 (1) is reproduced below: -

Section 33 Initiation of liquidation

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

14. A bare perusal of the provision shows that there are two circumstances under which order for liquidation will be passed under Section 33 sub-Section (1) clause (a):

1) Before the expiry of the Insolvency Resolution Process, or

2) When in the maximum period permitted for completion of the CIRP under Section 12, the Adjudicating Authority does not receive a resolution plan under section 30(6).

16. Here in the case in hand, after the completion of 180 days and even after the extension of 90 days, the Resolution Professional did not receive any resolution plan and hence, the matter was placed before the CoC, which by 100 percent voting share resolved to liquidate the Corporate Debtor. Under such circumstances, we have no option but to approve the Resolution of the CoC for Liquidation of the Corporate Debtor.

17. Accordingly, by exercising our power under Section 33 sub-Section (l)(a) pass the following order: -

i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016.

ii. Since the COC at Item no. 10 has approved the appointment of Resolution Professional, Mr Pawan Kumar Agarwal as liquidator, hence, we approve the appointment of Resolution Professional Mr Pawan Kumar Agarwal to act as a liquidator u/s 34 (1) IBC, 2016.

iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

iv. The Provision of Section 33 sub-Section 5,6 and 7 IBC, 2016 shall come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

v. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued & preferential transactions and Fraudulent Trading or wrongful trading etc., if any."

This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

vii. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

viii. The Registry is directed to communicate a copy of this Order to the Financial Creditor, the Corporate Debtor and Liquidator Mr. Pawan Kumar Agarwal IP immediately;

ix. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;

x. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

18. Accordingly, in terms of aforesaid order IA-2716/2021 in (IB)-1647 (ND) 2019 is hereby allowed.

