(2024) 03 NCLT CK 0014

In the National Company Law Tribunal

Case No : I.A No.5835 of 2023 In CP (IB) No.973/MB/2021

Mr. Sougat Sammiran Ghosh — APPELLANT

Vs

Debtone Corporate Advisory Pvt. Ltd — RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 15, 19(2), 33, 33(1)(a), 33(2), 34(1), 43, 45, 49, 50, 60(5), 66
Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 — Regulation 4(3), 6, 17

Citation : (2024) 03 NCLT CK 0014

Hon'ble Judges : Reeta Kohli, Member (J);Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Yahva Bhatatawala

Final Decision : Disposed Of

Judgement

1. This is an Application filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as the Code) by the Applicant who is also the Resolution Professional (RP) of the Corporate Debtor seeking the following reliefs:

a) To allow the present application.

b) Pass an order under section 33(2) for Liquidation of the Debtone Corporate Advisory Pvt. Ltd (Corporate Debtor).

c) Pass such order or orders as the Hon?ble Tribunal may deem expedient.

Brief facts of the case:

i. The Applicant submitted that the Corporate Debtor is presently undergoing Corporate Insolvency Resolution Process (CIRP) with effect from 17.03.2023 as per the order of the Hon?ble Tribunal. The aforementioned order appointed Ms. Chaya Gupta, having Registration No. IBBI/IPA-002/IP-N00984/2020-2021/13133 as Interim Resolution Professional (IRP) of the

Corporate Debtor.

ii. The IRP issued Public Announcement in Form A in accordance with Section 15 of the Code and Regulation 6 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 dated 26.03.2023 in 2 newspapers namely in Financial Express (English Newspaper) and Nav Kal (Marathi Newspaper) for inviting claims.

iii. In pursuance of the aforementioned Public Announcement, the IRP admitted total claims of Rs. 3,96,07,800/- from three (3) Unsecured Financial Creditor (?Tapati Gosh, Sougat Ghosh and Ajay Verma?). After collation of the aforementioned claims received against the Corporate Debtor and determination of the financial position of the Corporate Debtor, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor. An Interlocutory Application (IA) bearing No.2749 of 2023 was filed for taking the Constitution of CoC report dated 14.04.2023 on record of the Hon?ble Tribunal under Regulation 17 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 and the same was allowed by this Hon?ble Tribunal vide an order dated 30.10.2023

iv. The Hon?ble Tribunal vide order dated 17.03.2023 in CP (IB)-973 of 2021 ordered the Applicant (Sougat Sammiran Ghosh & Tapti Gosh) to deposit as amount of 5,00,000/- with IRP. Accordingly, the Applicant provided a demand draft dated 05.04.2023, the first CoC Meeting was conducted by the IRP on 23.04.2023, in which IRP informed about the receipt of Rs.5,00,000/-(Five Lakh only) vide Demand Draft dated 05.04.2023 from the Unsecured Financial Creditors.

v. The 2nd Meeting of CoC held on 12.05.2023, the IRP intimated the Statutory Authorities including Income Tax, ROC to file their claim (if any) vide email dated 25.03.2023.

vi. In the 3rd Meeting of CoC on 24.05.2023, the IRP herself made an application under section 60(5) of IBC, 2016 for replacement of the RP as she is not willing to be appointed as RP, which was duly communicated to the CoC members via emails.

vii. The applicant submits that the in 4th Meeting of CoC on 06.06.2023, CoC confirmed to publish EOI (Expression of Interest) in Form-G. The CoC also approved to replace the IRP with appointment of the Applicant as the RP and the same was allowed by this Hon?ble Tribunal through an order dated 11.07.2023 in IA No.2516 of 2023.

viii. Form G as per the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 was published on 08.06.2023 by the Applicant for inviting Expression of Interests (EOIs) from various Prospective Resolution Applicants (PRA?s). however, there were no queries or EOIs received from any party or investor until the last date for the receipt of the EOI.

ix. The applicant submits that, in 5th CoC meeting on 04.08.2023, the CoC approved the remuneration of the applicant as Rs.1,20,000/- per month and furthermore, during the 6th CoC meeting, there was a discussion regarding whether the Corporate Debtor has been subjected to any Preferential and other transactions covered under sections 43, 45, 49, 50, or 66 of the Code. In such cases, the Transaction Auditor is to be invited for a Transaction Audit.

x. The Applicant further submits that in 7th CoC meeting on 25.08.2023 the members took a decision to appoint the Transaction Auditor with 100% majority votes.

xi. In pursuance of the non-receipt of any EOI or inquiry pertaining to the resolution plans for the Corporate Debtor, the CoC in its 8th meeting conducted by the Applicant on 13.09.2023 approved to seek extension of CIRP period by 90 days as the period of CIRP of 180 days was expiring on 20.09.2023, the said resolution was approved by 100% voting. The applicant filed IA 4360 of 2023 for extension and the said IA was allowed by the Hon?ble Tribunal vide order 03.10.2023. Also the CoC members decided to file an Application under section 19(2) of the Code for non-cooperation against the Suspended Board of Directors.

xii. The 9th CoC meeting was held on 29.09. 2023.Since the login credentials was not provided by the previous Advocate the CoC members decide to file a fresh Application under section 19(2) of the Code for non-cooperation. Due to Bank?s internal policies, the signatory of the existing bank account could not be changed, the Coc members approved to open new Bank Account in Axis Bank in the name of ?Debtone Corporate Advisory Private Limited?.

xiii. In the 11th CoC meeting on 08.12.2023 the applicant appraised the CoC, the period of CIRP i.e.19.12.2023 is ending and the CoC members also approved to initiate liquidation proceedings against the Corporate Debtor with 93.23% voting.

xiv. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, the Counsel for the Applicant submits that no Expression of Interest (EOI) and Resolution Plan has been received and since the Corporate debtor is not operational and does not have assets that can be realised as observed from the Minutes of the 11th CoC Meeting, there is no option except to put the Corporate Debtor Company into Liquidation as per the Code. It is observed from the minutes of the 11th CoC meeting that the CoC with required mandate has approved to liquidate the Corporate Debtor in view of their not getting any Expression of Interest and Resolution Plan. This Tribunal has very limited judicial review in such matters of commercial wisdom Therefore there is no option except to allow the above Liquidation Application. This Bench, therefore feels this is a fit case for ordering Liquidation of Corporate Debtor.

xv. Accordingly, the above Interlocutory Application 5835 of 2023 is disposed of.

Prayers made in the application are allowed, directing the Liquidation of the Corporate Debtor. Accordingly, we pass the following order:

ORDER

a. The above I.A. No.5835 of 2023 is allowed and the Corporate Debtor is ordered to be liquidated.

b. Manish Lalji Dawda having IP Registration Number I B B I /IPA- 001/IP-P-02506/2021-2022/13797, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees as per table mentioned in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.

d. The Liquidator appointed in this case is to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

e. The Liquidator is appointed under section 34(1) of the Code. All 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 with the liquidator.

f. That the Corporate Debtor to be liquidated in the manner as laid down in the IBC by issuing Public Notice stating that the Corporate Debtor is in liquidation with a further direction to the Liquidator to send this order to the ROC under whose jurisdiction this Company has been registered.

g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

h. That on having initiated liquidation process, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty of the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.