

(2022) 04 NCLT CK 0017

In the National Company Law Tribunal

Case No : IA No. 356/2020 In CP (IB) No. 23/Chd/Pb/2019

M/s Amsons India

APPELLANT

Vs

Rainbow Denim Limited

RESPONDENT

Date of Decision : 12-04-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 12, 13(1), 15(b), 19, 21(1), 30(6), 33, 33(2), 33(5), 33(6), 33(7), 52, 56

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulation, 2016 — Regulation 6, 36A(7), 39(B), 39B(3), 39C, 39(D)

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 — Regulation 4(2), 12, 13, 15

Citation : (2022) 04 NCLT CK 0017

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Arora Vishwas Kumar, Manish Jain

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

IA No. 356/2020

1. The present application has been filed by the Resolution Professional to liquidate Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016. In this case, the petition for initiation of CIRP process filed by M/s Amsons India (Operational Creditor) against the Corporate Debtor under Section 9 of the IBC, 2016 was admitted by this Tribunal by order dated 09.12.2019. Accordingly, Mr. Dharmendra Kumar Bhasin was appointed as IRP. The IRP made public announcement dated 13.12.2019 in prescribed Form A, In accordance with Regulation 6 of IBBI (CIRP) Regulations, 2016 (hereinafter referred to as Regulations) read with Section 13(1)(b) and 15 of the Code (Annexure 1).

2. It is submitted that the IRP constituted the Committee of Creditors (CoC) on 02.01.2020 with Asset Care & Construction Enterprise Limited (with 94.04% voting share) and Edelweiss Asset Reconstruction Company Limited (with 5.96% voting share). In the First Meeting of Committee of Creditors (COC) was convened on 07.01.2020, as a result of e-voting of the members of the COC, Dharmendra Kumar Bhasin (IRP) was confirmed to act as a Resolution Professional (RP) to carry out the CIR Process.

3. It is further submitted that Second Meeting of Committee of Creditors was convened on 27.01.2020, whereby decision on Publication of invitation of Resolution Plan was taken decisions on Form G, Evaluation Matrix and Request for Resolution Plan (RFRP) document were taken by CoC, Eligibility criteria for prospective Resolution Applicants were finalized. As a result of which the Applicant published Invitation for Expression of Interest (in Form G) for Submission of Resolution Plan, as per regulations 36A (1) and 36A (2), on 05.02.2020

4. It is averred by the applicant that the third Meeting of Committee of Creditors was held on 04.03.2020. As No Resolution Applicant submitted EOI to submit Resolution Plan in accordance with Regulation 36A (7), a decision on re-publication of Form G by was taken by CoC. As a result of which the Applicant re-published Invitation for EOI for Submission of Resolution Plans in prescribed form G on 06.03.2020 and last date to submit the Expression of Interest of Interest was fixed by 29.03.2020. Consequent to that, no Resolution Applicant submitted EOI in accordance with regulation 36A(7)

5. It is contended by the applicant that fourth meeting of Committee of Creditors was held on 31.03.2020 to discuss future course of action amid the COVID-19 Pandemic. The Fifth Meeting of Committee of Creditors was convened on 24.06.2020, a unanimous decision amongst the members of the COC to place the proposal for Liquidation was taken as no Expression of Interest was duly submitted in accordance with Regulation 36A (7) to the RP despite publication of Form G twice.

6. It is submitted that sixth meeting of Committee of Creditors took place on 11.07.2020, whereby the members of COC discussed the possibilities for future course of business. Subsequently, the Agenda/resolution for liquidation was put to vote electronically. In the same meeting the members of CoC discussed on the Agendas concerning Regulation 39B, 39C and 39D.

7. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and the same is reproduced below:-

"Section 33(2): Initiation of liquidation

(1)

(2) 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 [approved by not less than sixty-six percent, of the voting share] 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).

[Explanation. - For the purpose of this sub-section, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

8. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. before the expiry of the Insolvency Resolution Process period;
- ii. 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; and
- iii. If does not receive a resolution plan under sub-section (6) of Section 30.

9. In the present case, the Resolution Professional has published the Form G inviting the Expression of Interest (EOI) on 05.02.2020 and 06.03.2020. However, pursuant to above publications, no EOI was received. In the Sixth Meeting of COC held on 11.07.2020, the COC has decided to liquidate the Corporate Debtor by passing Resolution in the aforesaid meeting and further resolved to appoint Resolution Professional as Liquidator

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

11. It is submitted that the CoC in its 6th meeting held on 11.07.2020 has resolved to appoint the present RP i.e. Mr. Dharmender Kumar Bhasin, Registration No. IBBI/IIPA-002/IP-N00816/2019-2020/12564 as liquidator and he has filed his consent in Annexure-13. Copy of Liquidator's Fee after negotiation with the members of COC is attached as Annexure-14, which shall form the part of Liquidation Cost. The Liquidator's Fee shall be structured in the manner mentioned herein below:

a. In case the security interest is relinquished to Liquidation Estate- the Liquidator's Fees shall be 50% of rates of Liquidator's Fees provided under Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.

b. In case the Security Interest is not relinquished to Liquidation Estate (In such case, there will be no Liquidation Estate available to be liquidated by the Liquidator) the Liquidator shall be entitled to the same monthly fees as paid to the Resolution Professional during the CIRP (i.e. Rs. 2,50,000/-) from the date of Liquidation Commencement date to the date of Dissolution of the Corporate

Debtor.

GST and out of pocket expenses shall be addition to the above.

12. It is further submitted that in respect to compliance of Regulation 39C, the members of COC in 6th meeting of COC, resolved that it is too early to decide the corporate debtor or its business be sold as going concern or not. Therefore, this matter is required to be taken up by the liquidator before the stakeholders committee, after liquidation order is passed by the Adjudicating Authority

13. It is averred that the estimated Liquidation Cost arrived at is Rs. 1,05,21,500 (excluding Liquidator's Fees), annexed as Annexure-15. The applicant submitted that since the liquid funds are available with the Corporate Debtor is more than the estimated Liquidation Cost, therefore, there is no need of plan to approve under Regulation 39B(3) to the Adjudicating Authority while filing under Section 33 of the Code.

14. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. M/s Rainbow Denim Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code.

15. Accordingly, by exercising our power under Section 33(2) 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 RP has given his consent to act as Liquidator, therefore, Mr. Dharmendra Kumar Bhasin bearing Registration No.IBBI/IPA-002/IP-N00816/2019-20/12564, resident of 191, Mamta Enclave, Behind Nimantran Banquet Hall, Dhakoli, Zirakpur, SAS Nagar, Punjab, Mobile No. 9877932667, e-mail: cmadkbhasin@gmail.com is hereby appointed as liquidator;

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 (5), (6) and (7) of the IBC, 2016 shall have 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. 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;

vi. 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;

vii. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;

viii. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.

ix. On initiation of the liquidation process but 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 to the Liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

x. 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;

xi. 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;

xii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

xiii. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), Punjab and Chandigarh 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;

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

xv. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

16. Thus, IA No. 356/2020 stands disposed of.