(2022) 10 NCLT CK 0052

In the National Company Law Tribunal

Case No : IA No. 788/2022 In CP (IB) No. 286/Chd/Pb/2020

M/s Gagan Fibres Private Limited APPELLANT

Vs

M/s Sohrab Textiles Mills Ltd RESPONDENT

Date of Decision : 28-10-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 12, 14, 19(2), 30(6), 33, 33(2), 33(5), 33(6), 33(7), 34, 52
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 — Regulation 4(2)(b), 12, 13, 15
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 39(B), 39(C), 39(D)

Citation : (2022) 10 NCLT CK 0052

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

Bench : Division Bench

Advocate : Pulkit Goyal, Harsh Garg

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

IA No. 788/2022

1. The present application is being filed by Mr. Prem Chand Goyal, Resolution Professional (RP) of M/s Sohrab Textiles Mills Ltd. (herein referred to as "Corporate Debtor") under section 33 of Insolvency and Bankruptcy Code, 2016 ('IBC') for the initiation of liquidation of Corporate Debtor.

2. It is prayed interalia, by the applicant to pass the liquidation order u/s 33(2) of the IBC, 2016 in the above mentioned matter of corporate debtor i.e. M/s Sohrab Textiles Mills Ltd. Appoint Mr. Prem Chand Goyal as the Liquidator and issue a public announcement stating the corporate debtor is in liquidation. Further, send a liquidation order to the authority with whom the corporate debtor is registered. .

3. The brief facts of the case, as stated in the application, is that:

3.1 CIRP was initiated vide order dated 06.10.2021 of this Bench and Sh. Ashok Malik was appointed as Insolvency Resolution Professional (hereinafter referred as IRP). The IRP made public announcement on 09.10.2021 in two newspapers whereby the claims were received from creditors and Committee of Creditors (hereinafter referred as CoC).

3.2. The IRP conducted the 1st meeting of CoC on 02.11.2021 (attached as Annexure-A2). The 2nd meeting of CoC was conducted on 12.11.2021 whereby it was resolved to replace the IRP with the new Resolution Professional (hereinafter referred as RP) i.e. Sh. Prem Chand Goyal. An application was filed by only Financial Creditor i.e. Punjab National Bank to replace the IRP with proposed RP. It is submitted that till the decision of the IA filed before the bench to replace the IRP with new RP, the IRP kept on performing his duties as RP. (Annexure-A3).

3.3 The 3rd meeting of CoC was held on 30.11.2021 (Annexure-A4) and 4th meeting of CoC was held on 20.12.2021, in which IRP informed the CoC regarding publication of Form-G by him in three newspapers (Annexure-A5). The 5th Meeting of CoC was held on 17.01.2022 in which IRP informed CoC that due to non-cooperation of Suspended Directors/Promoters, an application bearing IA No.604 of 2021 under Section 19(2) of IBC has been filed regarding non-cooperation, however this IA was withdrawn thereafter. Further, it was informed by IRP that as per Form G, the last date of submission of EOI was 04.01.2022, however, no positive outcome was received except a few queries. Hence, it was resolved to republish Form-G (Annexure-A6).

3.4 In the 6th meeting of CoC held on 31.01.2022, RP apprised the CoC that Form-G was republished on 21.01.2022. The original date of closure of CIRP period was 04.04.2022 i.e. 180 days from commencement of CIRP. Accordingly, IA No.109 of 2022 filed by IRP was allowed by this Bench vide order dated 21.02.2022 for extension of CIRP period by 90 days beyond 180 days. CIRP end date comes to 03.07.2022 (Annexure-A8).

3.5 The 7th meeting of CoC was held on 02.03.2022, the IRP/RP informed CoC that against the republication of Form-G, to Resolution-applicants had submitted their Expression of Interest (hereinafter referred as EOI) and information memorandum was shared with them but none of the resolution applicant submitted that Resolution Plan and the IRP has proposed the agenda for liquidation of corporate debtor. However, the same was declined by CoC (Annexure-A9). In IA No.603/2021 applicant was appointed as RP by this Bench vide order dated 16.03.2022 (Annexure-A10).

3.6 The 8th Meeting of CoC was held on 04.04.2022, whereby RP apprised the CoC that the report submitted by the transaction auditor and according to the report there were no adverse entries in the accounts of the corporate debtor. The agenda regarding the liquidation of the corporate debtor was discussed, however, the CoC rejected the liquidation proposal of the corporate debtor and directed the resolution professional to republish Form-G again (Annexure-A11).

3.7 The 9th meeting of the CoC was held on 27.04.2022. In this meeting, the eligibility criteria and evaluation matrix to call the interested and eligible resolution applicant, was approved by CoC (Annexure-A12).

3.8 The applicant republished Form-G on 28.04.2022. However, no resolution plan was received and CoC with 100% voting share passed the liquidation of the corporate debtor.

4. It is deposed by way of compliance affidavit filed vide Diary No.01311/3 dated 06.10.2022 that CoC while approving/ resolving for liquidation in its 10th CoC meeting held on 26.05.2022 had complied with Regulations 39(B), 39(C) & 39(D) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as it had rejected the resolution for the sale of corporate debtor as a going concern in view Reg. 39(C), IBBI Regulations, 2016. As per provisions of Regulation 39(B) CIRP Regulations, 2016, the CoC had rectified the estimated expenses amounting to Rs. 8,35,000/- in the 10th Meeting. The CoC incompliance to Regulation 39(D) had resolved that RP i.e. Sh. Prem Chand Goyal will be appointed as Liquidator to carry on liquidation proceedings of Corporate Debtor and will be entitled to liquidation fee as per Regulation 4(2)(B) of IBBI (Liquidation Process) Regulation, 2016.

5. 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.]

6. 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.

7. It is submitted that in the 10th meeting held on 26.05.2022, no resolution plan was received and CoC with 100% voting share passed the liquidation of the corporate debtor.

8. It may be noted that the agenda for the appointment of Resolution Professional as Liquidator has been discussed in the 10th meeting held on 26.05.2022 and was resolved that the Resolution Professional i.e. Sh. Prem Chand Goyal will be appointed as liquidator by 100% voting share (Annexure-A13). The RP gave his consent vide consent form dated 26.05.2022 along with AFA certificate to act as liquidator (Annexure-A14). The relevant provisions for the appointment of the liquidator are mentioned in Section 34 and are reproduced below:

Section 34-Appointment of liquidator and fee to be paid.

(1) 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 under 1[Chapter-II 2[or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

………………………..

(4) The Adjudicating Authority shall by order replace the resolution professional, if —

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded 3[in writing; or] 4[(c) the resolution professional fails to submit written consent under subsection (1).]

9. The Resolution Professional gave his consent vide consent form dated 26.05.2022 along with AFA certificate to act as liquidator (Annexure-A14).

10. The Law Research Associate of this Tribunal has checked the credentials of Mr Prem Chand Goyal, and there is nothing adverse against him. In view of the above, we appoint Mr Prem Chand Goyal Registration No. IBBI/IPA-001/IP-P01780/2019-2020/12710, email: ip.sohrab@gmail.com as the Liquidator.

11. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. M/s Sohrab Textile Mills Ltd., is directed to be

liquidated in the manner as laid down in Chapter III of the Code.

12. 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) Mr Prem Chand Goyal bearing Registration No. IBBI/IPA-001/IP-P01780/2019-2020/12710, Mobile No. 9813621782, email: ip.sohrab@gmail.com is hereby appointed as liquidator;

(iii) Mr Prem Chand Goyal shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations

(iv) The liquidator is directed to take custody and control of the assets, and 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;

(v) The liquidator is directed to continue pursuing the arbitration claim initiated by the corporate debtor, which is pending before the Arbitrator in terms of Section 33(5) of IBC, 2016 and to further allow it to continue the proceedings before the relevant Appellate Authority.

(vi) 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;

(vii) 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;

(viii) 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;

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

(x) 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.

(xi) 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 proceedings 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.

(xii) That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case maybe, shall cease to have an effect and shall be vested in the liquidator;

(xiii) 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 the 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;

(xiv) The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

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

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

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

13. Thus, IA No. 788/2022 stands allowed and disposed of.

