

(2020) 03 NCLT CK 0117

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Application No. 248/ND Of 2019 In Company Petition No. (IB)-560(ND) Of 2018

M/S Gromax India And Anr

APPELLANT

Vs

M/S SBO Exports Private Limited

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Income Tax Act, 1961 — Section 178
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1), 25(5)(a), 26
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 12, 13
Insolvency And Bankruptcy Code, 2016 — Section 9, 12, 12(2), 14, 19, 30(6), 31, 33, 33(1), 33(5), 33(7), 34, 34(1), 56

Citation : (2020) 03 NCLT CK 0117

Hon'ble Judges : Dr. Deepti Mukesh, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Rahul Shukla

Final Decision : Disposed Of

Judgement

Dr. Deepti Mukesh, J

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as

the "Code") for issuance of directions for liquidation of the corporate debtor, SBO Export Private Limited.

2. The facts in brief are that the operational creditor, M/S Gromax India had filed an application bearing no. IB 560(ND)/2018 under Section 9 of the

Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide

order dated 30.07.2018 and Mr. Atul Kumar appointed as Interim Resolution Professional (IRP) of SBO Export Private Limited.

3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 (CIRP Regulations) the said Interim Resolution Professional made a public announcement in FORM-A in "The Pioneer" and

"Dainik Tribune" in vernacular newspaper. The Public announcement was also uploaded in the website of Insolvency and Bankruptcy Board of

India (IBBI).

4. In First COC meeting held on 28.08.2018, the COC member having 98.16% of the voting share passed a resolution and appointed Mr. Abhishek

Anand as Resolution Professional replacing IRP, Mr. Atul Kumar.

5. It is submitted by the Resolution Professional that the ex-management of the corporate debtor was not traceable since beginning of CIRP and there

was no information available regarding assets of the corporate debtor. The RP filed a non-cooperation application against the ex-management of the

corporate debtor under Section 19 of the I&B Code and warrants were issued in respect of five ex-directors of the corporate debtor except one

which is in judicial custody. Subsequently out of five directors Mr. Raju Gujral and Mr. Subhash Kumar Sharma were traced but submitted that they are

totally unaware and having no knowledge of the affairs of the corporate debtor, on the other hand three ex-directors named Mr. Shubham Kumar, Mr.

Dheeraj Singh and Mr. Sunil Garg are still not traceable.

6. It is submitted that vide order dated 12.04.2019 this Tribunal directed for paper publication in vernacular and English newspaper having circulation in

the locality where these respondents are known to be last resided. Accordingly, paper publication was made in the "The Pioneer" (English and

Hindi) dated 28.04.2019, however no information has been received.

7. The Resolution Professional submits that the applicant was unable to prepare information memorandum containing relevant information for

formulating the resolution plan. Due to non-availability of information and non-cooperation of the available ex-directors and non-tracing of the

corporate debtor, neither valuation was obtained nor expression of interest (EoI) was issued. It is submitted that due to lack of availability of information

and of the ex-management of the corporate debtor, it was difficult to ascertain

affairs of the corporate debtor and therefore no Expression of Interest was floated hence the question of receiving resolution plan does not arise.

8. The Applicant has filed application for extension of CIRP under section 12(2) of I & B Code, 2016 and while hearing application for extension with

exclusion, this Tribunal vide its order dated 08.07.2019 has observed as follows:

“270 days are over and no resolution plan is submitted. The Forensic Audit Report clearly states that there is siphoning of the funds.

Hence, Resolution Professional is directed to take appropriate steps for an application for liquidation of the Corporate Debtor.”

9. In 7th COC meeting dated 19.07.2019, e-voting was conducted in accordance with Regulation 26 of the Insolvency and Bankruptcy Board of

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and thereafter minutes of meeting by electronic means to all members

of the committee were circulated within 48 hours of the conclusion of the meeting as per regulations 25(5)(a). After circulation of minutes of the

meeting by electronic means e-voting, the COC resolved as follows:

a. COC has approved the agenda for initiation of liquidation process of the corporate debtor in accordance with section 33(1) of the code.

b. COC has approved the agenda for appointment of Mr. Abhishek Anand to act as a liquidator under section 34 of the code.

c. COC has approved the agenda for fees to be paid to Abhishek Anand amounting to Rs 50,000/- per month to act as a liquidator of the corporate debtor.

d. COC has authorised the Resolution Professional for filing application for initiation of liquidation of the corporate debtor before this Hon’ble

Tribunal, New Delhi bench.

10. Mr. Abhishek Anand, Resolution Professional has submitted Form-2 consent to act as a liquidator of the corporate debtor before the COC member

and Form-2 is duly annexed with the application.

11. Due to non-receipt of a Resolution Plan within the period of CIRP, as per the provisions of IBC, 2016, COC’s only option is to seek the

liquidation mode as provided under the provisions of section 33 of IBC, 2016 of which the relevant sub-section 1 of section 33 is reproduced hereunder

;

33. (1) Where the Adjudicating Authority, â?

(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 shallâ?

(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.â??

12. Since there is lack of availability of information and due to non-cooperation from the ex-management of the corporate debtor, it was difficult to

ascertain affairs of the corporate debtor, therefore valuation reports as required under the provisions of IBC, 2016 from the registered valuers in

relation to the fair value and liquidation value of the assets of the corporate debtor, could not be obtained.

13. This Tribunal is of the view that as per the record and submissions made, COC and RP has made all endeavours to obtain resolution of corporate

debtor which has failed to bring results, leading to liquidation of the corporate debtor M/S SBO Export Private Limited.

14. We hereby order that the corporate debtor M/S SBO Export Private Limited stands liquidated and the incidence of liquidation to follow, on and

from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter â?" III of IBC, 2016 and also in terms of

Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017. Mr. Abhishek Anand, present RP is appointed as liquidator by COC in its 1st

meeting dated 28.08.2018 who has consented to act as liquidator. Minutes of COC meeting and consent Form 2 are annexed with the application.

Therefore, we order and give following directions:

a. Mr. Abhishek Anand, Resolution Professional holding registration no. IBBI/IPA-002/ IP-N00038/2016-17/ 10077, is appointed as Liquidator in

terms of Section 34(1) of the Code;

b. Mr. Abhishek Anandis directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy

Board of India;

d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly, in

relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of

liquidation.

e. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh

Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

f. This order is 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;

g. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and

Bankruptcy Code, 2016 and in accordance with the relevant regulations.

h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as

per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

C.A. 248(ND) /2019 is allowed, as a consequence IB 560(ND)/ 2018 stands disposed of in terms of above order.