

(2020) 02 NCLT CK 0080

In the National Company Law Appellate Tribunal

Case No : Company Application No. 1193 Of 2020 In Company Petition No. (IB)-1412(ND) Of 2019

Neesa Ltd

APPELLANT

Vs

Sanjay

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1)
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 4, 4(3), 12, 13
Insolvency And Bankruptcy Code, 2016 — Section 9, 14, 33(1)(a), 33(2), 33(5), 33(7), 34(1)

Citation : (2020) 02 NCLT CK 0080

Hon'ble Judges : Ina Malhotra, J; L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Manish Devan, Rajesh Gupta

Final Decision : Disposed Of

Judgement

1. This is an application filed by Mr. Rajesh Kumar Gupta, the Resolution Professional of M/s. Eshal Foods Private Limited under Sections 33(1)(a) and 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for seeking the following main reliefs :

"(b) Pass an appropriate Order to commence the Liquidation of the Corporate Debtor i.e. M/s. Eshal Foods Private Limited;

(c) Appoint Mr. Rajesh Kumar Gupta, Resolution Professional as Liquidator of the Corporate Debtor i.e M/s. Eshal Foods Private Limited and as per the resolution passed by the CoC, the Liquidator shall be entitled to fee as prescribed in the fee table under Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016.

(d) Pass an appropriate Order that the Order of Liquidation is a notice of discharge to the employees, officials, workmen etc."

2. Facts of the case in brief are that the Operational Creditor, M/s. Ambe Agrofoods Private Limited filed an application bearing No. IB-1412/(ND)/2019 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Eshal Foods Private Limited. The said application was admitted by this Tribunal vide Order dated 19.09.2019 and Mr. Rajesh Kumar Gupta was appointed as Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a Public Announcement in Form-A on 17.10.2019. The Public Announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted a Committee of Creditors (CoC) comprising of HDFC Bank, M/s. Shiva Paper Mart, Ms. Manisha Gupta and Ms. Namarta Singhal. The first meeting of the CoC was held on 15.11.2019. It is further submitted by the RP that in the first meeting of CoC, he was confirmed as RP from IRP.

5. That on an application filed by the IRP, this Tribunal vide its Order dated 03.01.2020 had confirmed the appointment of Sh. Rajesh Kumar Gupta as RP.

6. It is submitted by the Ld. RP :

"16. That the fourth meeting of the CoC held on 25.01.2020. In the fourth CoC meeting, M/s. Shiva Paper Mart, M/s. Manisha Gupta & Associates and M/s. Namarta Singhal proposed the liquidation against the Corporate Debtor in view of the fact that the Corporate Debtor is not undertaking any business operations or activities and there is no source of revenue at present. All the business activities are already closed and all staff members had already been removed from the services of the Corporate Debtor or had resigned....."

7. That the Ld. RP has annexed the Resolutions passed along with the voting thereon by the 5th Meeting of CoC held on 25.01.2020. The voting sheet as annexed is reproduced below :

M/s. ESHAL FOODS PRIVATE LIMITED (Under CIRP)

(Order dated 19.09.2019 in Case No. CP (IB)-1412(ND)/2019 passed by Hon'ble National Company Law-Tribunal, New Delhi Bench, New Delhi)

4th Committee of Creditors Meeting

(As per Notice with Agenda dated 22nd January' 2020)

Date: 25.01.2020 (Saturday) At 1 PM at 0-22, Lower Ground Floor, Jangpura Extension, New Delhi - 110014

VOTING SHEET

S. No

LIST OF MATTERS TO BE VOTED UPON

VOTING SHEET (.....) YES/NO/ ABSTAIN

1

To approve for publication of Expression of Interest (EOI) in Form-G and the minimum eligibility criteria for the Prospective Resolution Applicants.

NOT CONSIDERED

2

To approve the Bid Evaluation Matrix and the request for Resolution plan.

NOT CONSIDERED

3

To Discuss and Approve Interim Finance for Corporate Insolvency Resolution Process Cost.

NOT CONSIDERED

4

To Open New Current Account of Corporate Debtor designated for Corporate Insolvency Resolution Process to be operated by IRP /RP and to Authorise IRP/ RP to make payment upto Rs. 2 lakh without prior approval of Committee of Creditors.

NOT CONSIDERED

5

Any other matter with the permission of the Chair. Resolution: "Resolved that, the consent of members be and is hereby granted to initiate the procedure of Liquidation against the M/s Eshal Foods Pvt Ltd. (Corporate Debtor) and Mr. Rajesh Kuamr Gupta, an Insolvency Professional (Reg. No. IBBI/IPA-003/IP-M00198/2018-19/12308) be and hereby appointed as the Liquidator in the manner of Liquidation Process of M/s Eshai Foods Pvt Ltd at the fee calculated as per Regulation 4 of IBBI (Liquidation Process), 2016 "

Yes

VERIFICATION :-

I, Nilofar Shaikh, Authorised Representative of HDFC Sank Ltd. has been duly authorized on behalf of the board to participate, vote and sign in Committee of Creditors Meeting.

(Signature)

8. It is stated by the Ld. RP that there was no resolution plan and hence, the CoC in its 4th meeting convened on 25.01.2020 passed the Resolution for initiation of the Liquidation proceeding with 100% voting rights. The details of the voting result as averred by the Applicant is reproduced below :

S. No.

Name of Creditors

Voting right in CoC

Yes/No/ Abstain

1

M/s Shiva Paper Mart

11.08.%

Yes

2

Ms. Manisha Gupta

33.24%

Yes

3

Ms. Namarta Singhal

44.32%

Yes

4

HDFC Bank

11.36%

Yes

Total

100%

9. In the circumstances, basing on the resolution made by the CoC and there being no other alternative, this Bench is inclined to order Liquidation of the Corporate Debtor. The consent of the RP Sh. Rajesh Kumar Gupta to act as a Liquidator is on record.

10. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Eshal Foods Private Limited in the manner laid down in

the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a. Mr. Rajesh Kumar Gupta, IBBI Registration No. IBBI/IPA-003/IP-N00198/2018- 19/12308, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34(1) of IBC 2016
 - b. The Liquidator, is 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 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;
 - d. 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;
 - e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
 - f. 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.
 - g. The Registry is directed to communicate a copy of the Order to the Operational Creditor, the Corporate Debtor and Liquidator at the earliest but not later than 25.02.2020. A copy of this Order be also sent to the ROC for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within 30 days.
 - h. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi and Haryana and to the Insolvency and Bankruptcy Board of India;
11. C.A. 1193/2020 filed in C.P. No. (IB)-1412(ND)/2019 is disposed-off in the aforesaid terms.