

(2023) 05 NCLT CK 0067

In the National Company Law Tribunal

Case No : CA No. 49 Of 2020 & IA No. 200 Of 2021 In CP (IB) No. 159/Chd/
PB/2018

Oriental Bank of Commerce Vs M/s. Millennium Wires Private Ltd ?

Date of Decision : 25-05-2023

Acts Referred:

General Clauses Act, 1897 — Section 16
Insolvency and Bankruptcy Code, 2016 — Section 33, 34(4), 34(7), 60(5)
National Company Law Tribunals, 2016 — Rule 11

Citation : (2023) 05 NCLT CK 0067

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

Bench : Division Bench

Advocate : Anil Kumar Aggarwal, Subhash Saini

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

CA No. 49/2020

1. The present application has been filed by the Financial Creditor i.e. Oriental Bank of Commerce against Mr. Subhash Saini, Liquidator of M/s Millennium Wires Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking change of the liquidator.

2. The brief facts of the case as stated by the applicant i.e. Financial Creditor are as under:

i) That in the present case, the Corporate Debtor was liquidated by order dated 14.03.2019, and the respondent was appointed as Liquidator. It is alleged that the respondent/ liquidator has appointed various professionals with high fees without the approval of the stakeholders.

ii) It is also alleged that the liquidator has appointed Green Beret Real Estate Services LLP for the demarcation of agricultural land of the Corporate Debtor at a huge fee of Rs. 1,18,000/- but the process has not been completed.

iii) Further, the ex-Resolution Professional has been hired by the Liquidator by paying a sum of Rs. 15,000/- per month which is considered high by the Financial Creditor.

3. It is submitted that the applicant being the sole Financial Creditor of the Corporate Debtor finds this expenditure unnecessary and quite high without any result. It is, therefore, prayed by the applicant that the liquidator be removed.

4. The respondent-liquidator has filed its reply by Diary No. 01077/2 dated 10.03.2022 wherein it is stated that the erstwhile Resolution Professional has declined to acknowledge that he has appointed the Advocates, Ms. Diksha Goel and Mr. Vishwa Preet Rapri for filing any matter in OBC Vs. M/s Millennium Wires Private Limited. It is further stated that after the liquidation order is passed, the CoC has no role to play. Reliance has been placed on the judgment of Punjab National Bank Vs. Mr. Kiran Shah, Liquidator of ORG Informatics Ltd. passed by Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 102/2020 and IFCI Ltd. Vs. M/s BS Limited passed by Hon'ble NCLT, Hyderabad in IA No. 1148/200 in CP(IB) No. 278/7/HDB/2018 dated 07.01.2023.

5. In its rejoinder filed by Diary No. 01077/09 dated 20.10.2022, it is submitted that in view of Section 16 of the General Clauses Act, 1897, this Tribunal being the appointing authority for the liquidator shall have the powers to suspend or dismiss the liquidator. It is further alleged that the respondent has incurred huge unnecessary expenses during the liquidation process.

6. We have heard the learned counsels from both sides and have also gone through the records carefully.

7. In the present case, the issue to adjudicate is whether the Financial Creditor can move an application for the removal of the liquidator.

8. In this connection, it is noted that the Hon'ble NCLAT in the case of Punjab National Bank Vs. Mr. Kiran Shah, (Supra) has held as under;

"The grievance of the Appellant is that he is against the appointment of the Liquidator. However, we are not inclined to interfere with the impugned order as after the liquidation the "Committee of Creditors" has no role to play and they are simply a claimant whose matters are to be determined by the Liquidator and cannot move an application for removal of Liquidator in absence of any provisions under the Law."

We further note that the coordinate Bench of NCLT, Hyderabad in the case of IFCI Limited Vs. M/s BS Limited (Supra) has held as under;

"Once liquidation process is initiated, the erstwhile CoC members have no role to play and they cannot move any application for removal of Liquidator, nor there exit provisions under law to remove the liquidator. The Liquidator is at liberty to conduct the liquidation process strictly in accordance with the IBC."

9. A reference is made to Section 34(4) and 34(7) of IBC, which deals with the

replacement of a Resolution Professional in three situations but do not deal with the replacement or removal of the liquidator at the instance of creditors. We are therefore of the considered opinion that under IBC there is no legal provision related to replacement or removal of the liquidator.

10. In view of the above discussion, we hold that the Financial Creditor has no role to file an application for the removal of the liquidator, particularly when there is no instance of violation of any provision of the Insolvency and Bankruptcy Code, 2016 on the part of the Liquidation.

11. In the result, the present application being CA No. 49/2020 is dismissed.

IA No. 200/2021

12. The present application has been filed by Mr. Subhash Saini, Liquidator of M/s Millennium Wires Private Limited against Punjab National Bank (Formerly Oriental Bank of Commerce) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for issuance of necessary directions to the respondent bank to reimburse the liquidation expenses incurred and to be incurred by him in the liquidation process of M/s Millennium Wires Pvt. Ltd.

13. The brief facts of the case as stated by the applicant i.e. Liquidator are as under:

i) The Corporate Debtor i.e. M/s. Millennium Wires Private Ltd. was ordered to be liquidated under Section 33 of the Code by this Tribunal vide its order dated 14.03.2019.

ii) Subsequent to the liquidation, the applicant/ liquidator has been working with utmost diligence and sincerity. He has filed various preliminary reports as required under the Code and also pursued the large number of cases of the Corporate Debtor both civil and criminal pending in various Courts and Tribunals.

iii) He has also incurred expenses on traveling, conveyance and payments are to be made to various other professionals rendering assistance to the liquidator such as Valuers, Advocates, Auditors etc.

iv) It is further pointed out that right from the inception, the respondent bank had made defaults in the payment of liquidation expenses. Under the directions from this Bench, the expenses up to February, 2022 have been cleared but the liquidator has already incurred an amount of Rs. 6,76,922/- for the period from March, 2022 to December, 2022. In addition to the same an outstanding bill dated 17.01.2020 from the Forensic Auditor amounting to Rs. 2,91,665/- is pending for clearance.

v) It is further stated that the matter relating to the necessary payments to be made toward various liquidation expenses have been repeatedly taken up in the Consultation Committee meeting on various dates but the payment still remains pending as of the date of filing of this application.

14. The respondent has filed its reply by Diary No. 00183/3 dated 21.02.2022 stating that the applicant/ liquidator has failed to mention the details of expenses incurred during the months from March' 2020 to December' 2020. Further, the Forensic Audit Report is not yet received and therefore, the payment towards the Forensic Auditor's Bill has not been made. It is further stated that despite the passage of more than three years since the initiation of liquidation on 14.03.2019 nothing fruitful has been done by the applicant/ liquidator. It is submitted that the liquidation process is still at a standstill mode, the claim of the various expenses of the liquidator does not look justified.

15. Rejoinder has been filed by learned counsel for the applicant by Diary No. 0185/4 dated 10.03.2022 wherein the applicant has mentioned various dates of submission of details of liquidation expenses to the respondent bank. Further, it is stated that the Forensic Audit Report has already been received and even a copy of the same has been shared with the Central Bureau of Investigation (CBI), which is investigating fraud committed in the case of Corporate Debtor.

16. The Liquidator has further alleged collusion between the Directors of the Suspended Board with the respondent bank with regard to certain land transactions. It is further stated that the respondent bank has concealed the material fact that it has filed a complaint against the applicant/ liquidator with the Insolvency and Bankruptcy Board of India (IBBI).

17. We have heard the learned counsels from both sides and have also gone through the records carefully.

18. We note the fact that the respondent bank has defaulted in making payments towards liquidation expenses before and, on an earlier occasion, had to be directed by this Adjudicating Authority vide order dated 20.10.2020 for considering the claims as bills submitted by the liquidator and release of payment by him. Subsequent to this order, payments were made for a certain period.

19. As we have already dismissed IA No. 49/2020 filed by the respondent bank for the removal of the liquidator, the plea that payments towards liquidation expenses be linked to the removal of the liquidator cannot be entertained.

20. We have also noted that there are allegations of fraud etc. which are under investigation by CBI in the case of Corporate Debtor and the liquidator has to be very diligent in his cooperation with the directions of the investigative agencies. In such a situation, any further delay in reimbursing the verified claims of liquidation expenses adversely affects the liquidation process.

21. In the present proceeding, prima facie the bank has failed to make out a case for inflation of the bills by the liquidator, except for generally stating that the outcome is not satisfactory.

22. Considering the urgency of the situation, the liquidator is directed to convene a meeting of the SCC within two weeks of this order and submit bill-wise

expenses along with supporting evidence before the SCC. The SCC is directed to consider the bills submitted by the liquidator and determine the amounts to be paid as per law. The payments as decided by the SCC be made to the liquidator within two weeks of the SCC meeting. The liquidator is also directed to take effective steps to expeditiously complete the liquidation process. In case of any grievance with regard to the payments towards liquidation expenses, liberty is granted to the liquidator to approach this Adjudicating Authority.

23. In the result, the present application being IA No. 200/2021 is allowed and disposed of accordingly.