

(2020) 02 NCLT CK 0105

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

Case No : Company Application No. 1038 Of 2020 In Company Petition No. (IB)-204(ND) Of 2019

Pooran Trading Pvt. Ltd. And Ors

APPELLANT

Vs

Apple Industries Pvt. Ltd. And Ors

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 14, 25(2)(h), 33(1)(b), 33(5), 33(7), 34(1)

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1), 36(A)

Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 12, 13

Citation : (2020) 02 NCLT CK 0105

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

Bench : Division Bench

Advocate : Angad Gulati, Rakesh Kumar Singala, Manohar Malik, Nupoor Maharaj, Kajal Bhatia

Final Decision : Disposed Of

Judgement

L.N. Gupta, Member (T)

1. This is an application filed by Mr. Rakesh Kumar Singala, the Resolution Professional of the Corporate Debtor M/s. Pooran Trading Pvt. Ltd. under Sections 33(1)(b) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for seeking the following main reliefs :

"A. It is a humble prayer of the resolution professional/ applicant that this Hon'ble tribunal may be pleased to pass orders to liquidate this corporate debtor in terms of chapter III, Part II of the Insolvency and Bankruptcy code 2016.

"B. This Hon'ble Tribunal, may appoint the current Resolution Professional Shri Rakesh Kumar Singala as the liquidator for carrying out the liquidation process of

the corporate debtor Apple Industries Limited."

2. Facts of the case in brief are that the Financial Creditor, M/s. Pooran Trading Pvt. Ltd. filed an application bearing No. (IB)-204(ND)/2019 under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Apple Industries Pvt. Ltd. The said application was admitted by this Tribunal vide Order dated 13.03.2019 and Mr. Ajay 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 published in the newspapers namely, the Financial Express (English), Jansatta (Hindi) and also in Anathapur Edition of Deccan Chronicle (English) and Andhrabhoomi (Telgu) on 27.05.2019. The public announcement was also made and 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 Punjab National Bank having claim percentage of 99.84% and M/s. Pooran Trading Pvt. Ltd. having claim percentage of 0.16%.

5. It is submitted by the RP that as per decision in the second meeting of the CoC held on 22.04.2019, the IRP Mr. Ajay Gupta was replaced with Mr. Rakesh Kumar Singala, RP. The appointment of Mr. Rakesh Kumar Singala, RP was confirmed vide Order dated 08.07.2019 of this Tribunal.

6. It is further submitted by the RP that Form-G was published on 27.05.2019 inviting Expression of Interest (EOI) from the prospective resolution applicants as per the statutory requirement in terms of Section 25(2) (h) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 36 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is added by the RP that he had received requests from 5 (five) persons/entities for issuing eligibility criteria and accordingly, the eligibility criteria were made available to all the five applicants.

7. It is stated by the RP that Punjab National Bank, one of the CoC Members with voting rights of more than 99%, vide its mail dated 24.07.2019 requested the Resolution Professional to further extend the period of submission of EOIs for a period of 15 days. Accordingly, RP again issued advertisements in Form-G which was published on 27.07.2019 in Delhi NCR edition of Financial Express (English), Jansatta (Hindi), Ananthapur edition of New Indian Express (English) and Andhrabhoomi (Telgu) for invitation of EOIs from the prospective Resolution Applicants.

8. That this Bench vide Order dated 30.09.2019 had allowed the extension of CIR Process for 90 days beyond the period of 180 days.

9. It is stated by the RP that Resolution Plans were received from two Resolution

Applicants namely, M/s. Agarwal Foundries Pvt. Ltd. and Invent Securitization and Reconstruction Ltd.

10. It is averred by the RP that :

"13. The 10th committee of creditors meeting conducted by the resolution professional dated 03.12.2019 highlights the fact that both the resolution applicants had submitted their revised financial offer before the meeting and negotiated and the committee members with the help and assistance of the resolution professional concerned discussed more offers in detail with the invited representatives, RA No. 1 i.e. M/s. AGARWAL FOUNDRIES PRIVATE LIMITED was absent from the meeting and only RA No. 2 i.e. INVENT SECURITIZATION AND RECONSTRUCTION LIMITED another resolution applicant presented its Resolution Plan in this meeting. The revised resolution plans were placed before the Committee of Creditors for due consideration at the 10th Committee of Creditors held on 03.12.2019....."

11. It is further submitted by the RP that the Resolution Plans of M/s. Invent Securitization and Reconstruction Limited with Option-I being Item No. 6 and Option-II being Item No. 7 were put to vote before the Members of CoC in the 10th Meeting. It is stated by the RP that the Resolution Plans were disapproved by CoC by 99.84% of votes as per the E-Voting summary given on Page 52 and 53 of the Application.

12. That the RP has also filed his written consent on 21.01.2020 to act as Liquidator as required under Section 34(1) of IBC 2016.

13. In the circumstances, there being no approved Resolution Plan for running the affairs of the Corporate Debtor or any other alternative, this Bench is inclined to allow Liquidation of the Corporate Debtor as requested by RP.

14. In sequel to the above, the Application is allowed ordering Liquidation of the Corporate Debtor, M/s. Apple Industries Pvt. Ltd. in the manner as 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. Rakesh Kumar Singala, IBBI Registration No. IBBI/ IPA-0021/IP-N00581/2017-18/11744, 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 Financial Creditor, the Corporate Debtor and Liquidator at the earliest but not later than seven days from today. 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 & Haryana and to the Insolvency and Bankruptcy Board of India;

15. C.A. 1038/2020 filed in IB-204(ND)/2019 is disposed-off in the aforesaid terms.