

(2020) 07 NCLT CK 0083

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

Case No : Interlocutory Appeal No. 2124 (Pb) Of 2020 In Company Petition No. (IB) - 117 (Pb) Of 2019

Punjab National Bank

APPELLANT

Vs

Beta Infratech Private Limited And Ors

RESPONDENT

Date of Decision : 24-07-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 12, 14, 21, 30(4), 30(6), 33, 33(1)(a), 33(5), 34(1), 35(1)
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1), 17
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 12, 13
Companies Act, 2013 — Section 230

Citation : (2020) 07 NCLT CK 0083

Hon'ble Judges : B.S.V. Prakash Kumar, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Mano Rajani, S.V. Satyanarayana, R.P., Sunil Bagada, Santosh Sarikanda

Final Decision : Disposed Of

Judgement

Hemant Kumar Sarangi Member (T)

1. This is an application filed by the Resolution Professional, under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the Corporate Debtor, M/s. Beta Infratech Private Limited.

2. The facts in brief are that the Financial Creditor, Punjab National Bank, had filed an application under Section 7 of the Code bearing number IB-117(PB)/2019 for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal

on 14.06.2019 initiating CIRP against the Corporate Debtor and there in, appointed Mr. S V Satyanarayana, as the Interim Resolution Professional (IRP).

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 Interim Resolution Professional made paper publication inviting claims from the creditors of the corporate debtor. Consequently, in compliance with Section 21 of the Code read with Regulation 17 of the CIRP Regulations, a Committee of Creditors was constituted.

4. Thereafter, the meeting of CoC was held on 12.07.2019 and the applicant was appointed as Resolution Professional of the Corporate Debtor. Subsequently, after approval of the CoC the Invitation for Expression of Interest was published by the applicant on 28.08.2019, in English in Business Standard (Hyderabad, New Delhi & Uttarakhand), in Telugu in Nava Telangana (Hyderabad) and in Hindi in Action India (New Delhi & Uttarakhand), with the last date for submission of Resolution Plans as 27.10.2019.

5. As per the submissions of the Applicant, Five parties had sought details of EOI and two parties, namely, M/s. JC Flowers Assets Reconstruction Pvt. Ltd. (Eight Capital Group) and M/s. Aditya Birla ARC Ltd. had submitted the EOIs.

6. As per the Applicant, after verification of their eligibility, RP with the approval of CoC, furnished the information memorandum, Evaluation Matrix and Request for Resolution Plan (RFRP), to both the prospective Resolution Applicants. Neither of the parties submitted the Resolution Plan till the last date 27.10.2019. But M/s. Aditya Birla ARC Ltd sought more time for submission stating that, they are still evaluating the proposal and are also yet to finalise their partners.

7. However, in the fourth meeting of CoC, it was decided that the timeline for submission of expression of interest should be extended, consequently, an amended Form-G was published in the newspapers on 06.11.2019.

8. In response to the fresh EOI dated 06.11.2019, new EOI was received from Mr. Anuj Nautiyal, Bangalore while one out of the two earlier prospective Resolution Applicants, M/s. Aditya Birla ARC continued with its due diligence exercise.

9. Thus, with three valid EOIs on hand the last date for submission of Resolution Plan being 10.12.2019, CoC decided to seek extension of a further period of 90 days for the CIRP. Accordingly, an IA was filed before this AA by the RP praying for extension of CIRP from 11.12.2019 (180 days) to 09.03.2020 (270 days) and this AA vide its order dated 05.12.2019, approved the extension of CIRP to 09.03.2020. The CoC further extended the time frame for submission of the Resolution plan upto 15.01.2020 and then to 10.02.2020.

10. The Applicant further submits that, in the seventh and the last meeting of CoC, conducted on 26.02.2020, wherein, the RP has explained the non-receipt of Resolution Plans from the three short listed Resolution Applicants, i.e., M/s. JC

Flowers Asset Reconstruction Pvt. Ltd. (Eight Capital Group), M/s. Aditya Birla ARC Ltd. and Mr. Anuj Nautiyal, Bangalore by the last date on 10.02.2020 or later and have not sought additional time frame for submission of resolution plan. Similarly, the other two interested parties namely M/s. Ranjeet Hydro Power and consortium of three Solar companies also have not submitted the eligible documents confirming their eligibility for EOI.

11. Further, due to non-receipt of any Resolution Plan several extensions of time for submission of the same, the CoC has agreed to intimate the Liquidation Proceedings of the Corporate Debtor in terms of applicable provisions of the law.

12. Thereafter, in the 7th meeting of CoC it was decided that an application for liquidation of corporate debtor should be filed before the Tribunal. It is also submitted that the CoC in its 24th meeting has also deliberated regarding sale of Corporate Debtor as a going concern and also Compromise and Arrangement under Section 230 of the Companies Act, 2013.

13. The ex-management of the corporate debtor has raised objection with the contention that the offer made by the resolution applicant was more than the liquidation value and the object of the code is maximisation of the value of assets of the corporate debtor therefore the resolution plan should have been accepted instead of liquidating the corporate debtor.

14. In this regard, the minutes of the CoC shows that the resolution plan could not be approved by CoC with required majority votes. We do not find any infirmity in the reasoned decision of the CoC. In the absence of any approved/viable resolution plan, the Adjudicating Authority has no option but to pass order of liquidation on completion of the insolvency resolution period. Be that as it may even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

15. It is also pertinent to note that the word "may" used in Section 30(4) of the Code is indeed a discretion given to the Committee of Creditors either to reject or accept the resolution plan with 66% voting share, despite the plan in all respects is correct. Commercial decision of CoC is not open to judicial review. The Resolution Professional has filed the present application for liquidation of the Corporate Debtor, as statutory period has elapsed from the date of initiation of CIRP and no Resolution Plan has been approved by the Committee of Creditors.

16. It is pertinent to refer to the statutory provisions provided in Section 33(1) (a) of the Code which mandates that "where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter."

17. Therefore, upon failure of the resolution process there being no approved resolution plan and on completion of the statutory CIRP period; Liquidation has

to follow. Adherence to statutory requirements has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.

18. In the factual background and in the absence of any approved resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the decision of the Committee of Creditors, for liquidation of the corporate debtor under Section 33 of the Code.

19. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s. Beta Infratech Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

a. Mr. Sivanagaraja Taduvai with Registration No. IBBI/IPA-003/IP-N00065/2017-18/10551, is appointed as Liquidator in terms of Section 34(1) of the Code.

b. Mr. Sivanagaraja Taduvai, 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 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. 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;

e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

f. The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35(1) of the Code.

g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

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.

j. I.A. 2124 (PB)/2020 filed in IB 117 (PB)/2019 is disposed of in the aforesaid

terms.