
(2020) 10 NCLT CK 0015

In the National Company Law Appellate Tribunal

Case No : Interlocutory Application No. 2507/(ND) Of 2020 In Company Petition No. (IB) 248/(ND) Of 2019

Rajesh Jangra And Argentium International Pvt. Ltd.

APPELLANT

Vs

UTM Engineers Pvt. Ltd.

RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6(1), 39C, 40C

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

Insolvency And Bankruptcy Code, 2016 — Section 9, 12(2), 14, 18(1)(a), 19(2), 33(1)(a), 33(5), 33(7), 34(1)

Citation : (2020) 10 NCLT CK 0015

Hon'ble Judges : Dr. Deepti Mukesh, J; Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Abhishek Anand, Viren Sharma

Judgement

Dr. Deepti Mukesh, J

1. This is an application filed by the Resolution Professional (hereinafter referred as "RP") under Section 33 (1)(a) of Insolvency and Bankruptcy

Code, 2016 (hereinafter referred as the "Code") for passing an order OF liquidation of the corporate debtor, UTM Engineering Private limited.

2. The facts in brief are that the Operational Creditor, Argentium International Private limited had filed an application bearing no. IB-248 (ND)/2018

under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor, UTM Engineering

Private Limited. The insolvency application was admitted by this Tribunal vide order dated 17.10.2019 and Mr. Rajesh Jangra was appointed as

Interim Resolution Professional (IRP).

3. The RP under Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016, made a public announcement in FORM-A on 01.11.2019 and the last date for submission of proof of claim was 12.11.2019. The

newspaper cutting is annexed.

4. In terms of Section 18(1)(a) of the code, the RP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly

constituted a Committee of Creditors (hereinafter referred as the "COC") which comprised of sole financial creditor, being Central Bank of India.

In the 2nd meeting of COC the IRP was confirmed as RP. The claim of HDFC bank was verified and approved and resolved that the COC be

reconstituted, adding HDFC bank as a new financial creditor.

5. Further the applicant submits that in the 5th meeting the applicant and members of COC prepared and information Memorandum and deliberated

upon draft EOI for inviting prospective resolution applicants for submission of resolution plan and eligibility criteria as prepared by the RP. Thereafter,

the COC resolved that Invitation for Expression of Interest, to be published in FORM G. The same was published in Financial Express, English edition

and Jansatta Hindi Edition on 11.01.2020 with last date of submission being 27.01.2020.

6. The applicant submits that pursuant to Invitation of EOI, interests from 2 prospective resolution applicants had been received and neither of the two

could be considered eligible prospective applicants as they failed to file documents along with the Expression of Interest and both EOI received does

not fulfil the eligibility criteria. Also, a 3rd EOI was received on 1st Feb 2020 i.e. after due date. Hence no prospective resolution applicants could be

considered eligible. In view of the same, fresh revised FORM G with extended timelines for submission of expression of interest was decided to be

published. The copies of Form-G as published on 19.02.2020 in newspapers namely Jansatta (Hindi) & Financial Express (English) with the last date

for submission of EOI being 06.04.2020 have been annexed.

7. The applicant submits that the valuer appointed by the applicant have not been able to complete valuation due to lack of information regarding fair

value and liquidation value from the suspended board of director. Hence the applicant filed an application under Section 19(2) of the I & B Code, 2016

being CA 542/ND/2019 and the said is still pending before this bench.

8. The applicant submits that one of the financial creditors, Central bank of India proposed the name of Mr. Ashok Kumar Dewan, to be appointed as

RP. The COC passed a resolution for replacement of Mr. Rajesh Jhangra as RP and to file appropriate application before the NCLT, New Delhi

Bench. The said application bearing no. 1840 of 2020 for replacement of Resolution Professional is still pending.

9. The applicant submits that certain missing documents had been received from M/s SREI Equipment finance Pvt. Ltd. in support of its claim and

pursuant to Invitation of EOI, expression of Interest from 3 prospective resolution applicants had been received.

10. The applicant submits that after verification, the claim of M/s SREI Equipment finance Pvt. Ltd. has been admitted. Accordingly, the applicant

again reconstituted the COC and the new COC comprised of three financial creditors. The applicant further apprised the COC that as per Form -G

dated 19.02.2020 the last date for receipt of resolution plan was fixed for 06.04.2020 and the last date for closure of CIRP was 14.04.2020. However,

due to the imposition of nationwide lockdown, the IBBI vide notification dated 29.03.2020 inserted Regulation 40C. The Honâ??ble NCLAT Suo

Moto passed an order dated 30.03.2020, the period of lockdown imposed has been excluded from the period of CIRP. Accordingly, the fresh revised

timelines are as under:

a) Revised last date of submission of resolution plan as 14.06.2020.

b) Revised last date of expiry of CIRP period as 22.06.2020.

11. The applicant further states the applicant apprised the COC that the prospective Resolution Applicants, have requested for extension of time for

submission of the Resolution Plan in view of the Covid-19 pandemic. The applicant further apprised the COC that the CIRP period shall come to an

end on 22.06.2020, and if COC decided for extension for submission of Resolution Plan, an application before the adjudicating authority is required to

be filed. The resolution put up for e- voting in the 10th meeting for extension of CIRP period for 90 days beyond 180 days before and a resolution

seeking consent of COC be accorded to RP for filing the application before NCLT was put forth and was disapproved by the COC.

12. The applicant apprised the COC that pursuant to the outcome of e-voting and

view of the fact that the resolution for CIRP extension under

Section 12(2) was not approved therefore, the only consequence is liquidation of corporate debtor as per Section 33(1) (a) of IBC 2016.

13. Thereafter, the members of COC discussed about assessment of sale of the corporate debtor as a going concern and were of the view that since

a there is a running contract in one of the JV of the Corporate debtor. Therefore, it will be in the best interest of the stakeholders to explore the

possibility of selling the corporate debtor as a going concern. Accordingly, with a 99.28% voting share the said resolution was approved as:

â??RESOLVED THAT the consent of the members of Committee of Creditors is hereby accorded for sale of Corporate Debtor as a going

concern in accordance with the provisions of Regulation 39C of IBBI (Insolvency Regulation Process for Corporate Persons) Regulation

2016.â??

14. The applicant appraised the COC, that since the COC had not approved extension of CIRP time, therefore no fresh invitation for EOI or extension

can be given to Prospective Resolution Applicants. Further appraised that the CIRP period is ending on 23.06.2020, therefore the applicant is left

with no option but to file application for liquidation of Corporate Debtor in terms of Section 33(1)(a) of IBC, 2016.

15. Considering the documents and submission made, since the COC in its commercial wisdom has decided not to seek extension of CIRP period but

to take the corporate debtor in liquidation and explore the possibility of it being sold as going concern, we are of opinion that the decision of COC

should not be interfered. The present application seeking liquidation of the corporate debtor, UTM Engineering Private Limited, in the manner laid

down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 is allowed. The RP, being the applicant has not given consent to act

as Liquidator and COC have proposed the name of Mr. Kanti Mohan Rastogi to be appointed as the liquidator, who has filed consent to act as

liquidator in Form AA along with certificate of Registration.

16. As a consequence, the court appoints Mr. Kanti Mohan Rastogi having registration no. IBBI/IPA-002/IP-N00097/2017-18/10240, address at

Building No.E-7,Kailash Colony,New Delhi,email kanti.rustagi@patanjaliassociates.com as Liquidator in terms of Section 34(1) of

the Code with

following directions:

a) The liquidator 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;

b) The liquidator 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 rules and regulations.

c) The liquidator to follow up and continue to investigate the financial affairs of the Corporate Debtor to determine any undervalued and preferential transactions etc.

d) 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.

e) The Liquidator to 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.

17. As a consequence of the application being admitted the Moratorium as envisaged 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.

18. A copy of the order shall be communicated to the Applicant and the Corporate Debtor as well as to the liquidator above named and intimate of the

said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master

Data. ROC shall send compliance report to the Registrar, NCLT.