
(2019) 09 NCLT CK 0002

In the National Company Law Tribunal

Case No : Miscellaneous Application No. 2716 Of 2019, Company Petition No. 54
I&B Of 2019

R.H. Petroleum Pvt. Ltd.

APPELLANT

Vs

Tag Offshore Ltd.

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 9, 33(1), 33(2), 34(1), 52, 53

Citation : (2019) 09 NCLT CK 0002

Hon'ble Judges : Bhaskara Pantula Mohan, J;Shyam Babu Gautam, Member
(Technical)

Bench : Division Bench

Advocate : Dhruvad Vaghani

Final Decision : Allowed

Judgement

1. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an order dated 24.04.2019 of this Adjudicating Authority on a Section 9 Petition filed by the Operational Creditor, wherein Mr. Mr. Pramod N. Mulgund, was appointed as Interim Resolution Professional (IRP). Thereafter in the 2nd meeting of the Committee of Creditors (CoC) held on 30.05.2019 Mr. Sudip Bhattacharya was resolved to be appointed as Resolution Professional (RP) and the same was approved by this Bench.

2. The RP submits that the public announcement was made on 28.04.2019 fixing 07.05.2019 as the last date for submitting the claim. Subsequently, the RP constituted the CoC.

3. The RP submits that in the 3rd CoC held on 06.06.2019 two registered valuers were appointed as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation. It is further submitted that an advertisement was issued, inviting Expression of Interest in Form G in

"Business Standard" and "Navshakti" on 09.07.2019, fixing 17.08.2019 as last date for submission of Expression of Interest by the Prospective Resolution Applicants.

4. The Resolution Professional submits that he had received (6) six expression of interest and out of six only one had submitted complete set of documents. The CoC in the 6th CoC meeting held on 17.07.2019, one of the financial creditor i.e. State Bank of India had requested to put a proposal for filing of early liquidation application under section 33(2) of the Code on the following grounds:

- i. "That the Corporate Debtor does not have a going concern value;
- ii. that the Corporate Debtor has no viable business operations and the business of the Corporate Debtor were suspended since February, 2019;
- iii. that the Corporate Debtor has been blacklisted by ONGC and all other ports from all future contracts;
- iv. that the documents of compliance and safety management certificate have been suspended by Directorate General of shipping India;
- v. that the class certificate of all the vessels have been suspended by IRCLASS, Indian Registrar of shipping and hence the insurance has been withdrawn by the respective insurers;
- vi. that few of the Corporate Debtor's vessel have been arrested pursuant to orders passed by the Hon'ble High Court at Bombay and the vessels are, majorly, unmanned and poses navigational and environmental hazards though every efforts were taken by the Applicant to safekeep and protect the assets of the Corporate Debtor;
- vii. that the majority of employees have left the employment of the Corporate Debtor;
- viii. that the net worth of the Corporate Debtor has eroded;
- ix. that the vessels which are the only crore-assets available in the hands of the Corporate Debtor are unseaworthy;
- x. that the majority of these vessels are approaching shelf-life and the chances of recovery of the debt due is minimal;
- xi. Since the assets value of these vessels are deteriorating at a rapid pace, anyone who would show interest will be willing to pay price which would lower than the market value: and
- xii. Since most of the vessels are independently charged, the members of the CoC believe that it will be faster and easier to sell the vessels on individual basis rather than any prospective resolution applicant taking the Corporate Debtor as a going concern."

5. It is submitted that the CoC in the 6th CoC meeting held on 17.07.2019 considering the above grounds submitted in the meeting by one of the Financial Creditor i.e. State Bank of India was considered and decided that to run CIRP process is not in the best interest of the Corporate Debtor. The COC decided to liquidate the company with 76.30% voting. Hence this Application filed by the RP.

6. The Applicant/Resolution Professional Mr. Sudip Bhattacharya, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.

7. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid down under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), for the valuation report filed by the valuer has not been disputed by the CoC, on verification, we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been approved by the Adjudicating Authority and accordingly, this Bench orders;

a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

b. that the Mr. Sudip Bhattacharya, Registration No. IBBI/IPA003/IPN0080/2017-2018/10703, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code. The Liquidator's fee is fixed at 1st six months Rs. 7,50,000/-, next six months Rs. 6,00,000/-, rest period, if any Rs. 3,50,000/- for conduct of the entire liquidation proceedings.

c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

d. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

e. that the liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

f. that on having liquidation process initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.

g. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

8. Consequently, as stated supra, Resolution Professional is appointed as the Liquidator as provided under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator;

9. Accordingly, this Misc. Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.