(2020) 02 NCLT CK 0010

In the National Company Law Appellate Tribunal

Case No : Company Application No. 1311 Of 2020 In (IB) No. 1117(ND) Of 2018

RQS Engineering Pvt. Ltd — APPELLANT

Vs

Reliable Insupacks Pvt. Ltd — RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 02 NCLT CK 0010

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Rakesh Kumar, Himanshu KS, Ankit Sharma, Sameer Rastogi, Sachi, Sabeehaba Saddy, Aakansha Tiwari, Vibhor Mathur, Arun Pratap, Tanweer Anwar

Judgement

CA-1311/C-III/ND/2020 filed in IB-1117/ND/2018 :

The Applicant prayed for a direction to convene the meeting of the Secured Creditors, Unsecured Creditors and the Shareholders of the Corporate Debtor viz.; Reliable Insupacks Private Limited in terms of the Section 230-232 of the Companies Act, 2013 and a direction for publication of the notice for the proposed Meeting in the Newspapers. It is further prayed that the Liquidator be directed to take appropriate steps with respect to the Scheme of Arrangement and not to proceed with the liquidation process till the disposal of the present Application.

It is submitted by the Counsel for the Liquidator that Hon'ble NCLAT has passed the Order on 15.11.2019 placed at Page-89 wherein it has been observed by the Appellate Tribunal that there is no viability and feasibility of the Resolution Plan for approval by the COC. However, a direction was given to the Liquidator to consider the matter in terms of the decision of the Appellate Tribunal given in "Y. Shivram Prasad vs. S. Dhanpal & Ors. - Company Appeal (AT) (Insolvency) No. 224 of 2018, disposed of on 27th February, 2019 and another order of the same nature, the Counsel for the Liquidator submitted that the Applicant has sufficient time to place on record the Scheme, if any, for being considered in terms of the direction of the Hon'ble NCLAT. However, the Applicant has filed a revised Scheme on 26.2.2020.

Now, the Liquidator has issued notice for Auction which is fixed on 2nd and 3rd March, 2020. The Liquidator has filed certain observations in relation to the Scheme, copy of which is given to the Applicant. At this stage, the Counsel for the erstwhile Director Mr. MM Roy has taken serious objection to the revised Scheme stating that certain liabilities are on the shoulders of the ex-Director, which cannot be part of the Scheme, as the Applicant has to bring an independent proposal/Scheme for the satisfaction of the Creditors for being considered.

She has also pointed out that the Applicant who has proposed the Scheme is declared as 'Non-compliant' in the MCA Portal, however, the Representative for the Bank of India submitted that there are certain conditions which may be imposed by the Financial Creditor (Bank of India), with respect to the Scheme, if any. The Counsel for one of the Operational Creditors has verbally submitted that revised Scheme is acceptable. It is noted that this matter was listed before this Bench on 26.2.2020 and copy of the Scheme was never circulated to the Operational Creditor; then on what basis, observation is made, not known.

At this stage, the Counsel for HDFC Bank caused appearance. During the course of hearing, it has come to the notice of this Tribunal that one of the Applicants, viz.; Ved Engineers & Packers is the Creditor of the Corporate Debtor. It is further noted that Mr. Yashveer Singh Dagar, one of the suspended Board of directors and the Corporate Debtor is the relative of Mrs. Darshana Dagar, who is the Partner in Ved Engineers & Packers. It is submitted by the Liquidator that the Operational Creditor viz.; Rattan Polychem Private Limited and the Corporate Debtor is having common Directors i.e. Mr. Yashveer Singh Dagar. It is submitted by the Liquidator that the Applicants who have proposed the revised Scheme, have submitted the Scheme on 04.1.2020 and which was circulated to one of the members of the COC. The Bank of India holding 87% of the voting right did not agree to the Scheme on various grounds, one of them about the release of the property, with respect to which, it has been stated by the Financial Creditor that the Scheme cannot be released until full payment. Another point which taken by the Bank of India was that priority in payment cannot be given to the Operational Creditors as was stated in the Scheme. In short, the major Stakeholders in the COC did not agree with the Scheme filed. Now, the present revised Scheme has been proposed.

In the circumstances, it is deemed fit to direct the Liquidator to circulate copy of the revised Scheme to all the Stakeholders and to convene a Meeting on 20th of March, 2020 of all the Stakeholders on short notice by providing a copy of the revised Scheme (after removing all the defects) which shall be submitted by the Applicants on 6th of March, 2020 to the Liquidator. The status report will be filed by the Liquidator on next date. It is noted that the revised Scheme is also touching upon the issue of the Collaterals which are with Bank of India and stated to be the personal property of Mr. M.M. Roy. In the event, if any Scheme is being approved by the Lenders, the fate of the personal property of the ex-Director has to be decided. Therefore, Mr. M.M. Roy shall also be given a chance to be part of the Meeting so that he could protect his interest as far as the Scheme is concerned.

In view of above, the E-Auction which is proposed on 2 and 3 March, 2020 is hereby directed to be deferred, for which, fast immediate communication shall be sent by the Liquidator to the persons, who would be responding to the E-Auction Notice along with publication of notice in the newspapers, one in English and other in Vernacular, for which, the expenditure to be incurred is directed to be borne by the Applicants.

It is made clear that the voting, if any, conducted by the Liquidator shall remain confined to the Lenders who were part of the COC during the period of CIR Process.

List the matter on 27.3.2020.