

(2021) 07 NCLT CK 0007

In the National Company Law Tribunal

Case No : CA No.36 of 2020 in CP(IB) No.II0/ALD/2017

Shree Bhawani Paper Mills Ltd Vs

Date of Decision : 07-07-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 10, 33, 33(1), 33(1)(a), 33(2), 34, 34(1), 34(4), 35

Citation : (2021) 07 NCLT CK 0007

Hon'ble Judges : Rajesh Dayal Khare, Member (J)

Bench : Single Bench

Advocate : Abhishek Anand, Raglinv Dev Garg

Final Decision : Allowed/Disposed Of

Judgement

Rajesh Dayal Khare, Member (Judicial)

1. The present application is filed under Section 33(1)(a) read with 33(2) of the Insolvency and Bankruptcy Code by the Resolution Professional,

through his Counsel seeking order of the liquidation and appointment of liquidator under Section 33 and 34 of the Insolvency & Bankruptcy Code with

such prayer, to pass an order for the liquidation of the Corporate Debtor Company i.e. Shree Bhawani Paper Mills Ltd

2. The Adjudicating Authority vide its order dated 13.02.2018 based on a petition filed by the Corporate Debtor under Section 10 of the Code in

CP (IB) No. 110/ALD/2017, initiated the CIRP in respect of Corporate Debtor Company and appointed Ms. Anju Agarwal as IBP and subsequently

was confirmed as RP in the matter.

3. It is submitted by the counsel for the HP that 693 days have elapsed, been passed since initiation of the CIRP and in the 12th meeting of the

CoC convened on 06.12.2018, the Resolution applicants were invited to discuss the revised resolution plan submitted by them and attach detail

discussion, the CoC instructed the Applicant to put tin resolution plan for e-voting on 10.12.2018 and accordingly was pui to vote and CoC in the 13th

Meeting dated 17.12/2018 approved the Resolution plan and further the same was filed as CA No. 09 ot 2019 under Section 31 of the Code, for

seeking approval of the resolution plan before this Adjudicating Authority.

4.Â Â Subsequently, the resolution applicant filed an application for withdrawal of the resolution plan and this adjudicating authority lias granted liberty

to the resolution applicant to approach the CoC to reconsider its decision for withdrawal of resolution plan and CoC with 95.28% gave their no

objection on withdrawal of resolution plan by tin resolution applicant.

5.Â Â Pursuant to which, the applicant published revised Form (1 as approved in 15th meeting of CoC in Financial Express English in Delhi NCR,

Edition and Indian Express English and JanSatta Hindi in Lucknow Edition including Allahabad and Rai Bareilly. As per tin-revised Form-G the last

date for submitting the EOI was 06.02.2019 and the last date for submitting the resolution plan was on 09.1 I .20 19 to which a resolution plan was

received for the Corporate Debtoi namely â??Lakshmi Float Glass Limitedâ? on 08.11.2019 and was opened as per suggestions and a short note on

the resolution plan was circulated to the Members of CoC alongwith legal compliance report vide e-mail dated 11.11.2019.

6.Â Â In the 18th meeting of CoC convened on 04.01.2020, the applicant appraised the Members of CoC that the resolution plan submitted by

â??Laxmi Float Glass Limitedâ? was not approved by the CoC by the requisite voting share and CoC by 95.29% majority has passed tin resolution to

liquidate the Corporate Debtor as no resolution plan was received for the Corporate Debtor and the timeline of 693 days including the time of

extension and exclusion came to an end on 06.01.2020Â . Accordingly, as instructed by CoC, the applicants filed the present petition seeking

liquidation of the Corporate Debtor undm Section 33 of the Code and to appoint the RP as the liquidator in terms of the provisions contained in the

Code.

7.Â Â The Counsel for the Suspended Management submitted that the afresh EOI was invited, and one Company namely â??Lakshmi Float Glass

Limitedâ? furnished their proposal before the CoC, which was considered by the CoC in its 17th meeting dated 23.12.2019 and on perusal of the

minutes of the meeting, it appears that the RP had floored a proposal before the CoC to conduct revised valuation of the assets of the Corporate

Debtor as the valuation of the Company was last carried out in the year 2018 and in the meantime there has been an overall slow down in the

economy and even the GDP has declined to the range of 2%-3%. And he further suggested that in order to get better analysis, the viability of the

proposal of Lakshmi Float Glass Limited, the CoC must be aware of the value of the assets in the current market condition.

8. It is further submitted that aforementioned proposal of the RP was not taken into consideration inasmuch as same was not even put up for

voting and CoC went on to reject the proposal of Lakshmi Float Glass Limited even though they were not equipped with the latest valuation of the

assets of the Company. Further stated that the reason, this company requires fresh valuation is because the first valuation of the company was done on

30.05.2018 and the liquidation value of the assets were valued at the rate of Rs. 66.25 crores, while the second valuation was done on 20.06.2018 and

the liquidation value were then valued at the rate of Rs. 30,97,75,500/ and there was a significant dip in the market value of the assets in between two

valuations and it has been more than two years that the last valuation of the assets have been carried out and due to adverse market conditions and

the lockdown consequent to Covid-19 pandemic and other circumstances, the valuation of the assets has witnessed a significant blow.

9. It is further contended that instead of taking into consideration the aforesaid mentioned facts, the CoC went ahead and rejected the resolution

plan and choose to appoint the RP as the liquidator of the company, seeking initiation of liquidation proceedings of the Corporate Debtor.

10. The counsel for the respondent has also filed another application as 1A No. 180/2020 with the prayer to appoint a valuation agency and conduct

fresh valuation of the assets of the Corporate debtor and to direct the RP and CoC to explore other avenues of resolution, after considering the

current liquidation value of the assets and to extend the CIRP period in order to ensure resolution of the corporate debtor. It is contended that the

actual purpose of the Code is to maximize the value of the assets of the company and not to liquidate the Company, as liquidation is a matter of the

last resort, stating that sending the corporate debtor for liquidation will be extremely detrimental to all the stakeholder involved, including the creditors

and if the company goes into liquidation, the valuation of the assets of the Company will lurtlu . decrease.

11.Â Upon which, this Adjudicating Authority vide order dated 20.01.20.21 directed the applicant to appraise the CoC regarding conducting fresh

valuation for determining the value of the assets and CoC to consult i the same, as it would be difficult to decide on further course of action if fresh

valuation is not undertaken and further the Applicant wax directed to inform this Adjudicating Authority regarding the decision taken by the CoC.

12.Â Further, in accordance with the direction of this Adjudicating Authority, the Applicant has conducted a meeting of CoC on 25.01.2021 to adhere

to the direction given by the Tribunal and CoC has decided to conduct fresh valuation of the assets of the Corporate Debtor. Thereafter, the Applicant

appointed registered valuers to which the registered valuers have submitted their valuation report before the Applicant, in which the average

Liquidation value as a going concern basis of Land and Building , Plant and Machinery and Financial Assets and Security is Rs. 44,99,02,003/- and the

liquidation value as on peacemeal basis is Rs.37,30,89,695/-.

13.Â Pursuant to which, the Applicant convened another meeting of CoC on 02.03.2021Â wherein the Applicant has appraised the Members of

CoC about the out-come of fresh valuation of the assets of the Corporate Debtor. After discussions and deliberations, the Members of CoC decided

to go ahead with the valuation and directed the Liquidator to file an application before this Adjudicating Authority as a lot of time has already been

passed since the initiation of CIRP.

14.Â Upon hearing the submissions made by the parties and going through the contents of the present Liquidation application and the provision^

contained in the Code this Adjudicating Authority is of the view that a Sec 33(1) of IBC, 2016 contemplates that this Tribunal can pass an order of

liquidation of the corporate debtor, if the maximum period permitted for the completion of the CIRP is over and in the present matter more than 1000

days has passes since initiation of CIRP and as by operation of Sec 33(1) IBC, the corporate debtor is necessarily required to be ordered for the

liquidation under Sec 33(1)(b) of tin IBC,2016.

15.Â Further, even COC in its 18th meeting held on 04.01.2020 has with 95.29% majority has passed the resolution to liquidate the Corporate

Debtor as no resolution plan was received for revival of the company and even the latest valuation of the assets have not attracted any resolution plan

and further the commercial wisdom of the COC cannot be challenged which has approved the resolution for liquidation of the company.

16.Â Therefore, after considering facts and circumstances, and by exercising the power under Section 33(1), this Adjudicating Authority hereby

directs that the Corporate Debtor i.e Shree Bhawani Paper Mills Ltd. shall go into Liquidation and the moratorium declared for I InÂ–corporate

Debtor under Liquidation shall cease to have effect from pronouncement of this Order.

17.Â This Adjudicating Authority hereby appoint the Resolution Professional Ms. Anju Agarwal, having Registration Number as IBBI/IPA 001/ IP

P00106/2017-18/10213, as â??Liquidatorâ?? under Section 34(1) of the Code as he is not disqualified as per Section 34(4) of the IBC. The Liquidator

shall send an intimation to the ROC, Kanpur, U.P with which the Corporate Debtor Company is registered. The liquidator shall cause public

announcement in newspaper by declaring that the Corporate Debtor has gone under liquidation.

18.Â The Liquidator shall act as per section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as â??IBCâ?) subject to

directions on time to time as may be issued by this Adjudicating Authority.

19.Â The liquidator shall file progress report of every three months.

20.Â With the aforesaid observations, CA No.36/2020 is allowed and accordingly stands disposed of.