
(2020) 02 NCLT CK 0114

In the National Company Law Appellate Tribunal

Case No : Company Application No. 932/ND/C-III Of 2019 In (IB) No. 607 (ND) Of 2018

Star Mineral Resources Private Limited

APPELLANT

Vs

Gagan Shukla And Ors

RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 9, 14, 33(2), 33(5), 34, 34(1), 35(1)
National Company Law Tribunal Rules, 2016 — Rule 11
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 3, 12, 13
Companies Act, 2013 — Section 248(5), 252

Citation : (2020) 02 NCLT CK 0114

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This is an application filed by the Resolution Professional (herein after referred as "RP") under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code"), R/w Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred as "NCLT Rules") for issuance of directions for liquidation of the corporate debtor viz., M/s. Star Mineral Resources Private Limited in the manner as laid down under the Chapter III of Part II of the Code.

2. The facts in brief are that an application under Section 9 of the Code bearing number IB-607(ND)/2018 was filed by the operational creditor, M/s. Platina Bulk Private Limited for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Star Mineral Resources Private Limited. The said application was admitted on 17.12.2018 initiating Corporate

Insolvency Resolution Process against the Corporate Debtor viz., M/s. Star Mineral Resources Private Limited and there in appointed Mr. Akarsh Kashyap, was appointed as the Interim Resolution Professional (hereinafter referred as "IRP").

3. The Interim Resolution Professional had made Public Announcement in 'Form A' in the Daily News Papers namely 'Jansatta' in Hindi language on 21.12.2018 and 'The Financial Express' in English on 22.12.2018 and constituted Committee of creditors with sole Financial Creditor M/s. NSP Associates (India) Pvt. Limited.

4. It is submitted by the RP that when the CIRP was initiated on 17.12.2018, the status of the Corporate Debtor was not active, as it was struck off by the Registrar of Companies, Delhi & Haryana (herein after referred as "RoC") under Section 248(5) for non-filing of annual accounts and annual return for a period of three years.

5. The Financial Creditor has filed Appeal u/s 252 of the Companies Act, 2013, and this Bench vide Order dated 26.04.2019 has allowed the appeal with the direction to the RoC to restore the name of the company to the Register of the Companies.

6. The sole Financial Creditor, who was having 100% voting rights also moved an application for replacement of the IRP before the Adjudicating Authority, which was allowed on 04.06.2019 and Mr. Naresh Kumar Bansal as proposed by Committee of Creditors was appointment as IRP in place of outgoing IRP viz., Mr. Akarsh Kashyap.

7. Till the revival of the corporate debtor since the IRP could not take effective steps under the Code except the formation of the Committee of Creditors (hereinafter referred as "CoC"). However, the period of 140 days was excluded by this Bench vide order dated 01.07.2019.

8. It is submitted that after taking over the charge from the existing IRP, the newly appointed RP came to know that the Corporate Debtor had not filed any Balance Sheet for the respective years ending 31.03.2016, 31.03.2017, 31.03.2018. Even, the Income Tax returns were not filed for the previous years. It has been alleged that after a lot of follow up, the RP could only obtain the audited balance sheet of the Corporate Debtor ending 31.03.2016, which was initially not supplied by the Auditor.

9. It is submitted in the application that the RP could not call for the Resolution Plan in the absence of any specific information relating to the assets, liabilities, and business operation of the corporate debtor. The detailed position of the CIRP was discussed during the Fifth Meeting of the CoC wherein the CoC directed to move the present application in view of the following facts pertaining to the corporate debtor:

(i) The Corporate debtor is not a going concern and has no business operations and nothing has been informed till date by the suspended board of directors.

(ii) The Corporate debtor is not maintaining its registered office, corporate office and no records of the corporate debtor were made available to the resolution professional till date.

(iii) There are no employees with the corporate debtor.

(iv) In absence of any records it is not possible to form any Balance Sheet of the current date.

(v) The resolution professional received the following claims which are as follows:-

Sl. No

Name of Creditor (FC/OC)

Claims Submitted

Claims Provisionally admitted

1

NSP Associates (India) Private Limited (Financial Creditor)

98,94,958/-

98,94,958/-

2

Platina Bulkers Pte. Limited (Operational Creditor)

66,19,471.52

66,19,471.52

3

S V Roadways (Operational Creditor)

98,31,382/-

38,32,282/-

4

The Principal Commissioner of Custom Visakhapatnam (Operational Creditor)

1,48,98,525/-

1,48,98,525/-

10. The above facts were placed before the committee of creditors at its fifth meeting held on 4th November, 2019 at KD-138, First Floor, Pitampura, Delhi-110034, the CoC having 100% voting rights took the decision for Liquidation of the Corporate Debtor under section 33(2) of the Code and

instructed to the Resolution Professional not to call for any Resolution Plan as the Corporate Debtor is not a going concern and calling for Resolution Plan will be a waste of time, as there are no material assets left with the corporate debtor and decided to Liquidate the Corporate Debtor in view of all the facts, continuing with the Corporate Insolvency Resolution Process would only be a waste of time and efforts. It is appropriate to mention here that in the present case 330 days period expired on 11.11.2019.

11. The RP has submitted that he is eligible to be appointed as the Liquidator of the corporate debtor in terms of Regulation 3 of The Liquidation Process Regulation, 2016 read with Section 34 of the IBC, 2016. The Resolution Professional has also submitted written consent in Form AA dated 05.11.2019 to act as the Liquidator of the Corporate Debtor.

12. It is pertinent to refer to the statutory provisions provided in Section 33(2) of the Code which envisages that:

"Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors (approved by not less than sixty-six percent of the voting share) to liquidated the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

13. Therefore, as the statutory period of the insolvency has lapsed and there being no resolution plan, liquidation has to follow as recommended by the CoC.

14. In the result, the application is allowed by ordering liquidation of the Corporate Debtor, namely M/s. Star mineral resources 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. Naresh Kumar Bansal with Registration No. IBBI/IPA-002/IP-N00486/2017-18/11448, is appointed as Liquidator in terms of Section 34(1) of the Code.

b) Mr. Naresh Kumar Bansal, 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 effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

e) The Liquidator shall follow up and investigate the financial affairs of the

Corporate Debtor in accordance with the provisions of Section 35(1) of the Code.

f) The Liquidator shall also follow up any pending application for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

g) 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.

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) In the terms of the above, C.A. 932/ND/C-III/2019 filed in IB 607(ND)/2018 is disposed of in the aforesaid terms.

Let copy of the Order be sent to the parties including the Liquidator.