(2023) 10 NCLT CK 0016

In the National Company Law Tribunal

Case No : I.A. 4058 of 2023 In C. P. No. 429 Of 2022

State Bank of India Vs Deogiri Infrastructure Private Limited ?

Date of Decision : 05-10-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 15, 33, 33(1), 33(1)(a), 33(2), 33(5), 34(1), 52

Citation : (2023) 10 NCLT CK 0016

Hon'ble Judges : Lakshmi Gurung, Member (J);Charanjeet Singh Gulati, Member (T)

Bench : Division Bench

Advocate : Ayush J Rajani, Khushboo Shah, Mitali Bhatt

Final Decision : Disposed Of

Judgement

Lakshmi Gurung, Member (Judicial)

1. This application is filed by the Resolution Professional, of M/s Deogiri Infrastructure Private Limited., (hereinafter referred as Corporate Debtor) seeking liquidation of Corporate Debtor under Section 33(1)(a) read with Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC") with consequential prayers like appointment of Liquidator and moratorium during liquidation under section 33(5).

The brief facts of the Application are as follows:

2. On an application filed by State Bank of India under section 7 of IBC, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) vide order dated 29.03.2023 and the Applicant was appointed as Interim Resolution Professional ("IRP").

3. In compliance with section 15 of the IBC, the IRP made a Public Announcement dated 05.04.2023 calling for submission of claims till 17.04.2023 in terms of Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

4. Based on the claims received, the Committee of Creditors was constituted. His appointment was confirmed from IRP to RP of Corporate Debtor during the first meeting of the Committee of Creditors held on 03.05.2023 with 83.02% voting in favour.

Sl. No.	Name of Creditor	Amount Claimed	Claim Admitted	Voting (%)
1.	State Bank of India	50.44	50.44	65.23
2.	Bank of Baroda	13.82	13.76	17.79
3.	Indian Bank	13.13	13.13	16.98
	Total	77.39	77.33	100.00

6. A total of four (4) CoC meetings have been held during CIRP period.

7. The Applicant submits that apart from claims from financial creditors he has received claims from operational creditors as existing on the date of filing the present application which are as follows:

Claim of Operational Creditors

(Rs.)

Sr.

No.

Name of Operational

Creditor

Claim Amount

Claim Admitted

Under Verification

1

Samarth

Enterprises

13,54,974

13,26,000

28,974

2

State Tax

Department

15,44,996

15,44,996

..

3

Designer

Concrete Pvt Ltd

10,620

7,080

3,540

4

V V Peddy

Construction

44,64,054

..

..

5

Nitin S

Sharma & Associates

25,500

25,500

..

6

Abhinav

Construction

3,22,834

3,22,834

..

7

S. K.

Industrial Corporation

3,34,373

3,25,717

8,656

8

Ali Explosive &

Co.

18,69,568

4,99,298

13,70,270

9

Yash

Engineers

6,77,360

6,77,360

..

10

Kalpesh Cable

Industries Pvt Ltd

34,71,747

12,01,045

22,70,702

11

Shree Marketing & Distribution

Services

6,77,333

1,33,472

5,43,861

12

Vishal Cable

Industries Pvt Ltd

12,24,420

5,01,729

7,22,691

13

Lucky Electrical & Engg.

36,164

36,164

..

14

Bhoopati

Ramsurat Chaudhary

8,78,454

..

8,78,454

15

Prabhunath Umashankar

Vishwakarma

68,638

68,638

16

Vishwanath Namdeo

Danake

2,26,447

2,26,447

17

Kanti Cables

2,71,965

1,51,656

1,20,307

Total

1,74,59,447

1,01,71,476

72,87,971

8. He has also received claims from the employees. Since these claims were received without proper supporting documents, therefore they are kept under verification, which are as follows:

Sr.

No.

Name of

Operational Creditor

Claim Amount

Claim Admitted

Under Verification

1

Ravindra Kaduba

Dahatonde

14,994

–

14,994

2

Raosaheb Gunderao

Jakapure

44,688

–

44,688

3

Prashant R

Deshpande

3,92,963

–

3,92,963

4

Suresh Manikrao

Kulkarni

3,03,695

–

3,03,695

5

Ramesh Gunderao

Jakapure

10,436

–

10,436

6

Prashant

Bhagawandas Vaishnav

20,775

–

20,775

7

Roshan Komalprakash

Khanna

10,219

–

10,219

Total

7,97,770

-

7,97,770

9. The Applicant submits that during the course of the CIRP, he had appointed two registered valuers each for Plant & Machinery (Alok Kumar Gupta and Kedar Arvind Chikodi) and Security or Financial Assets (Alok Kumar Gupta and Jayeshkumar Parasmal Shah). All the valuers are registered with Insolvency and Bankruptcy Board of India.

10. The Applicant had issued Invitation for expression of interest ("EoI") on 26.05.2023 in Form G, and the last date for receipt of expression of interest was 15.06.2023.

11. The Applicant submits that during 3rd CoC meeting held on 21.06.2023, he has informed the CoC members that he had received the inquiries from nine (9) parties but did not receive a single EoI from any of the interested parties. Considering the situation of the Corporate Debtor, the CoC members deliberated

about filing application for liquidation of the Corporate Debtor. The Applicant also informed the CoC members that the CoC has to decide on the provisions of Regulations 39B, 39C and 39D of CIRP Regulations, 2016 before passing the resolution for liquidation of the Corporate Debtor. The CoC members requested the Applicant to defer this matter to the next CoC meeting.

12. During the course of the 4th CoC meeting held on 05.08.2023, the Applicant informed the CoC that, none of the interested party came forward with EoI, Pursuant to section 33(1)(a) read with section 33(2) of the Code, the CoC approved the resolution for liquidation of the Corporate Debtor.

13. The Applicant submits that considering the CoC Members approval with 83.02% voting shares, initiation of the liquidation of the Corporate Debtor, the Applicant has filed the present Application for Liquidation in terms of the provisions of section 33 of the Code.

14. The Applicant submits that the CoC members have also approved the Resolution put for appointment of the Applicant/ Resolution Professional to act as the Liquidator of the Corporate Debtor with 83.02%. The signed consent dated 29.08.2023 along with the Authorisation for Assignment is annexed to the application.

15. The Applicant prayed that since there are no resolution plans for consideration of the CoC, application is filed in terms of section 33(1) of the Code for liquidation of the Corporate Debtor with consequential reliefs.

16. Heard the submissions of the counsel appearing for the Applicant and perused the material available on record specifically the Minutes of the third and fourth meeting of CoC. In Item No. 5 of third CoC meeting held on 21st June 2023, it is mentioned that RP observed that there is need of determination of the avoidance transactions subjected to the CD, therefore, he has appointed M/s Amit Ray & Company to conduct Transaction Audit. RP also informed all the CoC members that the Suspended Directors (SD) have not yet provided any books of accounts and tally data and requested the CoC members to provide the bank account statements since 01.04.2013 onwards so as to aid the auditor for conducting the transaction audit. The CoC passed the resolution ratifying the fee payable to Amit Ray & Company with 65.23% votes.

17. Another important agenda, relating to the valuation of Corporate Debtor is noticed in Item No. 6 of third CoC meeting held on 21st June 2023 extract of which is reproduced below:-

Item No.6. – To update on the information received/pending from the suspended Directors (SD)-The RP informed that the suspended directors are yet to provide following information till date.

1. Tally data

2. Books of accounts in in physical form

RP informed that the SD has provided the agreement copies of two subcontractors namely Bharat Engineering and Aditya Enterprises. The SD has informed to RP that all the assets mentioned in the below lists are presently kept at Gut No. 1005 at Bidkin, Tal, Paithan, Aurangabad except one i.e., Caterpillar 320C which is located at Shop No.1, KM Stone 46, Near Gavli Tea Stall, Peth Road (NH848) Karanjali, Shivkar, Nashik- 422211. The SD assured that all these assets will be made available to the Valuer for valuation purposes.

Details of assets & their location

Sr.

No.

Asset

WDV as on

29.03.2023

Location

1

Stone Crusher

27,28,284.00

It was not in working condition for last five years. It was at site near village Peth, Dist. Nashik. The nearby villagers have stolen many parts and sold it as scrap. Hence at present, the stone crusher needs to be treated as scrap value.

2

Centring Plates

5,58,193.98

They were lying at different sites and stolen by nearby villagers.

3

Tippers Old (6 No.)

5,27,429.32

All vehicles are not in working condition & RTO tax for last five years along with fitness certificate is pending. They are lying at Gut No. 1005 at Bidkin, Tq. Paithan, Aurangabad.

MH 20

[Rs.87904.88]

AT

4945

MH 20

[Rs.87904.88]

AT

3461

MH 20

[Rs.87904.88]

AT

3467

MH 20 AT 3427

[Rs.87904.88]

MH 20 AT 3447

[Rs.87904.88]

MH 20 AT 3437

[Rs.87904.88]

4

Site Equipment’s centring

Plates

4,38,473.31

They were lying at different sites and stolen by nearby villagers.

5

Caterpillar 320D

3,68,500.00

All vehicles are not in working condition & RTO tax for last five years along with fitness certificate is pending. They are located at Gut No. 1005 at Bidkin, Tq. Paithan, Aurangabad

6

Caterpillar 320C

2,57,490.00

7

Bakhoe Loader JCB

77,051.00

8

Tippers (MH20DE2405)

86,753.00

9

Tippers (MH20DE1108)

65,262.00

10

Excavator ZX-110

1,30,517.59

11

Office Equipment’s

38,042.00

These assets were not in good condition, at the time of vacating the rented office, hence were left there

12

Electric Installation

54,233.00

13

Computers

85,648.61

14

Furniture & Fixtures

3,40,739.00

15

Lab Equipment

95,295.00

16

Vehicles

1,97,427.25

Sold & Cash deposited in account

17

Concrete Mixer

41,710.00

At Gut no. 1005, at Bidkin, Dist. Aurangabad

18

Breaker SB 302

39,481.00

19

Water Tanker

20,567.00

Total

61,51,097.06

The RP pointed out that, as per the above table, the SD has mentioned that the vehicles are sold off and the amount was deposited in the respective bank Account. RP requested the SD to provide the Bank Statements showing the amount credited towards the sale of vehicles.

The Representative of the SBI requested the SD to provide the ownership documents of all the assets. The SD informed that he is not having all the documents with him and thus have provided whatever was available with him to the RP such as RC book and/or invoices of few assets.

Thereafter, the RP discussed about the note received from the SD on the recovery of Security Deposits, where in SD stated that the chances of recovering of Security Deposits are NIL due to various reasons. CoC requested the RP to send email / letter to the relevant parties to get their feedback on the matter.

The RP inquired about the delay in submission of physical books of accounts, to which the SD informed that on account of death of the mother of one of his ex-employees, he was not able to send the same. The SD assured to provide the physical books of accounts within 7 days of time.

18. Item 6 of the fourth CoC meeting held on 05.08.2023 takes note of the status of CIRP of CD in following terms:-

" Transaction Auditor

The RP informed that the transaction auditor, M/s. Amit Ray and Company has commenced their work and have sent certain observations/requested for documents/information from the Suspended Directors. However, the auditor has informed that the suspended directors has not provided the desired information/ documents. The RP further informed that he has received the bank account statements from only Bank of Baroda and requested State Bank of India and Indian Bank to share the same promptly, to which the Rep. of SBI informed that they would be sharing the statements by today. The Rep. of Indian Bank did not provide any comments on the same.

Valuer

The RP highlighted that the suspended Director had provided the list of assets presently available with him, however, on the visit of the valuer, he found that few assets were not available on the site. The RP shared the queries as under:

Sr.

No.

Asset

Valuer

Query

Reply by Suspended

Director

RP Comments

1

Back hole Loader JCB

Not found at site

This was in non- working condition and was sold out to Mr. Anil Chutter in the year 2018 against his USL of Rs 436410/-.

It was pending in the company form 20/07/2017

Rajeshree Anil Chuttar and Anil Chuttar are

shareholders in co. Anil is having unsecured loan of Rs.4,36,410/- in

books. Still

outstanding. Please provide Supporting document to verify this transaction.

2

Tipper MH- 20- DE-

2405

Not found at site

This was sold out to RJ Feeds Pvt. Ltd in the year 2018 as the outstanding payment of loan against this vehicle for Rs. 81635/- was paid by RJ Feeds Pvt. Ltd. the vehicle was transferred in the name of this company. But due to oversight, the entry was not taken in the BS of 2018. In the BS the payment received

from RJ Feeds Pvt. Ltd. for Rs… is shown

as USL

Rs. 81635/- is still showing in the name of RJ Feeds in the balance sheet under Unsecured Loan. Please provide Sale Certificate. Please provide Supporting document to verify this transaction.

3

Tipper MH- 20- DE-

1108

Not found at site

This was sold out to RJ Feeds Pvt. Ltd in the year 2018 as the outstanding payment of loan against this vehicle for

Rs.81635/- was paid by RJ Feeds Pvt. Ltd. This vehicle was transferred in the name of this company. But due to oversight, the entry was not taken in the BS of 2018. In the BS the payment received from RJ Feeds Pvt. Ltd. for Rs… is shown

as USL

Rs. 81635/- is still showing in the name of RJ Feeds in the balance sheet under Unsecured Loan. Please provide Sale Certificate. Please provide Supporting document to verify this transaction.

4

Excavator ZX- 110

Sold Out,

as per

information provided at site

This was in non- working condition and was sold out to Mr. Prashant Jagirdar in the year 2018 as his USL of Rs. 5.0 Lacs was pending in the company form FY

2010.

Rs.5 lacs is still showing in the name of Mr. Prashant in the Balance sheet. Please provide Supporting document to verify this transaction

5

Office Equipment

Office was closed during site visit, hence cannot be inspected

We have already informed you that, the office was in rented premises & we have vacated it in the year 2018. There were no any valuable office equipment.

Why is it still showing in Balance Sheet?

6

Electrical installation

Office was closed during site visit, hence cannot be inspected

We have already informed you that, the office was in rented premises & we have vacated it in the year 2018. The electrical installation had to be scraped, so it was left at that place.

Why is it still showing in Balance Sheet?

7

Computers

Office was closed during site visit, hence cannot be inspected.

We have already informed you that, the office was in rented premises & we have vacated it in the year 2018. The computers were in very old & in scrap condition, so it

was left at that place.

Why is it still showing in Balance Sheet?

8

Fixtures & furniture

Office was closed during site visit, hence cannot be

inspected

We have already informed you that, the office was in rented premises & we have vacated it in the year2018. The furniture & fixture were scraped.

Why is it still showing in Balance Sheet?

9

Vehicle (Tata RX Pick up)

RC book

was not available

to us

We are trying to find it out.

10

Breaker SB 302

Not found at site

It was laying at the site. During last inspection done by Valuer Mr. Bhusan, it was shown to him. It is a small attachment, which might have been missed by your

valuer.

11

Water Tanker

As per RC Book, Vehicle Reg. No.

was MH- 20-A-5551

& as on site, it was MH-20-A- 5672.

Chessis & Engine No. were the

same.

The water tanker with Reg. number MH-20- A-5551 is on the site which was already seen by the valuer. Another taker with Reg. No. MH20A5672

in scrap condition does not belong to DIPL. It was brought there by mistake.

The RP sought comments from the Authorized Representative of the Suspended Directors, Mr. Sudhir Laad. He sought 21 days to provide the revised Balance sheet as on 29th March 2023 giving all the effects as per reply given by the Suspended Directors towards missing assets. The RP informed that both the valuers have completed the site visit for P&M and are in the process of providing the final report.

The RP informed that the SFA valuation is pending on account of non-submission of certain information by the suspended Directors.

19. Thereafter the CoC discussed the further course of action in the CIRP.

Item No. 8-

In the previous CoC meeting, the RP had informed that he did not receive any EoI in the Resolution Process. Thus, looking to the same and considering the present situation of the Company, the CoC members had deliberated and decided to file for Liquidation of the CD and accordingly, requested the RP to defer this matter to the next meeting. Accordingly, RP has taken this matter in the current meeting and has provided his consent to act as the liquidator. RP informed to CoC that in finalising the liquidation of the CD, COC needs to take the decisions under Regulations 398, 398A, 39C & 39D of CIRP Regulations, 2016, details as under:

i. Reg. 398- Meeting Liquidation Cost - The RP informed that while deciding to liquidate the CD, the CoC may make a best estimate of the amount required to meet liquidation costs, in consultation with the RP. The CoC shall make a best estimate of the value of the liquid assets available to meet the liquidation costs. Where the estimated value of the liquid assets is less than the estimated liquidation costs, the CoC shall approve a plan providing for contribution for meeting the difference between the two. The RP shall submit the plan approved to the Hon'ble NCLT while filing the approval of Liquidation. RP stated that in current case the CD does not have any available liquid funds and thus, the CoC has to approve a plan for providing for the liquidation cost in the liquidation process. The RP shared an estimated liquidation cost in the meeting. The CoC discussed and calculated the estimated Liquidation Cost of Rs. 12 lacs and the same will be met as per the voting share as applicable in this CoC meeting. The CoC requested to put the same for voting.

ii. Reg. 39BA - Assessment of Compromise or Arrangement - The RP informed that while deciding to liquidate the CD, the CoC shall examine whether to explore compromise or arrangement can be reached and the RP shall submit the CoC's recommendation to the Hon'ble NCLT while filing application under Liquidation. However, CoC stated that there is no chance of any compromise or arrangement.

iii. Reg. 39C- Assessment of sale as a going concern- The representative of the BoB advised to keep the both the options in the first Auction Process i.e. he has advised to keep Lot 1-Company as a Going Concern and Lot 2- Sale of Assets of the Company. CoC agreed for the same. CoC requested to put the same for voting.

iv. Reg 39D – Fee of the Liquidator – CoC has discussed this matter with the RP and after due deliberation it was decided to pay a fixed Fee of Rs. 6 lacs plus taxes and out of pocket expenses at actuals to the Liquidator as the Liquidator Fee and the same will be paid on the sale of assets of the CD. CoC requested o put the same for voting.

20. The Applicant put the resolution for voting to approve the liquidation of the CD. The relevant extract of the resolutions put for e-voting at the 4th meeting of the committee of creditors is reproduced below:

“Resolution No.3 – To approve the Liquidation of the CD

As discussed, vide item no.8, following Resolution may be passed by the CoC”

"RESOLVED THAT , pursuant to section 33(1)(a) read with Section 33(2) of the code, 2016, the CoC hereby approves the liquidation of the CD and hereby directs the RP to intimate the Adjudicating Authority of the decision of the CoC to liquidate the CD."

Resolution No.4 – To appoint the RP to act as the Liquidator of the CD

As discussed, vide item no.8, following Resolution may be passed by the CoC

"RESOLVED THAT, pursuant to section 33(1)(a) read with Section 34(1) of the code, 2016, the CoC hereby approves the appointment of the existing RP, Mr. Shailesh Desai having IBBI/IPA-001/IP-P00183/2017-18/10362 to act as the Liquidator of the CD."

Resolution No.7 – To fix the fees of the Liquidator

As discussed, vide item no.8, following Resolution may be passed by the CoC

"RESOLVED THAT, pursuant to section Regulation 39D of CIRP Regulations, 2016, the CoC hereby approves a fixed fee of Rs. 6 lacs plus taxes and out of pocket expenses at actuals to be paid to the Liquidator on the sale of assets of the CD”

21. It is observed from the minutes of the 4th COC meeting dated 05.08.2023 that the COC has, with 83.02% majority, passed all the above quoted Resolutions being Resolution No. 3, Resolution No.4 and Resolution No.7 and thus decided to liquidate the Corporate Debtor. Relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby allow this Interlocutory Application Number 4058 of 2023 by passing the following:

ORDER

a. The I.A. 4058 of 2023 is allowed and order is passed for liquidation of the Corporate Debtor M/s Deogiri Infrastructure Private Limited.

b. Mr. Shailesh Bhalchandra Desai, the Resolution Professional of the Corporate Debtor, having Registration No. IBBI/IPA-001/IP-P00183/2017-18/10362 is hereby appointed as the Liquidator under section 34(1) of the Code.

c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as approved by the CoC under regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

d. The Liquidator appointed in this case shall 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.

e. All powers of the board of directors and key managerial personnel of the Corporate Debtor shall cease to have effect and shall be vested with the Liquidator.

f. That the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Code including by issuing Public Notice stating that the Corporate Debtor is in liquidation.

g. Liquidator to send this order to the ROC under which this Company has been registered.

h. 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.

i. 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.

j. Liquidator is also directed to consider the Transaction Audit Report, Valuation Report and other relevant documents and if deemed fit to initiate appropriate action against suspended directors.

k. 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.

With the above directions, this application i.e. I.A. No. 4058 of 2023 is hereby allowed and disposed of.